



He Arotake Pōtitanga Motuhake
Independent Electoral Review

Final Report

Our recommendations for a fairer, clearer,
and more accessible electoral system

November 2023

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Message from the Chair

E te Minita, tēnā koe

It is with pleasure that we submit the final report of He Arotake Pōtitanga Motuhake – the Independent Electoral Review.

Regular, free, and fair elections are a fundamental part of Aotearoa New Zealand’s democracy. It has been a privilege for the Panel to be tasked with the once-in-a-generation opportunity of reviewing the laws that govern our electoral system.

Because elections are inherently political, we have particularly wanted to ensure we undertook our task independently. In doing so, we have been guided by a principled approach to our objectives, which we inherited from the 1986 Royal Commission on the Electoral System.

Since we started our work in mid-2022, we have been heartened by and so grateful to the many New Zealanders who have engaged with us, offering the review their insights, ideas and expertise. They have represented all walks of life – including all the parliamentary parties represented in the last parliament, academics, community and professional organisations, civil society organisations, and many individuals.

While these New Zealanders represented a diverse range of views, almost all agreed that many parts of Aotearoa New Zealand’s electoral system are working well. However, they were also clear that there is room for improvement to ensure that our electoral law is fit for the future.

Having looked at previous reviews of our electoral system, at research, and at international models and experience, we agree.

The strength of our democracy comes predominantly from our people. Political participation is a fundamental right, and we’ve come a long way since Aotearoa New Zealand’s first election to ensure people can exercise those rights. But challenges remain. COVID-19 has shown that we need an electoral system that can withstand unprecedented disruptions. We know that trust in government can be eroded when disinformation takes hold or when people think that influence can be bought. And past breaches of te Tiriti o Waitangi / the Treaty of Waitangi, including in the electoral system, have left a lasting legacy on Māori political participation.

The review allowed us to take a step back and look at our electoral law as a whole. Our electoral system needs to be robust to thrive in the face of challenges we are seeing to democracy at home and worldwide, and piecemeal change won't deliver what we need. The changes we've recommended, taken together as a package, will significantly improve the strength and resilience of our electoral system.

The central thread running through our recommendations is our vision to make the electoral system fairer, clearer and more accessible so that as many people as possible can take part in it.

Making our electoral system fairer is one way we think more New Zealanders can be encouraged to take part in our elections. Getting a "fair go" is an idea that resonates with New Zealanders. We've found several areas where our current laws could be fairer, including ensuring the way seats in parliament are won more closely reflects the number of votes each party gets, expanding who is eligible to vote and stand as a candidate, and improving public confidence in elections and supporting a fair contest of ideas by making the rules for political financing and election campaigns fairer and more transparent.

We think there are also places where our electoral system can go further to support more New Zealanders to vote. As well as addressing barriers to participation that still exist for different communities, we think initiatives like civics and citizenship education, as well as community-led outreach and education, could make a real difference in encouraging voter participation and supporting people to make informed choices.

Finally, we think making our electoral law clearer and more accessible will make it easier for voters, parties and candidates to participate in our elections. Rewriting and modernising the Electoral Act will bring it into the 21st century and make it easier to understand, implement and keep updated. We also need to ensure our electoral law upholds te Tiriti o Waitangi / the Treaty of Waitangi.

These are just some of the areas we touch on in this report. Our suite of recommendations – more than 100 in total – represents our collective view and is the result of balancing competing rights and principles. Together, the recommendations form a package that we believe would help to remedy inequities, remove barriers, and future-proof our electoral system for future generations.

The review has been a significant undertaking. I extend my sincere thanks to all those who have been involved in delivering this report, including our submitters and those we met with. We would particularly like to thank our dedicated secretariat, who provided invaluable assistance throughout the review: Emily Douglas, Carl Blackmun, Jo Dinsdale, Leigh Huffine, Emma McCann, Kathleen Robertson, Anna Moore-Jones and Georgia Whelan. I also want to acknowledge the tireless efforts of my fellow Panel members.

We present this report to you with a sense of optimism, in the knowledge that the improvements we recommend will build on the strengths of our current electoral system and see it do better into the future. We expect electoral law to keep evolving to meet the needs of our changing society, allowing space for more voices and for future innovation.

We have been honoured to contribute to the conversation; it is now over to others, particularly the government, to continue it.

Ngā mihi nui



Deborah Hart

Chair, Independent Electoral Review Panel

Karere nā te Heamana

E te Minita, tēnā koe

E harikoa ana mātou ki te tuku i te pūrongo whakamutunga o He Arotake Pōtitanga Motuhake.

He wāhanga waiwai ngā pōtitanga auau, herekore, tōkeke hoki o te manapori o Aotearoa. Nō te Pae te whiwhi i whai wāhi nei mātou ki te whakahaere i tētahi arotake mōmōhanga i ngā ture whakahaere i tō tātou pūnaha pōtitanga.

I te mea he mea pūmau ā-tōrangapū ngā pōtitanga, i tino hiahia mātou ki te whakahaere motuhake i ā mātou mahi. Nā whai anō, kua arahina mātou e tētahi tikanga ā-mātāpono ki ō mātou whāinga, i takea mai i te Kōmihana Roera ki te Pūnaha Pōtitanga 1986.

I te tīmatanga o ā mātou mahi i te puku o te 2022, i manawanui ai mātou, otirā i whakamiha hoki mātou ki te tokomaha o ngā tāngata o Aotearoa i whai wāhi mai ki a mātou, te tuku mai i ō rātou tirohanga, whakaaro me ngā mōhiotanga hoki. Nō ngā momo kātū noho katoa - tae atu ki ngā rōpū tōrangapū katoa i rō pāremata i te tau nei, ngā pūkenga, te haporī me ngā rōpū ngaio, ngā rōpū porihanga me te hunga takitahi.

Ahako ka whakakanohi ēnei tāngata i ngā whakaaro kanorau, ko te nuinga i whakaae e pai ana te mahi o te nuinga o ngā wāhanga o te pūnaha pōtitanga o Aotearoa. Engari i mārāma hoki rātou tērā ētahi āhuatanga hei hiki, e mātua rite ai tō tātou ture pōtitanga mō raurangi.

Nā te tiro ki ngā arotake o mua ki tō tātou pūnaha pōtitanga, ki ngā rangahau, tae atu ki ngā tauira me ngā wheako o tāwāhi, e whakaae ana hoki mātou.

Ko te pakari o tō tātou manapori i ahu hāngai mai i tō tātou iwi. He mōtika taketake te whai wāhi ā-tōrangapū, ā, kua tawhiti te haere, i te pōtitanga tuatahi o Aotearoa e taea ai e te iwi te whakatinana i taua mōtika. Engari tērā tonu ngā wero. I whakaatu mai te KOWHEORI-19 i te hiahia ki tētahi pūnaha pōtitanga e taea ai te kaupare i ngā whakararu tauira-kore. Kei te mōhio mātou ka waimeha pea te pono ki te kāwanatanga i te horanga o ngā kōrero whakatuapeka, i te wā rānei e whakaaro ana te tangata ka taea te hoko i te pōti. Waihoki kua roa nei te whakaaweawe kinotia o te Māori me tana whai wāhi ā-pōti e ngā takahanga o Te Tiriti, tae atu ki te pūnaha pōtitanga anō.

Nā te arotake nei i āhei ai mātou ki te hoki whakamuri ki te titiro whānui ki te ture pōtitanga. Me pakari tō tātou pūnaha pōtitanga e tōnuī ai ahakoa ngā uauatanga e kite nei tātou ki te manapori, i tēnei motu, i te ao hoki, ā, e kore e puta he oranga i ngā panoni moroiti noa. Mā ngā whakahoutanga e taunakitia ana e mātou, otirā hui katoa, e tino hiki i te pakaritanga me te manawaroatanga o tō tātou pūnaha pōtitanga.

Ko te ngako matua o ā mātou tūtohu, ko te whāinga kia tōkeke ake, kia mārama ake, kia tomopai ake hoki te pūnaha pōtitanga, kia whai wāhi nui ai te tangata.

Ko te whakarite kia tōkeke ake tō tātou pūnaha pōtitanga tētahi ara hei whakahihiri i te iwi o Aotearoa kia whai wāhi ake ki tō tātou pōtitanga. Ko te whakarite 'kia ōrite te whai wāhi' tētahi whakaaro e rata ana ki ngā tāngata o Aotearoa. Kua kite mātou i ētahi ture hei whakahoutanga kia tōkeke ake, pēnei i te whakarite i te tikanga o te whakawhiwhi tūru pāremata kia āta whakaata ake i te nui o ngā pōti ka whiwhi i ia rōpū, te whakawhānui i te hunga āhei ki te pōti, me te tū hei kaitono, me te hiki i te māia ā-tūmatanui ki ngā pōtitanga me te tautoko i te tauwhāinga ā-whakaaro tōkeke mā te hanga ture mō te tuku pūtea ki ngā rōpū tōrangapū me ngā kaupapa pōtitanga kia tōkeke ake, kia pūataata ake hoki.

Ki tō mātou whakaaro, tērā ētahi atu āhuetanga hei whai mā te pūnaha pōtitanga ki te tautoko i te iwi o Aotearoa ki te pōti. I tua atu i te turaki i ngā tauārai whakauru e pākati tonu ana i ētahi hapori, e whakaaro ana mātou ka whai hua pea ngā kaupapa mātauranga raraupori, kirirarau hoki, tae atu ki ngā take toronga, take mātauranga e arahina ana e te hapori, ki te akiaki i te hunga kaipōti me te tautoko i te tangata kia mārama tāna i kōwhiri ai.

Hei whakakapi, e whakaaro ana mātou mā te whakapūahoaho i te ture pōti, kia āhei ake hoki, ka ngāwari ake te whai wāhi o ngā kaipōti, ngā rōpū tōrangapū me ngā kaitono ki tō tātou pōtitanga. Mā te tuhi anō me te whakahou i te Ture Pōtitanga, e tō mai i te ture ki tēnei rautau, ā ka mārama ake, ka ngāwari ake hoki te whakatinana me te whakahou. Me mātua whakarite hoki kia hāpaitia e tō tātou ture pōtitanga Te Tiriti o Waitangi.

Koia nei ētahi whakaaro ka kōrerotia i roto i tēnei pūrongo. Ka noho tō mātou tūtohu - otirā neke atu i te 100 - hei whakakanohitanga o tō mātou tōpūtanga whakaaro, ā, ko te hua tēnei o te tauritetanga o ngā mōtika me ngā mātāpono maha. Mā te whakatōpū i ngā tūtohu, e whakaponono ana mātou ka āwhina ēnei ki te whakatika i ngā tōritetanga, te turaki tauārai me te whakarite i tō tātou pūnaha pōtitanga mā ngā whakareanga i muri nei.

I noho te arotake nei hei whāinga hira. E rere atu ana aku mihi maioha ki te hunga katoa i whai wāhi ki te kawenga o tēnei pūrongo, tae atu ki ngā kaituku kōrero me te hunga i tūtaki nei mātou. Ko te mihi motuhake hoki ki ā mātou kaituhi manawa-ū, i tuku i te āwhina waiwai hei te roanga o te arotake: Emily Douglas, Carl Blackmun, Jo Dinsdale, Leigh Huffine, Emma McCann, Kathleen Robertson, Anna Moore-Jones, Georgia Whelan. Me te tuku i te aumihi ki ngā mahi whakapeto ngoi a ōku hoa Pae.



Ka tukuna tēnei pūrongo ki a koe me te ngākaunui, me te mōhio hoki mā ngā whakapainga kua tūtohua nei e mātou e āwhina ki te whakapiki i ngā pakaritanga o tēnei pūnaha pōtitanga otirā kia whai hua ake ā ngā tau e tū mai nei. Ko te tūmanako ka whanake haere tonu te ture pōtitanga, e tutuki ai ngā hiahia o tō tātou porihanga hurihuri, e rangona ai ngā reo huhua, e kitea ai hoki te auahatanga.

Nō mātou te māringanui i whai wāhi ai ki tēnei whiriwhiri kōrero; otirā ka tukuna te rākau ki ētahi atu, ina koa ki te kāwanatanga, mā rātou e kawē.

Ngā mihi nui



Deborah Hart

Heamana, He Arotake Pōtitanga Motuhake

Executive Summary

Background

1. We were established as an independent panel in May 2022 by the Minister of Justice to review Aotearoa New Zealand's electoral system. Our Terms of Reference cover almost everything to do with how our elections work.¹
2. We approached our task independently and with open minds. Taking a principled approach, we considered how best to achieve the objectives set for us. These objectives included how to improve the fairness, accountability, clarity, representativeness and effectiveness of our electoral system and how it can uphold te Tiriti o Waitangi / the Treaty of Waitangi (**te Tiriti / the Treaty**).
3. Over 2022 and 2023, we met with a wide range of New Zealanders and received more than 7,500 written submissions during two periods of consultation. We are grateful to all those who took the time to share their views with us. Alongside these submissions, we also undertook research, looked at international case studies and experience, and considered previous reports and recommendations, including from the Electoral Commission, parliament's Justice Select Committee, and the 1986 Royal Commission on the Electoral System.
4. We have taken careful account of all these sources when developing our own views. In June 2023, we released an interim report with our draft recommendations. After considering feedback on that report, we have made several changes to our draft recommendations.
5. We present this, our final report, to the Minister of Justice.

¹ Our Terms of Reference can be found in **Appendix 2**. Matters specifically out of scope for this review were online voting, alternatives to the Mixed Member Proportional voting system, the retention of the Māori electorates, local government elections and broader constitutional matters like whether to have an Upper House.

Part 1: Foundations

The constitutional and human rights context of electoral law

6. We begin by outlining the wider constitutional arrangements and international and domestic human rights obligations within which our electoral law must operate. This context informed our approach to the review and our recommendations.
7. Aotearoa New Zealand's constitutional arrangements provide checks and balances by one branch of the government against another. Under Aotearoa New Zealand's constitutional arrangements, members of the executive must be members of parliament. This requirement gives the executive branch a powerful influence over the workings of the parliamentary branch.
8. Aotearoa New Zealand has ratified several binding international treaties that protect human, civil, political and minority rights and is a party to international declarations. Such obligations are taken seriously by our government and international partners alike. These agreements, along with the domestic human rights law in the Human Rights Act 1993 and the New Zealand Bill of Rights Act 1990, also underpin our electoral law.

The overall design of electoral law

9. The Electoral Act 1993 needs to be thoroughly redrafted to modernise its language, structure and content to make it easier to understand, implement and keep updated. Over time, the Electoral Act has become increasingly complex and unwieldy. It specifies *how* things are to be done (such as using the postal service) rather than what is to be done and to what standard, making it difficult to innovate. The Electoral Act uses outdated language in some areas, such as in provisions referring to mental health and disabled people. Redrafting would be an opportunity to update the Electoral Act for the 21st century.
10. An important feature of electoral law in Aotearoa New Zealand is the entrenched provisions. These provisions can only be changed by a majority vote in a public referendum or by a 75 per cent vote in parliament. This high bar for amendment is based on the idea that changes to core aspects of electoral law should have broad public and political support.
11. We found inconsistencies and gaps across the provisions that are currently entrenched. We recommend additional provisions should be entrenched, including the party-vote threshold, the Māori electorates, the right to vote and to stand as a candidate, and the independence of the Electoral Commission.



Upholding te Tiriti o Waitangi / the Treaty of Waitangi

12. The Crown is responsible for upholding its obligations under te Tiriti / the Treaty as they relate to our most fundamental democratic rights: the right to vote and contest free, fair and regular elections. The Crown must redress past breaches, actively protect Māori electoral rights, and provide equitable opportunities for Māori to take part in elections. Decades of systematic breaches by the Crown have resulted in consistently lower rates of Māori voter engagement and participation. The Crown must do better.
13. We recommend that the Electoral Act explicitly requires decision-makers (including the Electoral Commission) to give effect to te Tiriti / the Treaty and its principles when exercising all functions and powers under the Act. This requirement should also be an explicit statutory objective of the Commission. A statutory obligation will ensure the Commission has clear authority to continue its work to reach Māori voters and candidates. To provide greater transparency of this work, the Commission should be required to publish a Tiriti / Treaty policy and strategy. We recommend the Commission works with Māori to enable Māori governance over Māori electoral data, and that it is funded by government to do so.

Part 2: The voting system

Improving MMP

14. We think the way seats in parliament are allocated in elections could be fairer. Our recommended changes to the core Mixed Member Proportional (**MMP**) settings function as a package.
15. The current party-vote threshold of five per cent is higher than it needs to be. We recommend lowering the threshold to 3.5 per cent. Lowering the threshold will broaden representation by making it easier for new parties to enter parliament, while still allowing for the formation of stable parliaments and effective governments.
16. We recommend abolishing the one-electorate seat threshold (often referred to as the “coat-tail provision”), provided the party-vote threshold is lowered to 3.5 per cent. Currently, a party that wins an electorate is also entitled to its share of list seats based on its party vote, even if it did not meet the party-vote threshold. We think it is unfair that this rule gives voters in some electorates more say than voters in other electorates about which parties get represented in parliament.
17. An overhang seat occurs if a party wins more electorate seats than its share of the party vote would otherwise have entitled it to. When this happens, that party keeps all the electorate seats it has won, but the total number of list seats allocated to other parties is increased until the next election. This makes sure the

number of seats those parties has remains in proportion to their share of the nationwide vote. If the one-electorate seat threshold were removed, the number of overhang seats would be likely to increase. For that reason, if the threshold is removed, we recommend also removing these extra seats for other parties. Instead, fewer list seats should be allocated.

18. We propose fixing the ratio of electorate to list seats at 60:40 to ensure there are enough seats to maintain parliament's proportionality and the representation of diverse communities. The effect of this change would be that parliament would gradually increase in size over time in line with changes in our population.
19. In addition, there should always be an uneven number of seats to avoid hung parliaments, where no party or coalition of parties can form an absolute majority.

The parliamentary term and election timing

20. Parliaments last for a maximum of three years. We heard arguments for and against changing the term of parliament, which can only be done by a 75 per cent majority vote in parliament or by a majority in a public referendum. We think this is a decision for voters. It is 33 years since we last had a referendum on whether the term of parliament should be longer. It is time for another referendum, supported by an independent information campaign about the pros and cons of a longer term.
21. Currently, the prime minister can call a general election at any time within the three-year parliamentary term. In recent years, the prime minister has given plenty of notice – usually announcing the election date early in the third calendar year of parliament. This practice appears to work well, balancing the need for both flexibility and certainty, and so we do not recommend any change.

Vacancies in parliament

22. We think the grounds for when a Member of Parliament's (**MP**) seat is vacated remain largely fit for purpose. However, we propose that the ground for non-attendance without leave be changed from the term of parliament to three months, and that the ground for mental incapacity be removed as it is out of date and unnecessary.
23. We recommend abolishing the "party-hopping" rules. At the moment, an MP can lose their seat if they leave, or are removed from, their party. We heard from some submitters that this reflects the central importance of parties under MMP and the accountability of MPs to their parties and the voters that support them. However, in our view, MPs have the right to freedom of expression and of association and should be able to expressly dissent from their party's views. Removing rules would protect those rights and could act as an important check on parties.



24. Some submitters argued that by-elections are an expensive and unnecessary exercise. We consider that they fill an important democratic function by ensuring constituents continue to have local representation, and should be retained.

Part 3: Voters

25. The rules for who can vote and how, and the way voting is administered, are of fundamental importance to our electoral system and democracy. We have focused on how to make voting more accessible and improve voter participation.

Voter eligibility

26. The right of citizens to vote is a fundamental right, recognised and protected by international and domestic law. Any limit on that right must be reasonable and justified.
27. We recommend lowering the voting age to 16. Having reviewed the evidence, we are confident that 16-year-olds are just as capable of making informed decisions about how to vote as 18-year-olds. Lowering the voting age could also support improved participation, based on emerging research from other countries.
28. We recommend extending the time that New Zealand citizens can spend overseas without losing the right to vote, which is currently three years. People have more ways than ever before to stay connected with Aotearoa New Zealand while overseas. We think most citizens overseas would continue to be invested in and affected by government policies beyond a single electoral cycle. We recommend extending the timeframe to two electoral cycles.
29. Residents who live in Aotearoa New Zealand and have the right to stay here indefinitely can vote once they have lived here for a year. This time requirement starts from when a person first begins living here, regardless of whether they are on a temporary or resident visa at that time. We heard from submitters that they found both the current rules and our interim recommendations confusing, so we have sought to clarify these in this final report.
30. We recommend extending the time that residents for electoral purposes (that is, non-citizens entitled to remain in the country indefinitely) must live in Aotearoa New Zealand before being able to vote from one year to a full electoral cycle. We think the current timeframe is too short and creates risks. Our recommended change would ensure people will have seen and experienced an election here before they can take part in one. This required time period would still begin from when a person first begins living in the country. The amount of time that residents for electoral purposes can spend overseas without losing the right to vote should stay at 12 months.
31. In our view, all prisoners should have the right to vote. Currently, anyone serving a prison sentence of three years or more cannot vote. Given the fundamental nature



of the right to vote, disenfranchisement should not form part of someone's punishment.

Enrolling to vote

32. Currently, enrolment is compulsory but voting is not. We do not recommend changing these rules because they are generally working well.
33. Earlier this year, parliament made changes to the Māori electoral option, which gives people of Māori descent the choice of whether to enrol on the general roll or the Māori roll. Now, Māori electors can change rolls at any time except in the three months leading up to a general or local election, or once a seat has been formally declared vacant before a by-election. While this change helps to address a long-standing issue for Māori voters, we do not think it goes far enough, especially as there is evidence of voters wishing to change rolls in the three months before the 2023 general election.
34. We recommend that Māori voters should be able to switch rolls at any time up to and including election day for general and local elections, while retaining the exception for by-elections. The period just before an election is when people are most likely to be thinking about their choice of roll, and so the current law could prevent people from exercising the option exactly when they are most likely to be engaged with elections. To be as effective as possible, the greater flexibility to exercise the Māori electoral option should be accompanied by improved information and engagement.
35. Currently, people of Māori descent cannot be on different rolls for local body and general elections simultaneously. The growth of local Māori wards around the country makes this choice increasingly relevant for Māori voters. We recommend removing this administrative barrier to allow people to be on different rolls simultaneously.
36. The decline of postal services and the growth of digital enrolment services raise important policy questions about how to verify a person's residence. While particularly relevant to elections, we consider this issue requires broader government consideration. We recommend an all-of-government approach to encourage enrolment, for example, when people are accessing other government services.

Voting in elections

37. We make recommendations to reflect changes in voter behaviour, make voting more accessible, and improve the resilience of the electoral system.
38. More people now vote before election day, known as advance voting, than on election day. However, the law has only minimal provisions for advance voting,



and the rules regulating electioneering on election day are much more restrictive than they are during the advance voting period.

39. We think the rules for advance voting and election day voting should be more consistent. A minimum period of 12 days should be set for in-person advance voting. We recommend changing election day restrictions on electioneering to match advance voting rules, so one set of rules applies to the whole period.
40. Other recommendations focus on accessibility. We heard from submitters that equitable access to polling places is a key factor in enabling participation, and so we propose that electoral law sets principle-based standards for polling places to ensure they are widely available and accessible. Special voting provides ways to vote for people who cannot vote in person. With postal services in decline, work is needed on what voting methods will replace postal voting to ensure ongoing access for those who need it. We recommend changes to the process for issuing ballots to address barriers for some communities.
41. We have all become acutely aware of the potential for natural disasters, pandemics or other unforeseen events to disrupt an election. Existing emergency provisions already provide for delaying an election or implementing alternative voting processes. However, they do not provide for situations where parliament has already dissolved or expired, but it may not be safe or practical to hold an election for a prolonged time. We recommend updating these provisions to include a new last-resort power to withdraw the writ for a general election in the event of a catastrophic disaster.

Counting the vote and releasing results

42. The important processes of counting the vote and releasing results are generally working well.
43. We recommend allowing the preliminary count, which is done on election night ahead of the official count, to be conducted electronically in the future. This change would enable the Electoral Commission to start long-term work towards a live digital roll mark-off, where voters are marked off the roll electronically. Digital roll mark-off would make vote issuing easier and help to reduce the administrative costs of special votes. It would allow people voting outside the electorate where they are enrolled to cast an ordinary vote instead of a special vote. Electronic scanning technology has been successfully used to count votes in previous referendums.
44. We recommend creating a legal requirement for the preliminary results to be released as soon as is reasonably practicable to formalise and future-proof the current practice.

Improving voter participation

45. Voter participation is central to a healthy democracy. People are more likely to vote if they understand why voting is important in a democratic system. The Electoral Commission plays a crucial role in improving voter participation and educating people about the electoral system, and we support its continued work in these areas.
46. We recommend developing a funding model to support community-led initiatives for civics and citizenship education and voter participation. Community groups know best about how to reach their members, but they are not always resourced to do so. We have changed our initial view and now consider that the fund should be administered by the Electoral Commission rather than a different government agency. The Electoral Commission's independence and political neutrality, combined with appropriate safeguards, would ensure that the funding is not used for partisan purposes.
47. We set out the barriers to participation that may be faced by different communities, and the steps being taken to address them. We recommend some changes in response to outstanding barriers, such as providing targeted information to communities about using preferred names when enrolling and voting, and enabling people on the unpublished roll to cast an ordinary vote to make voting easier for those with safety concerns.

Part 4: Parties and candidates

Standing for election

Party regulation

48. Political parties play a vital role in our electoral system. They need to be regulated because they exercise significant public power in selecting and promoting candidates at elections and can (if registered) receive state funding. However, parties must also be able to organise themselves, determine policy, select candidates, and contest elections in ways that reflect their widely differing sizes, ethos, and organisational approaches. Our recommendations balance these two considerations.
49. We think many of the current rules are working well, although we recommend ways to strengthen them to increase transparency and public confidence. The existing requirement for party members to participate in selecting both electorate and list candidates would be strengthened by allowing the Electoral Commission to refuse to register a party whose rules do not permit this to happen.
50. We recommend giving the Electoral Commission a power to audit the requirement for registered parties to have 500 current financial members who are enrolled to vote if it has reasonable grounds to believe a party is not complying. We also



recommend bringing forward the deadline for when a party must be registered to the start of the regulated period (that is, about three months before election day).

51. We recommend closing the loophole where an unregistered party can avoid disclosure requirements by becoming a component party of a registered party.

Candidates

52. All citizens who are registered electors are eligible to stand as candidates. We think this remains appropriate. We could not find any reason to depart from this alignment between voter and candidate eligibility in each of the provisions we reviewed. We concluded that if our recommendations to expand voter eligibility are accepted, then those newly eligible groups should also be able to stand as candidates. That is, 16- and 17-year-olds, prisoners, and overseas citizens who have been away from Aotearoa New Zealand for no more than two electoral cycles. Extending candidate eligibility supports representation, and ultimately voters decide who to elect.
53. We heard from some submitters that electorate candidates should only be able to contest electorates where they live, and that dual candidacy should be prevented (candidates contesting an electorate and being on a party list at the same time). In our view, these proposals would undermine the ability of parties to stand strong candidates in all electorates, and we do not recommend them.

Political finance

54. Raising money and other resources is fundamentally important to parties' and candidates' participation in the electoral system. Parties and candidates use money and resources for a wide range of activities, including developing policy, communicating with the public, and campaigning. Making donations and providing loans is a form of political expression and electoral participation, allowing people to support parties and candidates of their choosing. The right to do so is protected by the New Zealand Bill of Rights Act 1990.
55. However, there are risks to electoral integrity and public confidence in the electoral system if some people are able to unduly influence parties and candidates by making donations or loans. Even the sense or perception of undue influence can undermine trust in our democratic processes.
56. Our recommended changes, as outlined below, may reduce private funding and increase compliance costs for parties. We recommend a modest increase in state funding to address these effects. Parties are central to our electoral system and supporting them in a fairer, more transparent and up-to-date way is vital.

Private funding

57. Private funding is an important source of political party finance but it also causes considerable public concern. We recommend simplifying and tightening some

provisions in the existing private funding rules to improve public trust by increasing transparency.

58. Parties and candidates mostly rely on private donations and loans to pay for their day-to-day activities and for their election campaigns. In Aotearoa New Zealand, people have the right to support any party. While the law should enable this form of participation, it also risks enabling the exercise of undue influence through financial means.
59. We recommend that only individuals enrolled to vote should be able to make loans or donate to parties and candidates. This means that all entities, whether trusts, companies, trade unions, iwi, hapū, or unincorporated associations, would be prohibited from providing funding. They will continue to be able to participate as third-party promoters or by donating to third-party promoters.
60. Currently there are no restrictions on the amount that an individual may donate or loan to a party or candidate. We recommend introducing a cap of \$30,000 per party and all its individual candidates for each election cycle. We also recommend reducing the amount of money that can be donated anonymously from \$1,500 to \$500. The reduction will improve transparency while still allowing for “grass-roots” fundraising. The rarely used protected disclosure regime for larger anonymous donations should be removed.
61. We make further recommendations in response to submissions about loopholes and avoidance issues. Registered third-party promoters who are required to declare their election expenses should also be required to disclose all donations over \$30,000 received from any person (whether as a single donation or multiple donations) in an electoral cycle used for election expenditure. Increased monitoring and new offences would be required to enforce new restrictions on third-party promoters. These changes are needed to limit, for example, the potential for donors to collude with parties and subvert our recommended changes to private funding.
62. Other recommendations close potential loopholes relating to membership and affiliation fees and financial disclosure by parties when applying for registration. In addition, the Electoral Act should contain a general anti-avoidance offence to strengthen the ability to enforce political finance rules.
63. Reporting and disclosure requirements should increase in frequency before elections. In an election year, we recommend requiring parties and candidates to disclose large donations (of more than \$10,000 in total) at the beginning of the three months leading up to election day, and within 10 working days during that time. We have extended this timeframe for disclosure from the seven days recommended in our interim report, in response to feedback from parties about the challenge this timeframe would present. The public disclosure threshold for donations in parties’ annual returns should reduce from \$5,000 to \$1,000.
64. We revise our initial view and now recommend largely retaining the definition of donation in the Electoral Act. However, we propose lowering the exemption for



gifts of goods and services to \$500. This change aligns with our recommended anonymous donation limit.

State funding

65. To balance the effect of our private funding recommendations, we recommend a modest increase in the levels of state funding provided to registered parties.
66. The changes we recommend to private funding aim to increase transparency, reduce the risk of undue influence, and incentivise parties to seek larger numbers of small donations. These changes are likely to affect the amount parties receive privately. We recommend a mix of direct and indirect state funding to compensate. We appreciate the contentious nature of public spending on parties that individual taxpayers may not support, but parties play a vital constitutional role in our system.
67. Per-vote funding should be introduced on a sliding scale for parties that receive at least two per cent of the party vote. Although this could favour parties already in parliament, other measures we recommend will offset this effect.
68. Base funding of \$15,000 each year should be made to all registered parties to support compliance with legal obligations. This funding will help smaller parties in particular to meet transparency and disclosure costs.
69. Tax credits of 33 per cent should be available to donors for political donations of up to \$1,000 each year.
70. A new fund – Te Pūtea Whakangāwari Kōrero ā-Tiriti / Treaty Facilitation Fund – should be established to support party and candidate engagement with Māori communities, in ways appropriate for Māori.
71. The purpose and size of the existing Election Access Fund / Te Tomokanga – Pūtea Whakatapoko Pōtitanga should be expanded to allow parties to apply to meet the costs of providing materials to voters with accessibility needs in their campaigns.
72. Precise costings for our package of recommendations, particularly for tax credits, are difficult to provide. About \$4.1 million in state funding is currently provided through the broadcasting allocation (discussed below) and suggest it should be reapplied to our funding model. In addition, Parliamentary Service funding for the parliamentary wing of parties was about \$52 million in the 2023/24 financial year. As this funding can be used for activities that also have potential electoral benefits, we suggest that some of this funding should be redirected towards our recommended state funding.
73. In this final report, we recommend establishing an independent fiscal institution to provide costings of registered party policies at their request. This could help to counter misinformation and disinformation and would constitute an indirect form of state funding to all registered parties.

Election advertising and campaigning

74. An election advertisement is generally one that encourages people to vote for or against a particular party or candidate, whether or not they are mentioned specifically. We support the current approach of applying low-level advertising restrictions all the time, such as requiring advertisements to include details of who has placed them, and increasing restrictions closer to the election.
75. We recommend that a total prohibition on election day advertising should only apply inside or within 10 metres of polling places, which is the approach that currently applies during advance voting.

Media-specific regulation of advertising

76. The media landscape has changed significantly, meaning that the existing controls on the broadcast media are no longer fit for purpose. The specific rules that apply to broadcasting party and candidate advertisements on television and radio should be removed, along with the current state funding for such advertising provided through the broadcasting allocation. Instead, parties and candidates should be free to advertise on television and radio as they wish, up to their campaign spending limits.
77. Online advertising, including its targeted (and microtargeted) nature, is a fast-moving and complex area and is used increasingly by parties. Although some protections are in place, we recommend broader government consideration of whether they are sufficient.

Campaign spending limits and disclosure requirements

78. Advertising spending limits for all electoral participants apply in the three months before election day.
79. We recommend setting a flat spending limit for parties at a level similar to the actual amounts the two largest parties spent at the 2020 election. From there, we recommend that spending limits for candidates and third-party promoters should be set as a proportion of the spending cap for parties. Our recommended changes to spending limits, subject to adjustment for inflation and other factors that may have arisen since 2020, are:
 - setting a flat spending limit of \$3.5 million for all parties
 - setting the limit for candidates at one per cent of the spending limit for parties for general elections and at two per cent for by-elections (instead of setting a dollar amount)
 - setting the limit for third-party promoters at 10 per cent of the party limit.
80. We note that our proposed spending limits would need to be adjusted at the time of enactment to take account of the impact of inflation and other factors since 2020.



81. We do not recommend changing current disclosure requirements, including that election expense returns are filed after the election.

Part 5: Electoral administration

Electoral Commission

82. The Electoral Commission generally delivers well-run elections with high levels of integrity. It also supports and encourages people to take part in elections, including by working directly with communities with lower participation rates. We think it is important the Commission focuses on understanding and addressing the barriers for these communities. Therefore, we recommend amending the requirement for the Commission to facilitate participation to a requirement to facilitate *equitable* participation.
83. The Electoral Commission board should be expanded from three to five members. The Minister of Justice should be required to ensure that the board collectively has skills, experience and expertise in te Tiriti / the Treaty, te ao Māori, and tikanga Māori. To this end, we recommend that the Minister of Justice should have to seek nominations for the Electoral Commission board from iwi and Māori representative organisations.
84. Our recommendations about the Electoral Commission work together with our recommendations that decision-makers give effect to te Tiriti / the Treaty, that the Commission has a Tiriti / Treaty strategy, and that it prioritises establishing Māori governance over Māori data.

Accessing the electoral rolls

85. Accurate and up-to-date electoral rolls are critical to administering elections and to the system's integrity. As well as having a central role in the electoral system, electoral roll data is accessed for other purposes, such as research and preparing jury lists, and by political parties wanting to canvass voters before elections. The rolls contain personal identifiable information such as names, addresses and occupations.
86. The need to strongly protect personal data has become more critical now that technology can be used to data-match and target people. We consider electoral roll data should be more stringently controlled by amending the Electoral Act to be more consistent with the requirements of the Privacy Act 2020.
87. Public inspection and purchase of electoral rolls should end, as should access to information about who has voted, although access should remain for undertaking election petitions and enrolment objections. Historical electoral rolls should be available publicly after 50 years for private research.



88. Access to roll data should continue for research relating to social science, health, and electoral participation. However, there should be tighter controls on data access and use, including a stronger approval process before researchers can access data. Electoral researchers should be provided with specific access to de-identified master roll information for research directly related to voter turnout, subject to the same approval process.
89. We have revised our initial view about party, MP and candidate access to roll data. We now consider they should continue to have access to roll data, but for specified, limited purposes, including election campaigning and communicating with constituents about parliamentary business. There should also be tighter controls on the use and retention of information by parties, MPs and candidates. The ability for scrutineers to access records of votes cast during the voting period, and to share this information with political parties and candidates, should end.

Boundary reviews and membership of the Representation Commission

90. The boundary review process is conducted by the Representation Commission and determines how the country is divided into electorates. We recommend that Stats NZ is given flexibility on the data sources it uses to calculate electoral populations, such as using the estimated resident population, instead of being required to use the census. However, other data sources should only be used once improved processes to ensure their robustness are in place, including around determining the Māori descent population. We recommend boundary reviews continue to take place every five years.
91. To stabilise electorate boundaries, we recommend increasing how much an electorate's population size can depart from the average size (known as the population quota tolerance) from plus or minus five per cent to plus or minus 10 per cent.
92. Currently, when the Representation Commission sets Māori electorate boundaries, it has to take into account Māori communities of interest. We recommend the Commission should have to consider Māori communities of interest alongside general communities of interest when it sets general electorate boundaries too.
93. The Representation Commission includes a chairperson, two members appointed by parliament (one representing the government and one the opposition) and four government officials. When determining Māori electorate boundaries, the Commission also includes the chief executive of Te Puni Kōkiri and two people of Māori descent (representing the government and the opposition). We recommend these members are also members when general electorate boundaries are being considered.



Electoral offences, enforcement and dispute resolution

94. Electoral offences need a thorough overhaul and consolidation. The offences in the Electoral Act are all criminal and have been added and amended over time, with some carried over from earlier electoral laws. As a result, some offences and penalties are out of date, and there are inconsistencies in the treatment of various behaviours.
95. The offence of “treating” voters with food, beverage and entertainment before elections should be repealed, and a judge should have an express discretion to restore voting rights to someone placed on the Corrupt Practices List. We recommend a new offence of intentionally obstructing, undermining or interfering with an election official’s work conducting elections. This offence will protect election officials and future-proof the Electoral Act. Further work should be done on whether a similar offence should be created for harassing candidates.
96. Currently, parties cannot be held directly liable for breaches of electoral law, and individual party secretaries are liable for offences such as breaking election finance or advertising rules. We think the question of whether parties should be liable, particularly for systemic breaches of donation and expenditure rules, merits a closer look as part of the overhaul of offences.
97. We recommend giving the Electoral Commission more investigative powers, such as requiring documents and undertaking audits, as well as the ability to refer serious financial offending directly to the Serious Fraud Office. The threshold for referral should align with the Serious Fraud Office’s jurisdiction.
98. The Electoral Commission currently has no ability to prosecute offences (all enforcement actions are taken by the Police and the Serious Fraud Office). As part of the overhaul of all offences, the ability of the Commission to impose low-level sanctions for the breach of some electoral laws should be considered.
99. The Electoral Act contains mechanisms for resolving disputes about election outcomes through election recounts and election petitions. In our interim report, we recommended that judges should have the discretion to decide whether a recount goes ahead. In response to feedback that this could lead to delays, we no longer make this recommendation. Consequently, the deposit fees required to apply for a recount should be retained at their current amounts.

Security and resilience

Managing the risks of disinformation

100. The spread of disinformation (false information intentionally spread to mislead or influence people), especially online, can undermine the integrity of the electoral system and distort free and open debate. While it is of particular importance to the electoral system, the issue is far broader than the electoral system. We are concerned about the risk that disinformation presents to the security and

resilience of the electoral system and to voter participation. Upholding rights to freedom of expression and freedom of association are also important.

101. We recommend extending the timeframe for the offence of knowingly publishing false information to influence voters, so that it covers the entire advance voting period.
102. Internationally, finding ways to regulate disinformation is a developing area. In Aotearoa New Zealand, ways to address it are being considered by social media companies and the government. The outcome of that work will impact on the electoral system. In the meantime, education and community engagement are the best tools we have.

Foreign interference

103. Efforts by other countries to influence, disrupt or subvert our national interest present a risk to our electoral system. The New Zealand Security Intelligence Service did not identify systemic, state-sponsored interference activity in the 2020 election but it did confirm a small number of states engage in interference activities against Aotearoa New Zealand's interests. However, electoral interference remains a key area of its focus, due to the prevalence of interference in elections around the world. The New Zealand Security Intelligence Service has confirmed a small number of states engage in interference activity against our national interest, including by targeting our political sector.
104. Our current law contains several safeguards, and the Electoral Commission works with our security agencies to identify potential foreign interference. We recommend addressing an existing vulnerability in our system by preventing registered third-party promoters using money from overseas persons to fund election advertising in the three months before an election. We also recommend amending the definition of overseas person to close potential loopholes.

Recommendations

Part 1: Foundations

Chapter 2: The Overall Design of Electoral Law

- R1. Redrafting the Electoral Act 1993 to incorporate the changes set out in this report and to update the statute's structure and language with the aim of making it modern, comprehensive and accessible.**
- R2. Reassessing the appropriate use of primary and secondary legislation in electoral law as part of redrafting the Electoral Act.**
- R3. Adding to the currently entrenched provisions by entrenching:**
 - a. the allocation of seats in parliament and the party vote threshold**
 - b. the Māori electorates**
 - c. the right to vote**
 - d. the right to stand as a candidate**
 - e. the independence of the Electoral Commission, including the process for removing its members**
 - f. the process for the report of the Representation Commission on electoral boundaries to take legal effect.**



Chapter 3: Upholding te Tiriti o Waitangi / the Treaty of Waitangi

- R4. Requiring decision-makers to give effect to te Tiriti o Waitangi / the Treaty of Waitangi and its principles when exercising functions and powers under the Electoral Act. This obligation should apply generally across the Act and be explicitly included in the Electoral Commission's statutory objectives.**
- R5. Requiring the Electoral Commission to publish a Tiriti / Treaty policy and strategy and report on progress as part of its statutory obligation to publish a post-election report.**
- R6. The Electoral Commission prioritises establishing Māori governance over data collected about Māori in the administration of the electoral system, and is funded by government to do so.**

Part 2: The Voting System

Chapter 4: Representation Under MMP

- R7. Lowering the party vote threshold for list seat eligibility from five per cent of the nationwide party vote to 3.5 per cent.**
- R8. Abolishing the one-electorate seat threshold, provided the party vote threshold is lowered to 3.5 per cent.**
- R9. Removing the existing provision for extra seats to compensate for overhang seats, in line with our other recommendation to abolish the one-electorate seat threshold, which would result in fewer list seats being allocated.**
- R10. Fixing the ratio of electorate seats to list seats at 60:40, requiring parliament to be an uneven number, and allowing the size of parliament to grow in line with the population.**

Chapter 5: Parliamentary Term and Election Timing

- R11. Holding a referendum on the parliamentary term, supported by a well-resourced information campaign (including dedicated engagement with Māori as Tiriti o Waitangi / Treaty of Waitangi partners).**
- R12. Continuing to allow the prime minister to call a general election at any time before the end of the parliamentary term.**

Chapter 6: Vacancies in Parliament

- R13. Updating the ground for non-attendance so that the seat of any Member of Parliament becomes vacant if they are absent from parliament for three months without permission.**
- R14. Repealing mental incapacity as a ground to remove a Member of Parliament.**
- R15. Retaining the remaining grounds for when a Member of Parliament vacates their seat, including the ground of citizenship.**
- R16. Amending the ground for criminal conviction to make clear that a vacancy arises upon conviction.**
- R17. Repealing the restriction on Members of Parliament remaining in parliament if they cease to be a member of the party from which they were elected.**
- R18. Retaining the current rules for filling vacant electorate seats and list seats, including the processes for a seat that is vacated within six months of a general election.**

Part 3: Voters

Chapter 7: Voter Eligibility

- R19. Lowering the voting age to 16.**
- R20. Extending the time that New Zealand citizens can spend overseas without losing the right to vote to six years (or eight years if the term of parliament is extended).**
- R21. Replacing the use of the term “permanent resident” in the Electoral Act with “resident for electoral purposes” to avoid confusion with the Immigration Act 2009.**
- R22. Keeping the time that residents for electoral purposes can spend overseas without losing the right to vote at 12 months.**
- R23. Extending the time that residents for electoral purposes must spend in Aotearoa New Zealand before gaining the right to vote to three years (or four years if the term of parliament is extended).**
- R24. Granting all prisoners the right to vote.**

Chapter 8: Enrolling to Vote

- R25. Retaining compulsory enrolment.**
- R26. Retaining voluntary voting.**
- R27. Allowing the Māori electoral option to be exercised at any time up to and including election day for general and local elections, while retaining the current prohibition ahead of by-elections.**
- R28. Allowing anyone of Māori descent to be registered simultaneously on one roll for general elections and a different roll for local elections.**
- R29. Improving education and engagement about the Māori electoral option.**
- R30. Adopting an all-of-government approach to encourage and support people to enrol, including when accessing other government services.**



Chapter 9: Voting in Elections

- R31. Requiring advance voting to be provided for a minimum period of 12 days.**
- R32. Including standards in electoral law for polling places to ensure they are widely available and accessible, including during advance voting.**
- R33. Future-proofing special voting provisions by:**
 - a. clarifying that anyone voting outside their electorate can cast a special vote at any time during the voting period**
 - b. monitoring whether postal voting remains a viable option for overseas voters**
 - c. considering how to scale up voting methods for people who cannot vote in person as postal services decline.**
- R34. Removing the election day restrictions on trying to influence voters so that the rules that currently apply during the advance voting period apply throughout the entire election period.**
- R35. Aligning restrictions on election day with those of the current advance voting period for the wearing of lapel badges, rosettes and party colours in polling places and within 10 metres of their entrances.**
- R36. Prohibiting voters from taking photos of their ballot papers in polling places.**
- R37. Repealing the requirement to verbally state your name to be issued a ballot.**
- R38. Repealing the ability of scrutineers to require voters to be questioned about their identity and whether they have already voted before they are issued a ballot.**
- R39. Vesting emergency powers in the board of the Electoral Commission, not just in the chief electoral officer.**
- R40. Adding a new general power for the Electoral Commission to extend the time available for any electoral processes or deadlines where they are impacted by an unforeseen or unavoidable disruption that could impact the proper conduct of an election.**

- R41. Adding a new power that, subject to appropriate consultation:**
- a. permits the governor-general, acting on the advice of the prime minister, to withdraw the writ issue for a general election where a national state of emergency will significantly interfere with the proper conduct of the election**
 - b. requires the prime minister, as soon as it is reasonably practicable after the withdrawal of the writ, to advise the governor-general of the earliest available date where the general election could be properly conducted (but no later than the day three months after the withdrawal of the writ).**
- R42. The government works with all parliamentary parties to consider the merits of a new statutory power to reconvene parliament.**
- R43. Amending the Constitution Act 1986 to ensure the continuity of executive government in the event of an adjourned election.**
- R44. Amending the Cabinet Manual so that the caretaker convention applies (as if the election result was unclear) in circumstances where an election is delayed under the emergency powers in the Electoral Act.**

Chapter 10: Counting the Vote and Releasing Results

- R45. Enabling the preliminary count to be conducted electronically.**
- R46. Requiring the release of the preliminary results as soon as reasonably practicable in legislation, while retaining a level of flexibility for emergency situations.**
- R47. Allowing a person's vote to be counted if they have voted in advance and die before election day.**



Chapter 11: Improving Voter Participation

- R48. Developing a funding model to support community-led education and participation initiatives, with this model also providing for by Māori for Māori activities.**
- R49. Providing targeted information about the use of preferred names for enrolment and voting purposes to relevant communities.**
- R50. Allowing people on the unpublished roll to cast an ordinary vote, subject to the development of a unique identifier for inclusion in the electoral rolls that meets privacy requirements without disclosing a voter's address.**

Part 4: Parties and Candidates

Chapter 12: Standing for Election

- R51. Providing the Electoral Commission with the power to either refuse to register, or to de-register, a party:**
 - a. whose rules do not meet the existing statutory requirement to provide for member participation, including through delegates, in the selection of candidates, but only after**
 - b. the party has been notified and given an opportunity to amend its rules to comply with its statutory obligations.**
- R52. Requiring parties to supply their party membership and candidate selection rules to the Electoral Commission when applying to register.**
- R53. Requiring a registered party to submit a list of party candidates at each general election to remain registered.**
- R54. Strengthening the current requirement that a party has 500 current financial members before it is eligible to register by:**
 - a. requiring those 500 members to be enrolled to vote**
 - b. enabling the Electoral Commission to audit any registered party for compliance with this ongoing requirement if it has reasonable grounds to believe that the party is not complying, and**



- c. providing for offences for obstructing or failing to provide information to the Electoral Commission in a timely manner when it is conducting an audit under recommendation 54(b).**
- R55. Requiring a party secretary to confirm by statutory declaration that the process for ranking list candidates complied with the party's candidate selection rules.**
- R56. Extending the period before an election in which parties cannot be registered to the start of the regulated period (usually three months before election day).**
- R57. Prohibiting unregistered parties from becoming component parties of registered parties.**
- R58. Broadening candidate eligibility, in line with our voter eligibility recommendations, to include:**
 - a. 16- to 17-year-olds**
 - b. citizens living overseas for two electoral cycles**
 - c. all prisoners.**
- R59. Updating the candidate definition of public servant in the Electoral Act to align with the Public Service Act 2020.**

Chapter 13: Political Finance

- R60. Permitting only registered electors to make donations and loans to political parties and candidates.**
- R61. Treating spending on election advertisements that requires authorisation from a political party or candidate as a donation.**
- R62. Limiting the total amount a registered elector may give by way of donations and loans to each political party and its candidates to \$30,000 per electoral cycle.**
- R63. Reducing the amount that can be donated anonymously to \$500.**
- R64. Abolishing the protected disclosure regime.**



- R65. Amending the minimum reasonable market value threshold for the donation of goods and services so that any good or service provided free of charge, or at a discount, with a reasonable market value of \$500 or less is not a donation.**
- R66. Requiring:**
- a. at the beginning of the regulated period, political parties and candidates to disclose donations and loans above \$10,000 (but below \$20,000) made during an election year**
 - b. during the regulated period, political parties and candidates to disclose donations and loans above \$10,000 within 10 working days.**
- R67. Requiring the disclosure of all donors and lenders who give more than \$1,000 in a year to a political party or candidate, but only requiring their names and electorates to be made public.**
- R68. Requiring registered third-party promoters to have a separate election campaign bank account for campaign donations and election expenses.**
- R69. Requiring registered third-party promoters to keep records of election campaign donations.**
- R70. Requiring registered third-party promoters that spend more than \$100,000 on election expenditure during the regulated period to also disclose donors who donate over \$30,000 in total during an electoral cycle, if the donation has been used for election expenditure.**
- R71. Increasing monitoring powers for the Electoral Commission and offence provisions in the Electoral Act, including restricting collusion between third-party promoters and political parties.**
- R72. Introducing a maximum political party annual membership and affiliation fee of \$50 per member, or member equivalent.**
- R73. Requiring political parties to disclose assets and liabilities when applying for registration.**
- R74. Including a general anti-avoidance offence provision relating to political finance rules in the Electoral Act.**
- R75. Increasing state funding by:**
- a. providing registered political parties with per-vote funding on a sliding scale**

- b. providing registered political parties with base funding of \$15,000 per year**
- c. providing tax credits for people who make donations of up to \$1,000 per year**
- d. establishing a new fund – Te Pūtea Whakangāwari Kōrero ā-Tiriti / Treaty Facilitation Fund – to facilitate political party and candidate engagement with Māori communities**
- e. expanding the purpose of the Election Access Fund to include applications by political parties to meet accessibility needs in their campaigns**
- f. establishing an independent fiscal institution to provide costings of registered political party policies at their request.**

Chapter 14: Election Advertising and Campaigning

- R76. Permitting election advertising on election day anywhere except inside or within 10 metres of polling places (where voters and scrutineers may only display lapel badges, rosettes, and party colours on their person).**
- R77. Allowing promoter statements for candidate advertisements to use PO Box numbers or email addresses instead of physical addresses.**
- R78. Abolishing the restrictions on the use of television and radio for election advertising by parties and candidates.**
- R79. Abolishing the process for providing funding to parties to run election advertisements on television and radio, and reallocating the funding to our package of state funding recommendations.**
- R80. Providing the Advertising Standards Authority with funding during election periods to support its ability to respond to complaints in a timely way.**
- R81. Broader consideration and monitoring by government of whether the laws regulating the use of microtargeting for online advertising are sufficient, including for safeguarding trust in elections.**



- R82. Adopting spending limits during the regulated period based on the sums below, after adjustments are made to allow for increases in inflation and other factors since 2020:**
- a. registered parties: \$3.5 million
 - b. candidates: one per cent of the registered party spending limit for a general election (\$35,000 at present) and two per cent for a by-election (\$70,000 at present)
 - c. third-party promoters: 10 per cent of the registered party spending limit (\$350,000 at present).

Part 5: Electoral Administration

Chapter 15: Electoral Commission

- R83. Amending the objective of the Electoral Commission to facilitate equitable participation.**
- R84. Expanding membership of the board of the Electoral Commission from three to five members.**
- R85. Requiring the board of the Electoral Commission to have a balance of skills, knowledge, attributes, experience and expertise in te Tiriti o Waitangi / the Treaty of Waitangi, te ao Māori, and tikanga Māori.**
- R86. Requiring the Minister of Justice to seek nominations for appointments to the Electoral Commission board from iwi and Māori representative organisations before a recommendation is made to the House of Representatives.**

Chapter 16: Accessing the Electoral Rolls

- R87. Removing the availability of the main and supplementary rolls for public inspection, except for the purpose of making an electoral petition or an objection to a registered elector's enrolment.**

- R88. Removing the availability of the master roll for public inspection after an election, but retaining access after an election for the purposes of making an electoral petition.**
- R89. Removing the ability for any person to purchase electoral rolls and habitation indexes.**
- R90. Making historical electoral rolls publicly accessible for the purpose of research after a period of 50 years, as is the case for births, deaths and marriages records.**
- R91. Retaining access to electoral rolls and habitation indexes for scientific, human health and electoral participation research, but with tighter controls on data access and use, and a stronger approval process (including ethics approval) that requires researchers to:**
- a. provide reasons why there is not a reasonable or practical alternative data source to the electoral rolls**
 - b. demonstrate that they have systems, policies, and procedures in place to look after any electoral roll data securely**
 - c. destroy electoral roll data at the end of research projects.**
- R92. Ensuring that the controls and approval process for researcher access to electoral rolls and habitation indexes:**
- a. is co-designed with Māori and grounded in the Māori data governance model published by Te Kāhui Raraunga**
 - b. builds in Māori oversight and participation.**
- R93. Allowing electoral researchers specific access to de-identified master roll information for research directly related to voter turnout, subject to the tighter controls and approval process set out in recommendation 91.**
- R94. Allowing Members of Parliament, candidates and parties to have access to electoral rolls for specified, limited purposes, and with controls on use and retention of information, including that:**
- a. Members of Parliament can access information for the purpose of communicating with constituents about parliamentary business. Data must be destroyed when they cease to be a Member of Parliament, and the data cannot be combined with any other information.**

- b. Electorate candidates can access information for the purpose of election campaigning. Data must be destroyed after the election, and the data cannot be combined with any other information.**
 - c. Registered parties can have ongoing access to electoral roll information for the purpose of election campaigning. Information must be destroyed if a party is de-registered, and the data cannot be combined with any other information.**
- R95. Removing the ability for scrutineers to access records of votes cast during the voting period and to share this information with political parties and candidates.**
- R96. Retaining the existing provisions for being enrolled on the unpublished roll.**
- R97. The Electoral Commission better publicise the unpublished roll and ensure flexibility in its administration, particularly for the evidence required to prove eligibility.**

Chapter 17: Boundary Reviews and the Representation Commission

- R98. Removing the requirement that the boundary review is based on census data, so that other data sources could be used once improved processes are in place to ensure:**
 - a. the transparency, robustness, and independent review of those data sources**
 - b. Māori data governance and a more robust and transparent calculation of the population of Māori descent.**
- R99. Increasing the population quota tolerance (that is, the extent to which it can vary from the average population in an electorate) to plus or minus 10 per cent when setting electorate boundaries.**
- R100. Considering Māori communities of interest alongside general communities of interest in the setting of general electorates as well as for setting the Māori electorates.**
- R101. Retaining the five-year frequency of boundary reviews.**
- R102. Retaining the current membership of the Representation Commission.**

R103. Adding the current Māori members of the Representation Commission – the chief executive of Te Puni Kōkiri and the two political representatives of Māori descent – as members for determining general electorate boundaries.

Chapter 18: Electoral Offences, Enforcement and Dispute Resolution

R104. Undertaking an overhaul and consolidation of all electoral offences and penalties, to ensure they are consistent and still fit for purpose. This work should be guided by the principles of proportionality, effectiveness and practicality.

R105. Giving judges an express discretion to restore voting rights for people found guilty of a corrupt practice.

R106. Repealing the offence of treating voters with food, drink or entertainment before, during or after an election for the purpose of influencing a person to vote or refrain from voting. Also repealing the offence of corruptly accepting food, drink or entertainment under these conditions.

R107. Making it a criminal offence to intentionally obstruct, undermine or interfere with the work of an electoral official in conducting elections.

R108. Giving the Electoral Commission additional investigative powers (including to require documents and to undertake audits).

R109. Giving the Electoral Commission the ability to refer serious financial offending directly to the Serious Fraud Office. The threshold for referral should include instances where the Electoral Commission suspects a serious or complex fraud that falls below a belief that a criminal offence has occurred, to align it with the Serious Fraud Office threshold.

R110. Considering whether the Electoral Commission should be able to impose sanctions for low-level electoral breaches, as part of a broader overhaul and consolidation of electoral offences.

R111. Retaining the deposits for recounts at the current amounts.

R112. Retaining the existing provisions for electorate-level or national-level recounts.



R113. Retaining existing notice periods for initiating an election petition and commencing the hearing for that petition.

Chapter 19: Security and Resilience

R114. Extending the timeframe for the offence of knowingly publishing false information to influence voters to include the entire advance voting period and election day.

R115. That the overhaul and consolidation of the offences and penalties regime for electoral law specifically considers the scope of the undue influence offence, and whether it should be expanded to include disinformation methods and mechanisms.

R116. Prohibiting registered third-party promoters from using money from overseas persons to fund electoral advertising during the regulated period.

R117. Amending the overseas person definition to close potential loopholes.

Minor and technical recommendations

Appendix 1 set out the minor and technical changes we recommend for each part of our final report.

Introduction

Why do elections matter?

Elections determine who has the power to govern the country and make its laws. The government is formed of Members of Parliament (**MPs**) from a political party (or group of parties) that can win key votes in parliament. The government (through ministers and cabinet) proposes changes to the law and is in charge of ministries and departments that implement the law.

Therefore, regular, free, and fair elections are important. They are fundamental to the success of Aotearoa New Zealand's democracy.

Our task

Electoral law helps keep our elections fair and accessible, allowing us to participate in choosing who will govern the country and for political parties to compete for our votes. These laws apply to voters, parties, candidates, the media, advocacy groups, and officials including the Electoral Commission (the independent body that administers elections).

The laws governing our elections are quite complex and many of them have not been properly considered or updated for many years. The Minister of Justice asked us to review these laws to see what is working and what could be improved. We have specifically been asked to consider whether the laws for our electoral system:

- are fair
- are clear and consistent
- are practicable and enduring
- encourage electoral participation
- uphold te Tiriti o Waitangi / the Treaty of Waitangi
- are open and accountable
- produce a representative parliament
- produce an effective parliament and government.

Our brief is wide: we were required to review almost everything to do with how our elections work. A copy of the Terms of Reference for the review can be found in **Appendix 2**.

The review was set up to be independent from the Minister and the government. We have been asked to consider the issues, seek public feedback, and make recommendations we think best for the electoral system as a whole.

Independent Electoral Review Panel

The Minister of Justice appointed the Independent Electoral Review Panel in May 2022:

- Deborah Hart (chair)
- Professor Maria Bargh (deputy chair)
- Professor Andrew Geddis
- Associate Professor Lara Greaves
- Alice Mander
- Robert Peden

Some issues are out of scope

We have not been asked to look at broader constitutional matters. Matters specifically out of scope for this review are alternatives to the Mixed Member Proportional (**MMP**) voting system, the retention of Māori electorate seats, re-establishing an Upper House, the role and functions of the Head of State, and the current size of parliament. Online voting is also out of scope.

Our approach

We approached our task independently and with open minds. Taking a principled approach, we have considered throughout this review how best to achieve the objectives set for us, including how to improve the fairness, accountability, clarity, representativeness and effectiveness of our electoral system and how it can uphold te Tiriti o Waitangi / the Treaty of Waitangi.

It was also important for us to hear from as many New Zealanders as possible to understand their views. As required by our Terms of Reference, over 2022 and 2023 we conducted two phases of engagement with the public, Māori, political parties, and other interested organisations and people. We provide more detail about our two consultations below.

Alongside the feedback we received during consultation, we also undertook research, looked at international models and experience, and considered previous reports and recommendations including those from the Electoral Commission, parliament's Justice Select Committee, and the 1986 Royal Commission on the Electoral System.

Our first consultation

We released a consultation document in September 2022. It outlined our current electoral law and practice and asked a series of deliberately high-level questions. We wanted to find out what was most important to New Zealanders and what people thought, before we started our deliberations.

During this first stage of engagement, which ended in November 2022, we received over 1,700 written submissions. These submissions included:

- more than 1,300 responses to our online survey
- more than 400 submissions by email.

We were fortunate to receive thoughtful and detailed views from many informed participants, including those of political parties.

We also held 58 meetings during which we met with 51 organisations and 32 individuals. We heard from 43 submitters at public meetings held online and in person in Auckland, Wellington, and Christchurch. In addition, we met all the political parties represented in the 53rd Parliament, alongside a number of other registered political parties.

In partnership with National Iwi Chairs Forum Pou Tikanga, 10 community workshops with Māori were run, using a mix of kanohi ki te kanohi (in-person) and online hui.

We published a summary of the submissions we received during our first consultation in March 2023.¹

Our online forms

During our two consultations, we used an online form as a channel to gather views from as many people as possible. We wanted to ensure that we had not missed any observations or innovations, any reasons for change, or reasons for keeping things the same. The online forms covered issues and recommendations at a high level.

We wanted to use a format that would encourage responses from anyone wanting to have a say. We note that with these online forms, we were aiming to receive a diverse range of views, rather than a representative set of New Zealanders' views, which would require scientifically sampled opinion polling or similar research.²

¹ Independent Electoral Review, 2023. *Summary of Submissions: Stage 1 Engagement*. Wellington: New Zealand.

² However, we note that many electoral topics are detailed and technical, requiring background information and lengthy explanations, making them unsuitable for opinion polls.

Our interim report and second consultation

We released our interim report and began our second consultation on 6 June 2023.³

The report contained an initial 123 draft recommendations on how to make Aotearoa New Zealand's democracy clearer, fairer and fit for the challenges of the 21st century.

The interim report allowed the public to see the detail of what we were proposing and why. In this way, we were able to get detailed feedback on our draft recommendations and to test them with people holding differing viewpoints.

Consultation on our interim report ran from 6 June to 17 July 2023. During that time, we:

- held around 30 meetings with more than 50 individuals and organisations, including political parties, the Electoral Commission, academics, regulators, and a range of community organisations
- hosted three public webinars
- convened a wānanga with key Māori stakeholders in partnership with National Iwi Chairs Forum Pou Tikanga (who also facilitated a series of community hui on our behalf)
- received over 5,500 submissions, including around 100 detailed submissions from stakeholders

Taking the consultation feedback on board, we were able to refine and amend our recommendations, and finalise our report.

Our final report

This report documents our final view on the areas in scope of this review. It discusses our electoral system in five parts:

- Part 1: Foundations
- Part 2: The Voting System
- Part 3: Voters
- Part 4: Parties and Candidates
- Part 5: Electoral Administration.

³ Independent Electoral Review, 2023. *Interim Report: Our Draft Recommends for a Fairer, Clearer, and More Accessible Electoral System*. Wellington: New Zealand.

We make 143 recommendations. All of these recommendations should be read in the context of three foundations of our electoral system that we discuss first, namely:

- the constitutional and human rights context of electoral law (**Chapter 1**)
- the overall design of our electoral law (**Chapter 2**)
- upholding te Tiriti o Waitangi / the Treaty of Waitangi (**Chapter 3**).

While this report is based on our interim report, it is a standalone document that can be read by itself. Where we have altered our recommendations as a result of feedback from consultation, or have maintained our view, we explain our reasons for doing so. In response to feedback, we also provide additional explanation or evidence in places to help readers understand the rationale for our recommendations.

We note that this report was being finalised during the 2023 general election. Where possible, we incorporated any information that was available about turnout and results from the election into relevant parts of the report. However, that information came too late to be part of our consideration of the issues before us.

This final report builds on what we heard from New Zealanders during both of our consultations, supplemented by further research. We carefully considered all views and information presented to us. We also drew on the knowledge and expertise held by the Panel and debated some recommendations at length, ultimately reaching decisions by consensus. Our recommendations reflect our collective conclusions about what would be best for Aotearoa New Zealand's electoral system. We believe that, combined, they will make our electoral system clearer, fairer and more accessible so that as many people as possible can take part in it.

Classification of submissions

When we refer to submitters in this report, the classifications below have been used to quantify the views of submitters who commented on a particular recommendation, question, or topic. As explained above, the aim of our consultation was to get a diverse range of views and reasoning, not a statistically representative sample of New Zealanders' views.

Classification	Definition
Few	Fewer than five per cent of submitters who commented on a recommendation, question or topic
Some	Five to 25 per cent of submitters who commented on a recommendation, question or topic
Many	26 to 50 per cent of submitters who commented on a recommendation, question or topic
Most	More than 50 per cent of submitters who commented on a recommendation, question or topic

1

PART 1

Foundations

This part covers:

- **the constitutional and human rights context of electoral law (Chapter 1)**
- **the overall design of electoral law (Chapter 2)**
- **upholding te Tiriti o Waitangi / the Treaty of Waitangi (Chapter 3)**



1. The Constitutional and Human Rights Context of Electoral Law

- 1.1 Electoral law has a fundamental role in the organisation of society. It sets the rules for representative democracy, including how we establish parliaments and governments.
- 1.2 However, electoral law is just one part of a wider democratic system. Democracy is the fundamental principle that underlies all aspects of Aotearoa New Zealand's constitution.¹
- 1.3 In this chapter we outline the features of our constitution, including Aotearoa New Zealand's human rights obligations – both in domestic and international law. We explain why the constitution and human rights law matter when thinking about electoral law. These constitutional features and human rights obligations underpin the considerations and recommendations throughout this report.

Electoral law exists within a constitutional context

- 1.4 A country's constitution determines who exercises public power and how they may do so. The constitution establishes the major institutions of government, identifies their principal powers, and regulates the exercise of those powers.²
- 1.5 Unlike some other countries, Aotearoa New Zealand does not have a single constitutional document (or “written constitution”) although many constitutional arrangements have been written into law, including in the Electoral Act 1993. In this section, we discuss the constitutional components that are the most important to our review.³

¹ Keith, K., 2023. On the Constitution of New Zealand: An Introduction to the Foundations of the Current Form of Government. In: *Cabinet Manual 2023*. Wellington: Cabinet Office, Department of the Prime Minister and Cabinet, p. 3.

² Ibid, p. 7.

³ Although we focus on the main components, we acknowledge other statutes with key constitutional elements including the Public Service Act 2020, and Acts establishing the courts, the Ombudsmen Act 1975, the Official Information Act 1982, the Magna Carta 1297 and the Bill of Rights

Constitutional documents

- 1.6 Te Tiriti o Waitangi / the Treaty of Waitangi (**te Tiriti / the Treaty**),⁴ signed initially on 6 February 1840, is considered a founding constitutional document because it created a framework for Māori and the British Crown to govern. In this report, consistent with our Terms of Reference, we refer to te Tiriti / the Treaty to acknowledge there are two versions of this agreement: one is the Treaty (the English language version); the other is te Tiriti (the Māori language version). We discuss te Tiriti / the Treaty in more detail in **Chapter 3**, both because of its foundational constitutional status, and to explain the impact of various electoral laws on rights under te Tiriti / the Treaty. We also consider a wide range of historical and current issues for Māori within the electoral system, including the experiences of Māori as voters, candidates and Members of Parliament (**MPs**). In addition, we consider different ways an electoral system could be based on te Tiriti / the Treaty.
- 1.7 Secondly, a number of constitutional arrangements are found in the Constitution Act 1986. This statute sets out the branches of government – the sovereign (the King, represented by the governor-general), the executive (generally government ministers), the parliament (the House of Representatives and the governor-general) and the judiciary. The Constitution Act provides that MPs are elected in accordance with the Electoral Act.⁵ We discuss this in more detail in **The three branches of government**, below.
- 1.8 In a democracy, constitutions provide checks and balances by one branch against another, to avoid abusive or excessive use of power. Aotearoa New Zealand is notable for having fewer legal and institutional checks and balances between its branches of government than some other democracies have. For example, in Aotearoa New Zealand we have one House of parliament, compared with other systems that have an upper and a lower House. As we explain later in this chapter in **The three branches of government**, parliament is supreme, and the executive branch of government is drawn from it.
- 1.9 Some fundamental principles that guide Aotearoa New Zealand’s democracy are found in the Constitution Act 1986; for example, that the judiciary is independent from the other branches. However, the Constitution Act does not contain a full statement of how our institutions of government are to relate to each other.

1688. The New Zealand Bill of Rights Act 1990 is of central importance, and we discuss this statute further, in **Domestic human rights**, below. Decisions of the courts, known as common law, are also of constitutional relevance, and we note a number of key judgments in our report.

⁴ In **Chapter 3** we note the differences between the English and Māori versions of te Tiriti / the Treaty. We also acknowledge te Tiriti was preceded by the signing of He Whakaputanga o te Rangatiratanga o Nu Tireni (the Declaration of Independence) in 1835, where Māori independence and sovereignty was accepted by the Crown.

⁵ Constitution Act 1986, section 10(4).

Constitutional conventions

- 1.10 As well as written sources, the constitution is also made up of unwritten practices and conventions. A constitutional convention is a practice followed so consistently that it comes to be regarded as binding and is generally considered to constrain how legal powers can be used.
- 1.11 Such “constitutional conventions” are of critical importance to the working of the Aotearoa New Zealand constitution because they regulate and control the use of many legal powers. The convention that the governor-general always acts on the advice of the prime minister is an example of a constitutional convention.⁶

The three branches of government

- 1.12 Each branch of government has distinct functions. The executive branch is often referred to as “the government” – the prime minister and other ministers of the Crown, their ministries and other central government agencies – and is responsible for the administration of government. All ministers must, by law, also be elected MPs. The key government decision-making body of the executive branch is Cabinet, consisting of those ministers the prime minister chooses to be members.
- 1.13 Parliament enacts legislation and scrutinises how the executive exercises its powers. The doctrine of parliamentary supremacy means that such legislation is the highest form of law in our system of government. Parliament is made up of the House of Representatives and the sovereign (as represented by the governor general) acting together. The House of Representatives contains MPs who are also ministers (who can be either inside or outside of Cabinet), “backbench” MPs from governing parties (those who are not ministers), as well as MPs from parties who are not in government (Opposition MPs). Because all the important parliamentary work takes place in the House of Representatives, it is commonly referred to as “parliament” by itself.
- 1.14 The role of the courts is to interpret, apply and enforce the law of Aotearoa New Zealand including Acts of parliament, government regulations, and the common law. The common law is law made by judges in cases brought before them.⁷ All persons in Aotearoa New Zealand are subject to the rule of law, including the executive and parliament. Later in this chapter, we consider **The role of the courts** in electoral law, and we do so in other parts of this report – for example, in **Chapter 18**. Throughout this report, we discuss several important cases that have clarified electoral law.

⁶ Keith, above n 1, p. 3.

⁷ Judges are also required to follow decisions of courts that are higher in the hierarchy where the facts of the case before them are similar. For example, a High Court judge would have to follow a Court of Appeal or Supreme Court decision. This rule is known as the doctrine of precedent.

Relationship between the executive and parliamentary branches

- 1.15 Under Aotearoa New Zealand's constitutional arrangements, ministers of the Crown must be members of parliament. This requirement gives the executive branch a powerful influence over the workings of the parliamentary branch.
- 1.16 Parliament makes laws and holds the executive to account. It scrutinises the actions of government ministers, government spending, and laws that the government wants the parliament to pass. However, because the governing party or parties typically have a majority in parliament, the government can usually get its proposed law changes passed by the House. Therefore, while parliament is important, on most occasions the executive government has the final say.
- 1.17 Parliament is particularly important in Aotearoa New Zealand because, as noted above in **Constitutional documents**, we have fewer checks on government than many other countries do. The central importance of parliament is a factor in parts of our report, such as when we discuss the term of parliament (**Chapter 5**), and emergency measures (**Chapter 9**). Because parliament itself is so crucial in our system of democracy, it follows that the way we elect MPs is also critically important. Large parts of our report focus on how we elect our MPs.

The importance of political parties

- 1.18 Political parties are a central feature of our electoral system, linking the people with parliament and government.⁸ As Sir Kenneth Keith states:

The competition for the power of the state, exercised by and through the House of Representatives, is a competition organised by and through political parties. It is party strength in the House after elections that decides who is to govern. It is the parliamentary party (or parties) with the support of the House (and the ability to maintain confidence and ensure supply) that provides the government.⁹

- 1.19 The internal procedures of parties, such as how they choose party leaders and candidates, affect governments. The relationships between parties, including coalition agreements, can have an impact.¹⁰ We discuss the role and regulation of political parties in **Chapter 12**.

The constitutional role of elections

- 1.20 The electoral system determines how MPs are elected. Elections are the way the competition for power can be settled peacefully.¹¹ In order to achieve such a

⁸ Keith, above n 1, p. 4.

⁹ Ibid.

¹⁰ Ibid.

¹¹ Geddis, A., 2023. *Electoral Law in Aotearoa New Zealand*. 3rd ed. Wellington: LexisNexis New Zealand Ltd, pp. 14-15.

peaceful transfer of power, the electoral system must be robust, fair, free from corruption – and open to participation by as many people as possible, through regular elections.

- 1.21 Elections give the government a mandate to govern, based on the votes of a majority of those who participated. They directly tie government powers and the ability to make laws to the decisions of individual New Zealanders at the ballot box.¹²
- 1.22 Most of Aotearoa New Zealand’s electoral law is found in the Electoral Act. We examine the Electoral Act in detail throughout this report and, therefore, we do not discuss it further here except to say some of its provisions require 75 per cent of MPs or a majority vote in a public referendum to change the law (a process known as entrenchment). Entrenchment is a constitutional feature: it recognises MPs have a vested interest in electoral law and, therefore, sets a higher bar for changing parts of it through the Electoral Act. We discuss entrenchment in **Chapter 2**.
- 1.23 Elections form a central part of the “democratic check” on governments. By giving voters an opportunity to elect MPs, regular elections also ensure voters can directly hold the government of the day accountable. Regular elections mean governments have to periodically renew the mandate that voters have given them.
- 1.24 Therefore, regular, free, and fair elections are not only important, they are fundamental to the success of Aotearoa New Zealand’s democracy.

International and domestic human rights

International rights

- 1.25 International and domestic human rights laws are a key pillar of our constitutional framework. Human rights help to balance the rights of individuals against the state – which has many resources and powers at its disposal. These rights should underpin electoral law.
- 1.26 We live in an increasingly globally connected world – one where we have many diplomatic, defence, trading and other relationships – and one where we rely on the cooperation of other countries. Many of these relationships are governed through international law. Aotearoa New Zealand has ratified several international treaties relating to human rights. These international treaties are written agreements between countries, governed by international law. The treaties we cover in this chapter were made in the United Nations.

¹² Ibid, p. 5.

International treaties

1.27 Once Aotearoa New Zealand ratifies an international treaty, we are bound by law to follow it. These international treaties are, therefore, part of our constitutional landscape because they create obligations on the executive and the parliament.

1.28 For electoral law purposes, the international treaties Aotearoa New Zealand has ratified include the:

- **International Covenant on Civil and Political Rights:** contains a number of civil and political rights (and the equal rights of men and women to them), confirming many of the rights in the Universal Declaration of Human Rights.¹³
- **Convention on the Elimination of All Forms of Discrimination against Women:** affirms the equal rights of men and women, including women's equal access to, and equal opportunities in, political and public life.¹⁴
- **Convention on the Rights of the Child:** applies to anyone under 18, and provides that children who are capable of forming their own views have the right to express those views freely in all matters affecting them.¹⁵
- **Convention of the Rights of Persons with Disabilities:** affirms the rights of disabled people to equality and non-discrimination, freedom of expression and opinion, and access to information.¹⁶ This convention also provides for disabled people's political rights – and the ability to exercise them on an equal basis with other people.

United Nations declarations

1.29 As a member of the United Nations, Aotearoa New Zealand is also a party to several declarations. These declarations are not binding in the same way international treaties are, but they establish standards of practice and behaviour

¹³ Aotearoa New Zealand ratified the *International Covenant on Civil and Political Rights* GA Res 2200A (1966) in 1978.

¹⁴ Aotearoa New Zealand ratified the *Convention on the Elimination of All Forms of Discrimination against Women* GA Res 34/180 (1979) in 1985.

¹⁵ Aotearoa New Zealand ratified the *Convention on the Rights of the Child* GA Res 44/25 (1989) in 1993.

¹⁶ Aotearoa New Zealand ratified the *Convention on the Rights of Persons with Disabilities* GA Res 61/106 (2006) in 2008.

with which states are expected to comply.¹⁷ United Nations declarations have significant status. Two declarations that are relevant to our work are:

- **Universal Declaration of Human Rights:** the founding international human rights document, which provides that “[a]ll human beings are born free and equal in dignity and rights”. Fundamental rights in this declaration include the right to life, liberty and security, equal protection by the law, the right to justice, freedom of thought and of expression, freedom of association, and the right to take part in the government.¹⁸
- **Declaration on the Rights of Indigenous People:** reaffirms the right of indigenous peoples to be free from discrimination, as well as their fundamental rights to self-determination.¹⁹ Among other rights, the declaration includes the rights to:
 - maintain and strengthen distinct political, legal, economic, social and cultural institutions while retaining the right to participate fully, if they so choose, in the political, economic, social and cultural life of the State²⁰
 - participate in decision-making in matters which would affect their rights, through representatives chosen by themselves in accordance with their own procedures, as well as to maintain and develop their own indigenous decision-making institutions.²¹

Domestic human rights

1.30 In Aotearoa New Zealand many of these internationally guaranteed rights can now be found in our domestic law, particularly in the Human Rights Act 1993 and the New Zealand Bill of Rights Act 1990.²²

¹⁷ Costi, A., Davidson, S. & Yarwood, L., 2020. Chapter 4 The Creation of International Law. In: A. Costi, ed. *Public International Law: A New Zealand Perspective*. Wellington: LexisNexis NZ Limited, pp. 189 – 190.

¹⁸ The *Universal Declaration of Human Rights* GA Res 217A (1948) was ratified by the United Nations in 1948. Aotearoa New Zealand became a party in 1966.

¹⁹ Aotearoa New Zealand endorsed the *Declaration on the Rights of Indigenous Peoples* GA Res 61/295 (2007) in 2010. Article 46 (3) states that its provisions must be interpreted in accordance with the principles of justice, democracy, respect for human rights, equality, non-discrimination, good governance and good faith.

²⁰ *Declaration on the Rights of Indigenous Peoples* GA Res 61/295 (2007), art 5.

²¹ *Ibid*, art 18.

²² When applying and interpreting the New Zealand Bill of Rights Act 1990, the courts have always sought to reflect not just the common law but also New Zealand’s international obligations under the ICCPR, which New Zealand has ratified and which the enactment of the New Zealand Bill of

Protection from discrimination in the Human Rights Act

- 1.31 Freedom from discrimination is one example of such a human right. This freedom is found in several international treaties. Domestically, section 21 of the Human Rights Act 1993 provides the right to freedom from discrimination under a list of grounds including sex, race, disability, age and political opinion.²³
- 1.32 Further, section 19 of the New Zealand Bill of Rights Act 1990 says that everyone has the right to freedom from discrimination under the grounds in the Human Rights Act 1993. Section 21(1)(i) of the Human Rights Act protects against discrimination to those aged 16 and over on the basis of age. We discuss age-based discrimination relating to voter eligibility in **Chapter 7**.

Democratic and civil rights in the New Zealand Bill of Rights Act 1990

- 1.33 Along with freedom from discrimination under the Human Rights Act 1993, the New Zealand Bill of Rights Act 1990 also contains a number of democratic and civil rights.²⁴ Many of these rights are directly relevant to electoral law. For example:
- **section 12:** the right of citizens 18 years old and over to vote and to stand for election
 - **section 13:** freedom of thought, conscience, religion and belief, including the right to adopt and hold opinions without interference
 - **section 14:** freedom of expression, including the freedom to seek, receive and impart information and opinions
 - **section 16:** freedom to assemble peacefully
 - **section 17:** freedom of association
 - **section 18:** freedom of movement
 - **section 19:** freedom from discrimination on the grounds of discrimination under the Human Rights Act 1993
 - **section 20:** rights of minorities to enjoy their culture, practise their religion and use their language.

Rights Act 1990 in part fulfils: *Fitzgerald v R* [2021] NZSC 131, [2021] 1 NZLR 551, at [42] per Winkelmann CJ; *Ministry of Transport v Noort* [1992] 3 NZLR 260 (CA) at 270 per Cooke P.

²³ Human Rights Act 1993, section 21.

²⁴ The New Zealand Bill of Rights Act 1990, long title affirms Aotearoa New Zealand's commitment to the International Covenant on Civil and Political Rights.

Rights that underpin electoral law

1.34 In this section, we briefly outline some of the key clusters of rights in international and domestic law that underpin electoral law.

Periodic and genuine elections

1.35 Some democratic rights centre on regular and genuine elections as the way to establish the authority of governments. For example, that secret ballots are required to ensure citizens can vote freely, all citizens of a certain age must be able to vote, and all votes must be equal.

The right to vote

1.36 International treaties state that ensuring citizens can genuinely exercise their right to vote means providing education and avoiding any unnecessary restrictions or obstacles that limit their ability to exercise this right. They also require that states identify factors that impede citizens from exercising the right to vote – and take positive measures to overcome those factors. For example, for disabled people, ensuring their rights are met includes making sure voting procedures, facilities and materials are appropriate, accessible and easy to understand and use.²⁵

The right to stand for election

1.37 The International Covenant on Civil and Political Rights, the Convention on the Rights of Persons with Disabilities, and the New Zealand Bill of Rights Act 1990 provide citizens with the right to take part in the conduct of public affairs, including standing for election.

Democratic rights

1.38 The International Covenant on Civil and Political Rights and the New Zealand Bill of Rights Act 1990 also protect the rights to freedom of thought, association and assembly. There is a right to adopt and hold opinions without interference and the right to join a political party.²⁶ The right of freedom of assembly allows parties and candidates to conduct electoral campaign gatherings.²⁷

1.39 The United Nations made a General Comment to Article 25 of the International Covenant on Civil and Political Rights in 1996 to provide further guidance. We

²⁵ *Convention on the Rights of Persons with Disabilities* GA Res 61/106 (2006), art 29.

²⁶ Section 13 of the New Zealand Bill of Rights Act 1990 provides that everyone has the right to freedom of thought, conscience, religion, and belief, including the right to adopt and hold opinions without interference. Section 14 of the New Zealand Bill of Rights Act 1990 recognises that everyone has the right to freedom of expression, including the freedom to seek, receive, and impart information and opinions of any kind in any form.

²⁷ New Zealand Bill of Rights Act 1990, section 17.

outline the key points from the General Comment in the box below. We also discuss it in later chapters of this report, as relevant.²⁸

United Nations General Comment

The United Nations made a General Comment to Article 25 of the International Covenant on Civil and Political Rights in 1996 to provide further guidance on the rights of citizens. That General Comment states (among other things) that:

- states should adopt laws and other measures to ensure citizens have an effective opportunity to enjoy the rights that Article 25 protects, and these rights cannot be limited or destroyed
- the right to vote and to stand as a candidate must be established in law and may be subject only to reasonable restriction, such as a restriction on the voting age
- restrictions must be objective and reasonable. It is unreasonable to restrict the right to vote on the grounds of physical disability
- where the right to register to vote is subject to residence requirements, those requirements must be reasonable, and must not exclude the homeless
- any abusive interference with registration or voting, and any intimidation or coercion of voters should be prohibited by penal laws that are strictly enforced
- voter education and registration campaigns are essential to the effective exercise of Article 25 rights
- positive measures should be taken to overcome specific difficulties, including illiteracy, language barriers, poverty or impediments to freedom of movement
- the right to vote includes the right to choose between a selection of candidates
- citizens must be free to associate as they chose, including by joining parties, campaigning and advertising political ideas
- the right to stand as a candidate should not be unreasonably limited by requiring that a candidate belong to a political party
- elections must be held at intervals that are not unduly long
- voters should be able to form opinions independently and free from compulsion or inducement

²⁸ *General comment no. 25, The right to participate in public affairs, voting rights and the right of equal access to public service (article 25)* UN Doc CCPR/C/21/Rev.1/Add.7 (27 August 1996).

- grounds for removing elected office holders must be based on objective and reasonable criteria and have fair procedures
- reasonable limitations on campaign expenditure may be justified where necessary to ensure the free choice of voters is not undermined, or the democratic process distorted by disproportionate expenditure
- an independent electoral body should be established
- the secrecy of the ballot should be protected in the run up to election day and the security of the ballot box must be guaranteed. Ballots must be counted in the presence of candidates or their agents
- assistance to the disabled, blind or illiterate should be independent
- the drawing of electorate boundaries and the method of allocating votes should not distort the distribution of voters, or discriminate against any group. It should not exclude or unreasonably restrict the right of citizens to freely choose their representatives
- free communication of ideas under a free press is essential
- political parties play a significant role in elections
- given their importance, political parties should respect Article 25 rights themselves.

New Zealand Bills of Rights Act rights can be subject to reasonable limits

- 1.40 Although protected under the law, the New Zealand Bill of Rights Act 1990 rights are not absolute. They can be constrained, but “only to such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society” (section 5, New Zealand Bill of Rights Act 1990).
- 1.41 Having the legal ability to limit rights recognises that the rights of one person can encroach on the rights of another. Requiring that rights may be limited only to the extent that such limits can be demonstrably justified in a democracy creates a “culture of justification” that puts an important brake on government overreach. Deciding which limitations are justifiable engages all the constitutional branches of state – when governments propose legislation, when parliament enacts legislation, and when the courts are called upon to consider it.

Scrutiny by the executive and parliament

- 1.42 All legislation introduced to parliament is checked by government lawyers for its compliance with the New Zealand Bill of Rights Act 1990.²⁹ This means looking to see whether the proposed law limits any of the rights guaranteed by the New Zealand Bill of Rights Act and, if so, whether that limit can be justified under section 5. Where it is considered that a law change will limit rights in a way that cannot be justified, the government lawyers advise the attorney-general. If the attorney-general agrees, they then have a duty to notify parliament under section 7 of the New Zealand Bill of Rights Act.
- 1.43 Upon receiving a notification from the attorney-general about the New Zealand Bill of Rights Act 1990 inconsistency, parliament then forms its own view about whether a law does or does not justifiably limit any rights affirmed by the New Zealand Bill of Rights Act.

The role of the courts

- 1.44 Unlike some other countries, Aotearoa New Zealand's constitution does not provide the ability for a court to strike down any law as unconstitutional or inconsistent with fundamental rights and freedoms. But when the courts are interpreting a law, they must interpret it in a way that is consistent with the rights and freedoms in the New Zealand Bill of Rights Act 1990, if such an interpretation is possible (section 6, New Zealand Bill of Rights Act). The Supreme Court has also noted that this section 6 consistency test involves considering whether any restriction on rights is justifiable in a free and democratic society under section 5 of the New Zealand Bill of Rights Act.³⁰
- 1.45 The senior courts can also issue a "declaration of inconsistency" when a law cannot be interpreted in a way that is consistent with the New Zealand Bill of Rights Act 1990.³¹ Parliament can then choose to change the law, but the court's decision does not make the law invalid. A law change in 2022 ensures that the court's declarations are to be actively considered by parliament: the government is now required to present MPs with a response to the court's declaration within

²⁹ The Ministry of Justice is generally responsible for New Zealand Bill of Rights Act 1990 vetting, but bills developed by the Ministry of Justice are vetted by the Crown Law Office. There is an exception for appropriation bills, which are not checked for compliance with the New Zealand Bill of Rights Act 1990.

³⁰ *Hansen v R* [2007] NZSC 7, [2007] 3 NZLR 1.

³¹ *Attorney-General v Taylor* [2018] NZSC 104, [2019] 1 NZLR 213 at [73]. The "senior courts" are the High Court, the Court of Appeal and the Supreme Court: Senior Courts Act 2016.

six months.³² This change strengthens the ability of the courts to check the power of parliament, but leaves parliamentary supremacy intact.

- 1.46 The Supreme Court has noted that section 4 affirms parliament's right to legislate inconsistently with the New Zealand Bill of Rights Act 1990 (in line with the supremacy of parliament as we discuss in **The three branches of government**) and that section 6 is an instruction to the judiciary as to how to interpret parliament's legislation.³³ The courts have repeatedly recognised that the New Zealand Bill of Rights Act is a statute of constitutional significance.
- 1.47 The courts have considered a declaration of inconsistency on a number of electoral law issues. Most recently, the Supreme Court declared that a voting age of 18 was an unjustified limitation on the rights of 16- and 17-year-olds.³⁴

Constitutional and human rights considerations in this report

- 1.48 The constitutional and human rights considerations set out in this chapter explain why electoral law is important. These considerations signpost the essential matters that must be taken into account when reviewing electoral laws.
- 1.49 Such considerations have been at the forefront of our thinking throughout this report. Balancing individual rights with the reasons why these rights may be limited can be a challenging exercise. It can also be one where reasonable people may disagree, but we have endeavoured to ensure that where such balancing has taken place, our thinking is clearly set out.

³² New Zealand Bill of Rights (Declarations of Inconsistency) Amendment Act 2022, inserting sections 7A and 7B into the New Zealand Bill of Rights Act 1990. Under the change, the Attorney-General must also notify parliament of a court's declaration of inconsistency within six days of the declaration becoming final (that is, once the appeal period is over and all appeals have been heard).

³³ *Fitzgerald v R* [2021] NZSC 131, [2021] 1 NZLR 551, at [40] per Winkelmann CJ.

³⁴ *Make It 16 Incorporated v Attorney-General* [2022] NZSC 134, [2022] 1 NZLR 683. We discuss the voting age in **Chapter 7**. See also Geddis, above n 11, pp. 283-284 for further discussion on the New Zealand Bill of Rights Act 1990 and electoral law.

2. The Overall Design of Our Electoral Laws

- 2.1 Good legislative design means that laws are clear, effective, accessible and constitutionally sound.¹
- 2.2 The scope of this review covered the Electoral Act 1993, the Electoral Regulations 1996, Parts 2 and 3 of the Constitution Act 1986, and Part 6 of the Broadcasting Act 1989. We have considered:
- whether the legislative framework strikes the right balance between certainty and flexibility in its use of primary legislation, secondary legislation, and other instruments
 - the protection of fundamental electoral rights through entrenched provisions
 - what other improvements could support the review's objectives.
- 2.3 We also considered how well the legislative framework upholds te Tiriti o Waitangi / the Treaty of Waitangi (**te Tiriti / the Treaty**).

Modernising electoral law

- 2.4 The current Electoral Act came into force in 1993 when the Mixed Member Proportional (**MMP**) voting system was adopted. However, its basic framework was taken from the Electoral Act 1956. Some provisions in the current law have been largely unchanged since the nineteenth century.

¹ For more information, see Legislation Design and Advisory Committee, 2021. *Legislation Guidelines*, Wellington: Legislation Design and Advisory Committee.

Is there a case for change?

Issues identified

- 2.5 The Electoral Act 1993 has been subject to piecemeal change since it was passed. It has been amended so many times that the order and structure no longer make sense, making it very difficult to navigate. Many provisions have been carried over from the Electoral Act 1956 (or even earlier) with limited consideration as to whether they are still relevant or fit for purpose.
- 2.6 Making piecemeal changes risks inadvertently introducing inconsistencies or contradictions into the law. It also leads to the law becoming more complex and harder to access. The absence of a thorough review means that provisions may become outdated or irrelevant over time.
- 2.7 There are many instances throughout the Electoral Act 1993 where the structure and language are convoluted, difficult to understand, or simply archaic. To provide just a few examples:
- the offence of “undue influence” refers to inflicting “any temporal or spiritual injury, damage, harm, or loss upon or against any person”
 - the voter and candidate eligibility provisions are scattered throughout various sections of the Electoral Act in an illogical order
 - the fact that there is a section 206ZH in the Electoral Act indicates that it has been revised so many times that it has become unwieldy
 - the special voting regulations refer to “convalescent, aged, infirm, incurable, destitute, or poor people”.

Our initial view

- 2.8 In our interim report, we proposed that the Electoral Act should be thoroughly redrafted with the aim of making it modern, comprehensive and accessible.
- 2.9 The basic framework of the Electoral Act has not been updated to reflect the major changes in electoral practice over the last 60 years. Continuing to amend such a heavily revised law on a piecemeal basis jeopardises its overall coherence.
- 2.10 This situation creates the risk that the law will become increasingly unwieldy, unclear and inconsistent. Given the democratic importance of electoral law, it is problematic that many people affected by the law may struggle to understand it.



Earlier recommendations

1986 Royal Commission

The 1986 Royal Commission recommended that the Electoral Act should be redrafted with the aim of making it as comprehensive and accessible as possible.

Electoral Commission

The Electoral Commission has made a range of recommendations over the years to modernise and simplify the Electoral Act – for example, updating the use of archaic language and removing references to outdated methods of communication like fax.

The Electoral Commission has also recommended prescribing only the purpose and information required for electoral forms (such as enrolment and special declaration forms) to allow discretion and flexibility to better meet the needs and circumstances of electors. Many forms previously contained in the Electoral Act and the Electoral Regulations are now delegated to the Electoral Commission with the form of the ballot being a key exception to this approach.

Feedback from second consultation

- 2.11 There was general support for modernising and redrafting the Electoral Act, with submitters commenting on the value of making sure the law is easily understood by all. A few submitters, including the Electoral Commission, noted that redrafting the Act would be a substantial project requiring significant time and resource.
- 2.12 A few submitters who completed our online form thought the current law worked fine or had concerns about this proposal. They were concerned that “modernising” the Act could create ambiguity and obscure the original intent of the law. A few submitters thought this process would be used to make more substantive changes without adequate transparency.

Our final view

- 2.13 We maintain our view that there is a need for a fundamental redraft of the Electoral Act. Implementing the package of changes set out in this report would be a significant task. Redrafting would provide an opportunity for a comprehensive update and refresh of the Electoral Act to bring it into the 21st century.
- 2.14 The Royal Commission on the Electoral System recommended the same approach in 1986. While the Electoral Act 1993 made significant changes to incorporate the new MMP voting system, this more fundamental review of the law did not happen

at that time. It is 37 years since the Royal Commission's recommendation, and this exercise has still not been undertaken. It is now long overdue.

- 2.15 This redrafting exercise would not mean that all the content of electoral law needs to be revisited. In our review, we have found that many aspects of electoral law are working well, and these should be retained. Our proposal is to rewrite the Electoral Act in modern legislative language that makes it more accessible and coherent.
- 2.16 As part of this process, we recommend attention be paid to:
- modernising outdated language
 - improving clarity to avoid uncertainty about rights or responsibilities and difficulty in interpreting the law
 - removing provisions that are no longer fit for purpose
 - improving the order and organisation of provisions into a more logical structure
 - overhauling and reviewing offences and penalties to be consistent and effective
 - embedding a more technology-neutral approach, particularly in primary legislation.
- 2.17 On the final point, it is important that the use of new technologies and methods of communication is subject to appropriate safeguards and democratic scrutiny, including engaging with affected community groups. We do, however, think that primary legislation should avoid specifying the use of certain technologies and methods of communication (such as post) unless there is a strong reason to do so. This approach will allow electoral provisions to evolve over time as technologies change. Regulations could be used to provide for any technical detail and safeguards needed to facilitate these changes responsibly and transparently. These regulations will be subject to review by parliament's Regulations Review Select Committee.
- 2.18 In response to the concerns of submitters, we note that the redrafting process would have the aim of reducing ambiguity in the law. The redrafted Electoral Act would also be subject to parliamentary scrutiny, including public submissions, as part of the legislative process. This will ensure that all proposed changes are considered through a transparent process before the new Act is enacted.

Interaction with our other recommendations

- 2.19 In **Chapter 3**, we recommend that the Electoral Act require decision-makers to give effect to te Tiriti / the Treaty and its principles, as well as making this a specific objective for the Electoral Commission. These changes would support the active protection of Māori rights and interests in all aspects of electoral administration.

- 2.20 Over time, electoral law has mostly been consolidated into a single Act, with some relevant provisions remaining in the Constitution Act 1986 and the Broadcasting Act 1989. In **Chapter 14**, we recommend abolishing the broadcasting regime for election programmes. These changes would remove the need for the provisions in Part 6 of the Broadcasting Act 1989, which would consolidate electoral law further. We consider it appropriate that some provisions remain in the Constitution Act 1986 as they regulate the executive and legislative branches of government.
- 2.21 In **Chapter 18**, we discuss our recommendation to overhaul and consolidate the offences and penalties regime in the Electoral Act to ensure it is fit for purpose.

The Panel recommends:

- R1. Redrafting the Electoral Act 1993 to incorporate the changes set out in this report and to update the statute's structure and language with the aim of making it modern, comprehensive and accessible.**

The use of primary and secondary legislation

- 2.22 Electoral law sits across primary legislation (the Electoral Act 1993) and secondary legislation (the Electoral Regulations 1996). The Electoral Act empowers regulations to be made for specific purposes. Most of the current electoral regulations relate to special voting.
- 2.23 Changes to the Electoral Act are debated and passed by parliament and are usually subject to public scrutiny through the Select Committee process.
- 2.24 Changes to the Electoral Regulations are confirmed by Cabinet and approved by the governor-general. While parliament does not play a role in making these regulations, the Regulations Review Select Committee reviews all regulations made under the Electoral Act. The House of Representatives can also disallow a regulation, meaning it no longer has force.

Is there a case for change?

Issues identified

- 2.25 The use of primary and secondary legislation needs to strike a balance between certainty and flexibility. A high degree of prescription in primary legislation may mean that the intent of the law is clear, but it is difficult and time consuming to



make reasonably minor changes and improvements. Regulations are commonly used where laws may need to be updated regularly or where technical or administrative detail needs to be set out.

- 2.26 The different kinds of legislation also reflect the strength of the safeguards in place when making changes to electoral law. The entrenched provisions, discussed in the next section, represent the highest level of protection from change. Primary legislation is subject to parliamentary scrutiny and public debate, which means that changes go through an open and transparent process. Secondary legislation is primarily the responsibility of the lead minister and Cabinet, though additional safeguards can be put in place. These safeguards may be particularly important for electoral law, given that it regulates the political system itself.
- 2.27 The Legislation Design and Advisory Committee guidelines highlight the following considerations when determining what law-making powers can be delegated:
- **The legitimacy of the law:** important policy content should be determined by parliament through an open, democratic process, but the details may not require parliamentary time.
 - **The durability and flexibility of the law:** delegation can help to respond to changing or unforeseen circumstances and allow for minor flaws to be addressed quickly.
 - **The certainty or predictability of the law:** too much delegation or poorly scoped delegations can undermine the clarity of the law.
 - **The transparency of the law:** the heavy use of secondary legislation may create complexity and make it hard to find the rules, but too much technical detail in primary legislation is also difficult to navigate.²
- 2.28 Currently, our electoral law may rely too heavily on overly prescriptive primary legislation, as seen in the level of detail in the Electoral Act and the limited use of regulations for only a few topics. The regulation-making powers in the Electoral Act are also quite narrowly defined and may not have kept pace with best practice.

Our initial view

- 2.29 In our interim report, we noted that in many instances, electoral law is set out in highly prescriptive detail in primary legislation. This approach provides clear direction to the Electoral Commission and leaves little room for subjective decision-making. The consequence, however, is that the primary legislation is long, complex, inflexible and may need frequent updating.

² Legislation Design and Advisory Committee, above n 1, p. 67.

- 2.30 Our initial view was that the redrafting of the Electoral Act would provide an opportunity to review whether the right balance has been struck between primary and secondary legislation in each area of electoral law.
- 2.31 We also noted that, in general, the use of primary and secondary legislation is a matter best considered by the Parliamentary Counsel Office. A thorough and detailed review of their appropriate use in electoral law is not a task that could be undertaken as part of this review, but we set out general comments that could help to guide the approach.

Feedback from second consultation

- 2.32 Very few submitters commented on this issue. Those who did mostly supported the recommendation, citing the greater flexibility that the appropriate use of secondary legislation can provide.
- 2.33 The New Zealand Law Society and the Clerk of the House of Representatives noted that the constitutional nature of electoral law means that adequate parliamentary oversight and control should be prioritised over flexibility when considering what can be delegated. Another submitter pointed out that the degree of prescription in the primary legislation reflects the need to ensure procedural rigour given electoral law's political implications.

Our final view

- 2.34 We still consider that the balance between primary and secondary legislation in electoral law should be revisited as part of redrafting the Electoral Act.
- 2.35 Primary legislation is appropriate for the most important features of electoral law. These should be subject to parliamentary scrutiny and public input through the Select Committee process. The Electoral Act should set out matters of principle and significant policy, while regulations can provide the detail on how those principles and policies should be implemented.
- 2.36 We acknowledge the concerns raised with us about too much delegation, given the constitutional nature of electoral law. In some areas, it may be appropriate to keep a higher level of detail in primary legislation that might be left to secondary legislation in other areas of law. Examples of electoral matters that should generally be contained in primary legislation are:
- the right to vote and to stand for office
 - the voting system
 - the creation and process for filling vacancies in parliament
 - the term of parliament and the election timetable

- core aspects of the voting method, such as the secrecy of the vote, the form of the ballot, and the provision of in-person and special voting
- the composition, powers and functions of electoral administration bodies
- core aspects of the regulation of election campaigns and finances
- serious electoral offences
- rights to appeal or legal challenge.

- 2.37 In general, these features of electoral law are already included in primary legislation, and we think they should continue to be in future versions of the Electoral Act.
- 2.38 Strengthening the safeguards that apply to regulation-making powers can also mitigate the risks of delegation to secondary legislation. These safeguards could include stronger engagement requirements for regulations. Engagement may be particularly valuable on areas of public interest, such as voting procedures and access to the electoral rolls, rather than administrative matters. The nature of the engagement requirements, including who should be consulted and the timing and process, will depend on the regulation. Engagement with Māori as the Crown's Tiriti / Treaty partners will be important.
- 2.39 We also think there may be value in reviewing the regulation-making powers in the Electoral Act.³ In general, the powers to make regulations are quite detailed and prescriptive, except for a general power to make regulations to give effect to the Electoral Act. A more up-to-date approach might see the regulation-making powers set at a similar, and generally higher, level.
- 2.40 One particular area of electoral law where we think the balance between primary and secondary legislation needs to be revisited is voting methods and procedures. Most rules governing ordinary voting are in the Electoral Act, while special voting rules sit largely in the regulations, and advance voting provisions are split between the two. This allocation may reflect ad hoc changes that have been made over time rather than deliberate consideration of the ideal balance. The growth of advance and special voting strengthens the case for a more consistent legislative

³ Electoral Act 1993, section 267.

treatment across voting methods. More detailed voting procedures may be acceptable in secondary legislation.

The Panel recommends:

- R2. Reassessing the appropriate use of primary and secondary legislation in electoral law as part of redrafting the Electoral Act.**

The entrenched provisions

- 2.41 An important feature of electoral law in Aotearoa New Zealand is the entrenched provisions. The entrenched provisions were introduced in the Electoral Act 1956. These provisions can only be changed by a majority vote in a public referendum or a 75 per cent vote in parliament.
- 2.42 The entrenched provisions, set out in section 268 of the Electoral Act, are:
- section 28, which sets the membership of the Representation Commission
 - section 35, which sets the process for dividing New Zealand into general electorates, as well as the definition of “general electoral population”
 - section 36, which sets the allowance for adjusting the population quota within general electorates
 - sections 74, 60(f), and the definition of the term “adult”, so far as those provisions set the minimum voting age
 - section 168, which sets the method of voting
 - section 17(1) of the Constitution Act 1986, which sets the maximum term of parliament.
- 2.43 Entrenchment is based on the idea that changes to core aspects of electoral law should typically be made with broad political and public support. The higher threshold for altering these provisions reflects the importance of protecting certain aspects of electoral law from changes intended to benefit particular political parties.

Earlier recommendations

1986 Royal Commission

The 1986 Royal Commission recommended entrenchment of the right to vote and to be a candidate, the method of voting, the determination of the number of electorates and their boundaries, the Representation Commission, the term of parliament, and the tenure of the Electoral Commissioner.

The Royal Commission suggested that the substance of these matters should be entrenched rather than the specific provisions. It also supported double entrenchment, where the entrenching provision is itself entrenched, though it did not consider it crucial.

Is there a case for change?

Issues identified

- 2.44 When the Electoral Act 1956 was passed, it was believed that entrenchment could not be legally effective as the prevailing view was that one parliament could not restrict the actions of future parliaments. Entrenchment was considered to impose a moral and political check on parliamentarians rather than a binding legal one.⁴ Nevertheless, the requirements for amending entrenched provisions have been consistently followed by successive parliaments and have developed into a constitutional convention.
- 2.45 Since then, understandings of parliament's law-making powers have become more nuanced. It is now more commonly accepted that "manner and form" provisions, which require special procedures to be followed by parliament when changing certain aspects of the law, could be legally binding and restrict how parliament may make new law.
- 2.46 There have been no changes to which provisions are entrenched since 1956, even though potential gaps and inconsistencies have been raised since. The current entrenched provisions reflect issues that were heavily debated at the time and that were important aspects of the First-Past-the-Post voting system. Much has changed since then, including the move to MMP, and the entrenched provisions should be reviewed in light of these changes.
- 2.47 As part of our review, we have considered what provisions should be entrenched (and on what basis), the process for amending entrenched provisions, and whether double entrenchment is required.

⁴ See the Hon Mr John Marshall, (26 October 1956) 310 NZPD 2839.

Our initial view

- 2.48 Our initial view was that the provisions that are currently entrenched should remain so. These provisions are fundamental aspects of our electoral system, and their entrenched status has been broadly accepted since they were adopted in 1956.
- 2.49 We also identified inconsistencies and gaps across the entrenched provisions. We recommended several additional provisions be entrenched, including (but not limited to) the method for the allocation of seats in parliament, the party vote threshold, the right to vote, and the Māori electorates.

Feedback from second consultation

- 2.50 Submitters who supported our draft recommendation to entrench additional provisions did so in recognition of the importance of these provisions. Others thought entrenchment should be used sparingly to preserve its impact.
- 2.51 The New Zealand Law Society questioned the rationale for entrenchment generally, noting the risks of making the law harder to change. It proposed more consideration of potential adverse effects and the implications for protecting human rights and minority rights. One organisation supported different approaches to entrenchment depending on whether the change would increase or limit voting rights. It proposed that increasing voting rights should only require the support of a simple majority while reducing voting rights should require a supermajority.
- 2.52 Not all submitters agreed with the provisions we proposed to entrench and, in some cases, questioned our rationale. Some submitters were concerned that the proposed provisions were not universally accepted and entrenchment could limit future democratic debate on these issues.
- 2.53 A few submitters also suggested that we should provide guidance on the appropriate method of change – either parliamentary vote or referendum – for different entrenched provisions. The Clerk of the House of Representatives commented on the importance of making sure the scope of entrenched provisions is clear.

Our approach to entrenchment

The rationale for entrenchment

- 2.54 It is useful to explore the arguments for and against the use of entrenchment. Entrenchment has constitutional implications, which means its use needs to be considered carefully.

2.55 In our view, entrenchment can provide the following benefits:

- **Entrenchment enhances the legitimacy of change:** Amending or repealing an entrenched provision requires either public support (referendum) or broad parliamentary consensus (a supermajority). In this way, entrenchment ensures that changes have democratic legitimacy beyond the normal process for change.
- **Entrenchment guards against political interference:** Requiring a higher threshold for change makes it harder for political parties to change the “rules of the game” for their own benefit. This benefit is particularly important for electoral law, which regulates political parties and affects the legitimacy of parliament.
- **Entrenchment creates certainty and stability:** Making it harder to change the law means the rules in question are more likely to be stable and certain. Constitutional matters are more likely to be enduring, compared with substantive policy issues that may change frequently based on the position of the government of the day.
- **Entrenchment protects core aspects of our constitution:** In Aotearoa New Zealand, entrenchment is currently used only for electoral matters that are of constitutional significance. Entrenchment recognises that these matters are important and fundamental to our democracy. As such, more than the default law-making process (a simple majority in parliament) should be required to change them.

2.56 However, we heard arguments against the use of entrenchment from the New Zealand Law Society. We are also aware of other views on the use of entrenchment that have been raised in academic literature⁵ and through other reviews, such as the Review of Standing Orders 2023. These include:

- **Entrenchment makes it harder to change laws:** Entrenchment creates an additional burden to the standard process for statutory change. As a result, it can be more difficult to respond to changing societal expectations and to keep legislation modern and fit for purpose. This constraint can, in turn, limit the effectiveness of parliament in responding to such changes.
- **Entrenchment places constraints on parliamentary sovereignty:** Parliamentary sovereignty is a fundamental principle in New Zealand law. Entrenchment imposes a restriction on parliamentary sovereignty by binding future parliaments to follow certain “manner and form” requirements. It should, therefore, be used carefully and sparingly. It may

⁵ For example, Barber, N. W., 2016. Why entrench? *International Journal of Constitutional Law*, 14(2), pp. 325–350.

be justified particularly where it protects another constitutional principle, such as representative democracy or the principle of legality.

- **Entrenchment creates risks of incumbency bias:** A government could seek to use entrenchment to make it harder for subsequent parliaments to overturn their policies. Doing so could erode the integrity of our democracy by unreasonably limiting the ability to change contested policy areas.
- **Entrenchment could create tension between constitutional institutions:** If there is doubt about the scope of an entrenched provision or whether the “manner and form” requirements were followed, the courts may be required to determine if the law was validly made. This situation may risk disagreement between the legislature and the judiciary on constitutional and political matters – an outcome that many commentators consider undesirable.

2.57 While we note these points, we would also challenge how much weight they should be given in this context. The additional provisions we have proposed to entrench, discussed below, are as fundamental as the provisions which are already entrenched. We think it should be harder to change these provisions – doing so by a simple parliamentary majority risks gaming the system for political benefit. Entrenchment does not prevent parliament from passing substantive policy proposals, nor limit parliament’s ability to debate the entrenched provisions or to call a referendum.

2.58 It is important that entrenchment is seen to have democratic legitimacy. The process for entrenching a provision reflects this concern: Standing Order 270 requires that any proposal for entrenchment must itself be carried in a committee of the whole House by the majority that it would require for the amendment or repeal of the provision being entrenched. The House has recently agreed that any proposal for entrenchment must be considered by a select committee, including a call for submissions, and cannot be considered under urgency.⁶ These procedural requirements are important safeguards to ensure that the House considers the appropriateness of entrenchment proposals and that they can only be adopted with the support of more than a simple majority in the House.

2.59 If parliament follows these procedures and entrenched provisions are clearly scoped, then issues should not arise about whether a law has been validly made. And if the rules are not followed, then we see a legitimate role for the courts in these matters – though we note the process has largely been managed well since entrenchment was introduced.

⁶ Standing Orders Committee, 2023. *Review of Standing Orders 2023: Report of the Standing Orders Committee*, Wellington: New Zealand Parliament, pp. 32-33.

Our framework for considering entrenchment

2.60 In considering our final view, we have taken the arguments discussed above into account and built on the considerations set out by the 1986 Royal Commission. To assess whether a provision should be entrenched, we have used the following questions as a framework:

- **Is the provision constitutional in nature?** Given the imposition on regular parliamentary processes, we think entrenchment should only be used for constitutional matters, including those relating to the integrity and legitimacy of representative democracy.
- **Could changing the provision reduce the rights of the electorate?** Reducing the rights of the electorate affects the role of voters in our constitution, which by extension affects the legitimacy of our democracy.
- **Could changing the provision expand the powers of parliamentarians?** A key purpose of entrenchment is to prevent political opportunism by political parties seeking to change the rules in their own favour.
- **Does the provision affect individual and minority rights?** Entrenchment can be a way of protecting individual and minority rights by raising the threshold for change. If a simple majority can change the law, then the rights of individuals and minorities may be more at risk of being undermined. However, entrenchment also means that there is a higher bar for changes to expand rights.
- **Is the matter sufficiently important?** A provision must meet a high threshold of importance to justify a change to the standard legal process.

2.61 As noted above, democratic legitimacy is also important. We consider that the process for entrenchment ensures a proposal must have broad support to be adopted. The proposals we recommend entrenching would be subject to this process.

2.62 We emphasise that the entrenched provisions are not necessarily exhaustive of the matters that should only be changed with broad consensus.

Our final view

2.63 We have maintained our initial view that the existing entrenched provisions should be retained. These provisions are consistent with the framework set out above.

2.64 We have also confirmed our draft recommendations about the further provisions we consider should be entrenched, with one addition. These recommendations would help to make the entrenched provisions more comprehensive and consistent. We discuss our rationale for each additional provision below.



- 2.65 We have commented on the scope of what we propose to entrench based on existing provisions to indicate the substance of what should be entrenched. These exact provisions may change as part of the proposed redrafting of the Electoral Act.

The allocation of seats in parliament and the party vote threshold

- 2.66 A country's voting system defines how representatives are selected for its parliament. In our view, the current entrenched provisions protect matters that were critically important to a First-Past-the-Post voting system, leaving gaps that need to be addressed to reflect the adoption of MMP.
- 2.67 The voting method, which requires a voter to mark their party vote and electorate vote, and the boundary determination process, which defines the number of electorate seats, are already entrenched. There is no corresponding entrenchment, however, of the party vote threshold and the process for allocating seats in parliament. These are core parts of MMP that significantly impact the proportionality and representativeness of parliament.
- 2.68 Political parties have a strong self-interest in the party vote threshold as it determines their own chances of electoral success, as well as that of their competitors and potential coalition partners. Changes to the party vote threshold could be seen as advancing a particular party's partisan electoral interests. While there may be different views on what the party vote threshold should be, we think most people would agree that this rule should not be changed by a bare majority of MPs in parliament.
- 2.69 The formula used to determine how votes for qualifying parties are turned into seats in parliament is also important. Changing this formula can create different outcomes for larger or smaller parties. Again, allowing such changes by way of a bare majority vote in parliament runs the risk of political manipulation.
- 2.70 We therefore propose that the calculation and allocation of seats currently contained in sections 191 to 193 of the Electoral Act, which includes the party vote threshold, should be entrenched. We note that the size of parliament would be entrenched as a consequence, as the size of parliament is embedded in the formula for allocating seats. With the changes we have proposed in **Chapter 4**, this would mean that the fixed ratio of electorate to list seats and the growth of parliament over time would also be included in this calculation.

The Māori electorates

- 2.71 While the boundary determination process for general electorates (sections 35 and 36) is entrenched, the same provisions for the Māori electorates (section 45) are not. This is often taken to mean that the Māori electorates could be abolished, or the process for determining the number of electorates amended, by a simple majority. Conversely, changes to general electorates must meet a higher threshold for change.

- 2.72 However, there is a legal argument that the Māori electorates are already entrenched, given they are referenced in the entrenched provisions relating to the general electorates. In light of this possibility, expressly entrenching the Māori electorates would make their status clear and avoid the risk that the courts will be required to resolve the matter in the future.
- 2.73 In any case, our view is that the discrepancy between the protection given to the general and Māori electorates is inconsistent and unfair on its face. The rationale for entrenching the Māori electorates is the same as the general electorates – that it would protect the boundary determination process from political interference. While some people point out that the Māori electorates were originally intended to be temporary, they have now existed for almost the entirety of Aotearoa New Zealand’s electoral history. They are a core part of how seats in parliament are allocated under MMP and on that basis, consistent with our previous recommendation, should be entrenched. To be clear, entrenching the Māori electorates does not confer any greater voting rights for people on the Māori roll.
- 2.74 Some submitters questioned why we have made this recommendation when the retention of the Māori electorates is out of scope of the review. We have not considered the merits of retaining the Māori electorates relative to alternative forms of Māori representation. Our recommendation to entrench the Māori electorates is not intended as a comment on their future, but rather to ensure that a long-standing feature of our electoral system is given fair and consistent treatment in the law.
- 2.75 We acknowledge the ongoing conversations about constitutional change, and that the role of the Māori electorates may evolve over time. In our view, entrenchment does not constrain these debates from taking place. Rather, it sets the process that must be followed if changes to their status are proposed and makes this equal to the general electorates. The 1986 Royal Commission usefully framed the Māori electorates in terms of both their current constitutional relevance as well as their potential for future evolution:⁷

Although they were not set up for this purpose, the Māori seats have nevertheless come to be regarded by Māori as an important concession to, and the principal expression of, their constitutional position under the Treaty of Waitangi. To many Māori, the seats are also a base for a continuing search for more appropriate constitutional and political forms through which Māori rights (mana Māori in particular) might be given effect.

- 2.76 We recommend that the provisions contained in section 45 of the Electoral Act, as well as the definition of Māori electoral population in section 3(1), should be entrenched.

⁷ Royal Commission on the Electoral System, 1986. *Report of the Royal Commission on the Electoral System*, Wellington: House of Representatives, p. 86.

The right to vote and stand as a candidate

- 2.77 The right of citizens to vote is affirmed by international law and the New Zealand Bill of Rights Act 1990. Voter eligibility rules in the Electoral Act impose some limitations on that right while also extending it to residents.
- 2.78 Given the importance of these rules, and their direct impact on participation, it is desirable for them to be based on broad consensus and public support. Currently, the voting age is the only aspect of the right to vote that is entrenched. We think there is cause to address this inconsistency and entrench the right to vote more broadly.
- 2.79 Political parties may be motivated to allow or restrict certain groups to vote for their own gain. Entrenchment can be a means of protecting human and minority rights by increasing the threshold required for change. While democracies tend to expand voting rights over time, there is a risk that a simple majority could choose to significantly roll back voting rights for particular groups. A higher threshold for change helps to mitigate this risk.
- 2.80 Some submitters pointed out that entrenchment may mean it is harder to keep up with evolving interpretations of rights, and it also creates a risk that a minority in parliament can block the expansion of voting rights for some groups. To manage this risk, we heard a suggestion that only changes to *reduce* voting rights should be entrenched, while changes to *expand* voting rights could still be made by a simple majority. We are concerned, however, that having different requirements depending on the nature of the change may appear politically opportune. While views on voter eligibility are often varied, there is a risk that making changes that don't have broad support will undermine the perceived legitimacy of the electoral system. Entrenching voter eligibility rules more broadly, instead of just the voting age, will ensure more consistent consideration in this regard.
- 2.81 For the same reasons, we also recommend candidate eligibility rules are entrenched. In practice, candidate eligibility rules may be less likely in Aotearoa New Zealand to be subject to political interference than voter eligibility, given the less direct effect on election outcomes. However, entrenchment would ensure that any significant changes to candidate eligibility, such as allowing non-citizens to stand as candidates, would require broad consensus.
- 2.82 We recommend that the provisions contained in sections 74 and 80 of the Electoral Act should be entrenched, so far as they set voter eligibility requirements. Care should be taken not to entrench related provisions in these sections, such as which electoral district a person is qualified to enrol in. We also recommend entrenching section 47, which provides for candidate eligibility.

The independence of the Electoral Commission, including the process for removing its members

- 2.83 An independent and impartial electoral administrator is an important part of our electoral system. The Electoral Commission serves a constitutional function by ensuring that free and fair elections can be delivered without political interference.
- 2.84 The Electoral Act sets a high threshold for removing members of the Electoral Commission – members can only be removed for just cause by the governor-general acting upon an address of the House of Representatives. This process is intended to prevent the government of the day from removing members of the Electoral Commission prematurely if it does not agree with their decisions or actions. Entrenching this process would stop a government from using a bare parliamentary majority to change the law to allow it to directly sack members of the Electoral Commission.
- 2.85 We acknowledge that an address from the House can technically be adopted by a simple majority, and so entrenchment will not necessarily stop a majority government or coalition from removing a member of the Electoral Commission unilaterally. It does, however, ensure that any such move must be done transparently following a public debate, and that these transparency requirements cannot be easily changed.
- 2.86 We recommend that the provisions contained in section 4G of the Electoral Act, which relate to the power to remove or suspend members of the Electoral Commission, should be entrenched. In addition to our draft recommendations, we think the independence of the Electoral Commission in performing all its duties and functions should also be protected, given the importance of protecting the conduct of elections from political interference. Therefore, we also recommend section 7, which affirms the independence of the Electoral Commission, should be entrenched.

The process for the report of the Representation Commission on electoral boundaries to take legal effect

- 2.87 Several provisions in the Electoral Act relating to boundary determinations are already entrenched to protect this process from political interference. The Royal Commission noted that section 40 presents a gap in the entrenched provisions. This section provides for the electorates set by the Representation Commission to take legal effect without any parliamentary role or oversight.
- 2.88 We recommend this section should be entrenched to protect the independence of the Representation Commission's determinations. The equivalent provision for the Māori electorates is already contained in section 45, which we have proposed to entrench.



The method for changing entrenched provisions

- 2.89 Entrenched provisions can only be changed by a majority vote in a public referendum or a 75-per-cent vote in parliament. Several submitters commented on what they considered the appropriate method for amending different provisions, and a few suggested that we should offer guidance on this question.
- 2.90 We do not believe that there is a prescriptive formula for determining the right method of change – to some extent, the choice will always depend on circumstance and political judgement. We do, however, offer some thoughts on factors that may be taken into account when determining the appropriate method:
- For complex and highly technical matters, parliamentary consideration may be preferable to a referendum.
 - Referendums may not be suitable for issues affecting individual and minority rights.
 - Referendums may be suitable for issues that expand parliamentary power or fundamentally alter the voting system.
 - All referendums should be supported by well-resourced and independent public information campaigns.

Other considerations

- 2.91 We previously considered the Royal Commission's suggestion to entrench the substance of particular aspects of electoral law rather than entrench specific provisions. The appeal of this approach is that it would entrench the essence or principle underlying the matters being protected. However, we do not recommend it because we are concerned it might give rise to uncertainty about the precise scope of what is entrenched.
- 2.92 The entrenched provisions are not doubly entrenched, meaning that the entrenching provision (section 268 of the Electoral Act) is not itself entrenched. As a result, section 268 could be repealed or amended by legislation passed by a simple majority and the entrenched provisions subsequently changed or repealed with a simple majority.

- 2.93 We do not consider double entrenchment is needed, as the current approach to entrenchment has developed into a constitutional convention and has been well respected by subsequent parliaments.

The Panel recommends:

- R3. Adding to the currently entrenched provisions by entrenching:**
- a. the allocation of seats in parliament and the party vote threshold**
 - b. the Māori electorates**
 - c. the right to vote**
 - d. the right to stand as a candidate**
 - e. the independence of the Electoral Commission, including the process for removing its members**
 - f. the process for the report of the Representation Commission on electoral boundaries to take legal effect.**



3. Upholding te Tiriti o Waitangi / the Treaty of Waitangi

- 3.1 Our Terms of Reference require us to consider how to ensure New Zealand continues to have an electoral system that upholds te Tiriti o Waitangi / the Treaty of Waitangi (**te Tiriti / the Treaty**).
- 3.2 To make this assessment we first set out a summary of the historical context surrounding te Tiriti / the Treaty. We discuss the ways it has been upheld or breached over time and what this legacy means for our current electoral system.

Historical context

- 3.3 Before colonisation, Aotearoa New Zealand was governed by Māori in accordance with a system of laws and rules. A key concept in Māori governance was tikanga – law, practices and values.¹ Tikanga was developed over centuries of Māori culture and society in Aotearoa New Zealand. Tikanga provided the core values and principles that governed Māori political, legal, economic and social behaviour.
- 3.4 At the start of the nineteenth century, European settlers began to arrive in Aotearoa New Zealand. Initially settlers tended to abide by the system of tikanga-based governance. However, as increasing numbers of settlers arrived and their demands for land increased, this placed pressure on tikanga-based governance. In He Whakaputanga o te Rangatiratanga o Nu Tireni (the Declaration of Independence, signed in 1835) Māori announced their sovereignty and independence, which was acknowledged by the British Crown.²

¹ As set out in Gallagher, T., 2008. Tikanga Māori Pre-1840. *Te Kāhui Kura Māori*, 0(1) – ‘tikanga has been defined in many ways. Judge Eddie T. Durie defines it as the ‘values, standards, principles or norms to which the Māori community generally subscribed for the determination of appropriate conduct’ ... Chief Judge Joe Williams describes tikanga as ‘the Māori way of doing things – from the very mundane to the most sacred or important fields of human endeavour’. No one definition is completely correct or wrong.’

² For further information refer to the Waitangi Tribunal, 2014. *He Whakaputanga me te Tiriti – The Declaration and the Treaty: The Report on Stage 1 of the Te Paparahi o Te Raki Inquiry*, Wellington: Legislation Direct.

- 3.5 British resident James Busby was instrumental in negotiations but was also concerned about the increasingly lawless behaviour of British settlers. His assessment was that further controls were required on the British settlers to ensure peace. Māori were interested in the British Government establishing control over their own people and having Māori mana and rangatiratanga formally acknowledged and reaffirmed.

Te Tiriti o Waitangi / the Treaty of Waitangi

- 3.6 In 1839 the British Government sent William Hobson to Aotearoa New Zealand. He had instructions to establish a British colony, impose British law on settlers, and to establish the sovereignty of the British Crown. Hobson drafted an agreement between the Crown and Māori that would fulfil this objective. This agreement made certain promises to Māori.
- 3.7 There are two versions of this agreement: one is the Treaty (the English language version); the other is te Tiriti (the Māori language version). Te Tiriti purported to be a te reo Māori translation of the Treaty. It was not an accurate translation.
- 3.8 The agreement that was presented to rangatira at Waitangi on 5 February 1840 was the Māori language version: te Tiriti. The vast majority of rangatira signed the te reo Māori version.
- 3.9 There are several fundamental differences of meaning between the two texts. These are often debated but can be summarised as:
- The agreement signed by most Māori stated the Crown obtained “kāwanatanga” (the authority to govern). In contrast, the English version stated the Crown obtained “sovereignty” (supreme power, authority or rule – total control over the country).
 - The agreement signed by most Māori reaffirmed their “tino rangatiratanga over their whenua, kainga and taonga” (unqualified exercise of chiefly authority over their lands, homes and all their treasures). In contrast, the English version only promised Māori the “full exclusive and undisturbed possession of their Lands and Estates Forests Fisheries and other properties”.
- 3.10 While it is beyond the scope of this report to examine the detailed implications of these two versions of the agreement between the Crown and Māori, the issues that

arise from the differences between them are helpfully summarised by the Waitangi Tribunal:³

...Britain's representative William Hobson and his agents explained the Treaty as granting Britain 'the power to control British subjects and thereby to protect Māori', while rangatira were told that they would retain their 'tino rangatiratanga', their independence and full chiefly authority.

Though Britain went into the treaty negotiation intending to acquire sovereignty, and therefore the power to make and enforce law over both Māori and Pākehā, it did not explain this to the rangatira. Rather, in the explanations of the texts and in the verbal assurances given by Hobson and his agents, it sought the power to control British subjects and thereby to protect Māori.

...

The rangatira who signed te Tiriti o Waitangi in February 1840 did not cede their sovereignty to Britain. That is, they did not cede authority to make and enforce law over their people or their territories.

The rangatira agreed to share power and authority with Britain. They agreed to the Governor having authority to control British subjects in New Zealand, and thereby keep the peace and protect Māori interests.

The rangatira consented to the treaty on the basis that they and the Governor were to be equals, though they were to have different roles and different spheres of influence. The detail of how this relationship would work in practice, especially where the Māori and European populations intermingled, remained to be negotiated over time on a case-by-case basis.

Māori political representation

- 3.11 The Crown, bound by te Tiriti / the Treaty, had (and has) a duty to recognise and respect Māori expressions of tino rangatiratanga. It has not done so.⁴
- 3.12 In the second half of the nineteenth century, Māori sought to develop their own institutions and expressions of political power in accordance with the guarantee of tino rangatiratanga. These included, for example, the regional parliaments set up by hapū and iwi around the country, and the Kotahitanga movement in the 1890s which strove to establish a national Māori parliament.

³ Waitangi Tribunal, above n 2.

⁴ These historic breaches are exemplified by the experience of te Raki Māori. See page 1618 onwards from Waitangi Tribunal, 2022. *Tino Rangatiratanga me te Kāwanatanga: The Report on Stage 2 of the Te Paparahi o Te Raki Inquiry*, [pre-publication version] Wellington: Waitangi Tribunal.

- 3.13 Ultimately, the Crown steadfastly refused to recognise and support any of these institutions or expressions of tino rangatiratanga. As a result, Māori then sought to improve Māori representation in parliament as “their last vestige of a lost autonomy”.⁵
- 3.14 The Crown was also obliged to ensure that Māori were politically represented in the kāwanatanga sphere (that is, parliament and its precursors) in a manner that was fair and equitable. It did not. Instead, among other actions, the following took place:⁶
- The New Zealand Constitution Act 1852 enfranchised all males aged 21 or over, subject to a property test. However, this property test excluded almost all Māori men due to the different legal status of Māori land. This was despite Māori being both a majority of the population and owning the majority of the land at the time.
 - No provision was made for Māori representation in parliament until four Māori electorates were introduced in 1867. However, these Māori electorates provided far fewer representatives than Māori were entitled to on a population basis.
 - Unlike the number of general electorate seats, which increased based on population growth, the number of Māori electorate seats remained fixed at four until 1993 – under the First-Past-the-Post system, this meant the vote of a Māori voter in a Māori electorate was worth less than those in the general electorates.
 - Until 1975 only so-called “half-castes” (for example, those with one Māori and one European parent) were allowed to choose whether to vote in a general electorate or a Māori electorate. Otherwise, Māori were required to vote in the less-representative Māori electorates.
 - Until 1967 only Māori could stand for election in the Māori electorates, while Māori were prohibited from standing for election in the general electorates. Effectively, this limited the number of Māori who could be elected to parliament to four.
 - The secret ballot (now a fundamental electoral right) was introduced in European seats in 1870, while the secret ballot was not introduced for the Māori electorates until almost 70 years later.

⁵ Sorrenson, M., 1986. Appendix B: A History of Māori Representation in Parliament. In *Report of the Royal Commission on the Electoral System: Towards a Better Democracy*, Wellington: The Royal Commission on the Electoral System.

⁶ For a fuller account, refer to: Parliamentary Library, 2009. *The Origins of the Māori Seat Research Paper*, Wellington: New Zealand Parliament.

Te Tiriti / the Treaty and the electoral system today

The importance of constitutional change

- 3.15 These examples show that there is a legacy of the Crown failing to uphold the right of equitable participation of Māori in the electoral system and rejecting proposals for expressions of tino rangatiratanga. Both actions were contrary to what was agreed in te Tiriti / the Treaty.
- 3.16 We heard clearly and forcefully from Māori communities that the Crown's legacy of breaching Māori political rights impacts perceptions of the electoral system to this day. These perceptions have been compounded by the ongoing and unresolved tension between the guarantee of tino rangatiratanga for Māori and the Crown's exercise of kāwanatanga.
- 3.17 We heard that for Māori this continues to be a significant and ongoing concern. Many raised work that has already been done by Māori – including with the Crown – to suggest ways for establishing constitutional arrangements that uphold their political rights (such as the Constitutional Conversation⁷ or Matike Mai⁸). However, despite the devotion of much time and effort by Māori, these issues have not yet been appropriately acknowledged and addressed by the Crown. We heard this frustration in our engagement with many Māori who consistently expressed a strong view that broader constitutional change was their top priority rather than modernising the electoral system.
- 3.18 These issues go to the heart of Aotearoa's constitution and raise questions about whether a Westminster-style unicameral parliament can ever be said to uphold the guarantee of tino rangatiratanga in te Tiriti / the Treaty.
- 3.19 While answering such questions is beyond our Terms of Reference, these issues influence Māori perceptions of the electoral system and, therefore, the objectives we were asked to consider (such as rates of participation and public confidence). We, therefore, recognise that the electoral system in and of itself may not be able to uphold tino rangatiratanga in a way that gives effect to te Tiriti / the Treaty without broader constitutional changes. We encourage further partnership between the Crown and Māori in considering how best to properly acknowledge and address these issues of constitutional significance.

⁷ Constitutional Advisory Panel, 2013. *New Zealand's Constitution: A Report on a Conversation He Kōtuinga Kōrero mo Te Kaupapa Ture o Aotearoa*, Wellington: Constitutional Advisory Panel.

⁸ Independent Working Group on Constitutional Transformation, 2015. *He Whakaaro Here Whakaumu Mō Aotearoa / The Report of Matike Mai Aotearoa – The Independent Working Group on Constitutional Transformation*.

The positive impact of an improving Māori/Crown relationship

3.20 At the same time, we also recognise that Māori/Crown relations have come a long way. There has been a slow but positive evolution in how te Tiriti / the Treaty has been recognised by the Crown. In particular:

- The government has established a ministerial portfolio for Māori/Crown relations and established a dedicated agency, Te Arawhiti, to support the portfolio. The purpose of Te Arawhiti is to help guide the Māori/Crown relationship from historical grievance towards true Treaty partnership, and to help guide the Crown, as a Treaty partner, across the bridge into te ao Māori.
- The new Public Service Act 2020⁹ specifies that the role of the public service includes supporting the Crown in its relationships with Māori under te Tiriti / the Treaty.
- Cabinet has endorsed and published guidance on including te Tiriti / the Treaty provisions in legislation and guidance for policy makers on te Tiriti / the Treaty implications of their work.¹⁰
- Recent changes to legislation fostered the ability of local authorities to establish Māori wards or constituencies.¹¹ This is one way for councils to honour the principle of partnership committed to in te Tiriti / the Treaty because they guarantee that Māori will be represented at council.
- The new resource management system incorporates te ao Māori, mātauranga Māori, and ensures Māori participation in planning and decision-making at national, regional and local levels.¹²

3.21 It is our task to update the electoral system and electoral law to recognise te Tiriti / the Treaty.

⁹ Public Service Act 2020.

¹⁰ Refer to Cabinet Office, 2019. *Cabinet Office Circular CO (19) 5 Te Tiriti o Waitangi / Treaty of Waitangi Guidance*. Wellington: Department of the Prime Minister and Cabinet.

¹¹ Refer to the Local Electoral (Māori Ward and Māori Constituencies) Amendment Act 2021, which removed all mechanisms for holding binding polls on Māori wards.

¹² See the following publication: Ministry for the Environment, 2022. *Te whakahou i te whakahaere rawa: He tūrangā tōtika ake mā te Māori Resource management reform: A more effective role for Māori*, Wellington: Ministry for the Environment.

Our approach to considering te Tiriti / the Treaty

- 3.22 It is within the spirit of a maturing and evolving Māori/Crown relationship that we have approached our assessment of whether the electoral system upholds te Tiriti / the Treaty.
- 3.23 To do so consistently and transparently, we have identified three considerations to apply when Tiriti / Treaty issues arise during our review of the electoral system.
- 3.24 These considerations (see **Figure 3.1**) are derived from te Tiriti / the Treaty itself and interpretations of it expressed by the courts and the Waitangi Tribunal (its principles). This approach is not meant to be exhaustive and broader considerations are incorporated where relevant.

Figure 3.1: Te Tiriti o Waitangi / the Treaty of Waitangi assessment framework

Consideration	Comment
<i>Active protection of equitable Māori electoral rights</i>	The Crown has the obligation to actively protect Māori rights, including citizenship and political rights. Derived from Articles 1 and 3, we consider whether an option fosters the equitable participation of Māori at all levels of the electoral system. It recognises that the exercise of kāwanatanga as envisaged by Article 1 is legitimate only to the extent it is based on the ability of Māori to, amongst other things, fully participate in regular, free, and fair elections on an equitable basis with all other people.
<i>The guarantee of tino rangatiratanga</i>	The Crown has the obligation to recognise and respect Māori tino rangatiratanga. Derived from the guarantee in Article 2, this consideration looks at whether the electoral system enables Māori to exercise self-determination and have maximum control or autonomy over electoral activities. This control or autonomy should be exercised consistently with other principles derived from te Tiriti / the Treaty.
<i>Partnership and informed decisions</i>	We also considered whether an option supports the Crown and Māori to act towards each other in good faith, fairly, reasonably, and honourably.

Our initial view

- 3.25 In our interim report we recommended:
- Requiring decision-makers to give effect to te Tiriti o Waitangi / the Treaty of Waitangi and its principles when exercising functions and powers under the Electoral Act. This obligation should apply generally across the Act and be explicitly included in the Electoral Commission's statutory objectives.

- That the Electoral Commission prioritises establishing Māori governance over data collected about Māori in the administration of the electoral system.

3.26 We also made several other detailed recommendations that will better uphold te Tiriti / the Treaty, including:

- entrenching the Māori electorates (**Chapter 2**)
- lowering the voting age (**Chapter 7**)
- removing the disqualification of prisoners from the right to vote (**Chapter 7**)
- removing restrictions on when the Māori electoral option can be exercised (**Chapter 8**)
- funding programmes that are by Māori for Māori to increase voter participation (**Chapter 11**)
- establishing Te Pūtea Whakangāwari Kōrero ā-Tiriti / Treaty Facilitation Fund to facilitate party and candidate engagement with Māori communities, in ways appropriate for Māori (**Chapter 13**)
- requiring that the Electoral Commission's board collectively has skills, experience, and expertise in te Tiriti o Waitangi / the Treaty of Waitangi, te ao Māori and tikanga Māori (**Chapter 15**)
- adding the current Māori members of the Representation Commission as members for determining general electorate boundaries, not just the Māori electorate boundaries (**Chapter 17**)
- when considering the general electorate boundaries requiring the Representation Commission to consider the impacts on communities of interest for Māori (**Chapter 17**).

3.27 We also identified some areas where there were potentially tensions between our interim recommendations and the rights and interests that are protected under te Tiriti / the Treaty, including the impacts of:

- removing the one-electorate seat threshold (**Chapter 4**)
- a referendum on extending the term of parliament (**Chapter 5**)
- restricting the ability of organisations to make donations to political parties (**Chapter 13**).

3.28 These matters are discussed further in the cited chapters.



Feedback from second consultation

Breaches of the Crown's obligations

- 3.29 We heard anecdotal and research evidence that many Māori are treated unfairly or discriminated against when voting. Some of these examples were:
- polling booths not having a Māori roll or voting papers for Māori electorates
 - voters (Māori and non-Māori) on the general roll being told they are unable to vote for a 'Māori party' if they are not on the Māori roll
 - Māori casting invalid votes due to errors by polling staff
 - staff being unable to find the Māori roll and correct voting forms, with Māori having to wait to cast, and/or leave (due to time) before casting, their vote
 - Māori voters wanting to change rolls and being unable to do so.

The statutory requirement to uphold te Tiriti / the Treaty

- 3.30 Most submitters who made a detailed written submission (including academics, Māori organisations, and civil society groups) supported the inclusion of a general Tiriti / Treaty clause in the Electoral Act.
- 3.31 However, some other submitters were concerned that this clause alone would not drive the desired level of operational change at the Electoral Commission. An academic suggested a more descriptive Tiriti / Treaty clause (which we discuss further below) would offer stronger direction to the Electoral Commission. Some said they did not know what giving effect to te Tiriti / the Treaty and its principles looks like in practice. Additional structural suggestions were made, including:
- establishing dedicated Māori roles or entities (such as a deputy chief electoral officer Māori role, or a Māori Electoral Commission)
 - creating a national Māori representative forum to provide expert advice directly to the Electoral Commission
 - requiring the Electoral Commission to publish a comprehensive Tiriti o Waitangi policy and strategy.
- 3.32 On the other hand, comments left through our online form were largely opposed to or did not see the relevance to the electoral system of upholding te Tiriti / the Treaty. Some other submitters also held these views. Many individuals incorrectly interpreted our recommendations as creating additional voting rights or privileges for Māori.
- 3.33 Some of these online submitters were also particularly concerned about references to Tiriti / Treaty principles, which they thought should be explicitly defined in the legislation.

Establishing Māori data governance

- 3.34 Only a few submitters commented on our proposal for establishing Māori governance over Māori electoral data. Most submitters supported Māori data governance, stating it:
- could improve the trust and confidence Māori have in the electoral system
 - recognises that for Māori, data is a taonga and should therefore be administered by Māori under Article 2 of te Tiriti / the Treaty.
- 3.35 The Privacy Commissioner noted that any use of data must strike an appropriate balance between individual privacy and collective good and that individual Māori should have choices about how their data is managed and used.
- 3.36 Two submitters supported establishing a dedicated Māori data officer. The Privacy Commissioner thought such a role would accelerate implementation of Māori data governance. Another submitter noted there were a lot of options for this role – including that it could sit outside the Electoral Commission and operate broadly across government.
- 3.37 In contrast, the online comments we received expressed reservations or were opposed to establishing Māori governance over Māori electoral data. Questions were raised about how to ensure the integrity of electoral data and how to manage privacy risks.

Changes to the Māori affiliation service

- 3.38 The Māori affiliation service was established via amendments to the Electoral Act in 2002 to assist people of Māori descent to make contact with their iwi, if they wished for assistance to do so. The Tūhono Trust has been appointed as a “designated body” under the Act to undertake this task in accordance with requirements of the Act.¹³
- 3.39 With a person’s consent, the Electoral Act allows information on a Māori voter to be passed on to the Tūhono Trust, which then connects the person’s information to their nominated iwi. In relation to the Māori affiliation service, the Tūhono Trust’s submission suggested:
- removing the requirement for the Electoral Commission to seek consent from Māori electors to share their contact information for the purposes of the Māori affiliation service
 - removing the prohibition on the creation and maintenance of information on whakapapa via the Māori affiliation service

¹³ Electoral Act 1993, section 111D.

- removing the requirement for iwi and Māori organisations to be listed in regulations before they can receive data and instead allow information on Māori electors to be shared with any iwi included in the Stats NZ iwi classification list.

Other issues raised

3.40 A number of other issues were raised by submitters that relate the Crown's Tiriti / Treaty obligations. These are discussed in later sections of the report, but for reference we note that we recommend:

- stronger controls and approval processes when people wish to access the electoral rolls for research purposes (**Chapter 16**)
- stronger safeguards over the calculation of the Māori electoral population if data outside the census is to be used in future (**Chapter 17**).

Our final view

A statutory obligation to uphold te Tiriti / the Treaty

- 3.41 Upholding te Tiriti / the Treaty should be central to the administration of the electoral system, given its constitutional significance.
- 3.42 We maintain the view there should be an explicit requirement in the Electoral Act for decision-makers to give effect to te Tiriti / the Treaty and its principles when exercising functions and powers under the Act (known as a general Tiriti / Treaty clause). We are also confirming our recommendation that this obligation is explicitly included in the Electoral Commission's statutory objectives.
- 3.43 In making this recommendation we considered recent guidance on providing for te Tiriti / the Treaty in legislation.¹⁴ That guidance notes the most important factor is to identify the outcomes sought by including a reference to te Tiriti / the Treaty in legislation.
- 3.44 Our objective is to recognise the centrality of te Tiriti / the Treaty to our electoral system. Te Tiriti / the Treaty is the founding document of our democracy. Free and fair elections are fundamental to ensuring the health of that democracy. And those elections can only be free and fair when inequities facing Māori voters (as described above) are eliminated.
- 3.45 We are recommending a general clause to ensure an enduring focus on improving Māori voter participation that has the flexibility to adapt as circumstances and priorities for Māori change.

¹⁴ Te Arawhiti, 2022. *Providing for the Treaty of Waitangi in Legislation and Supporting Policy Design*, Wellington: Te Arawhiti.

- 3.46 Our general Tiriti / Treaty clause is complemented by the other more specific recommendations we have made. These are cited above, and propose concrete improvements that would better uphold the Crown's obligations under te Tiriti / the Treaty.
- 3.47 In making these recommendations we acknowledge work already undertaken by the Electoral Commission to better reach Māori voters. The new obligations we recommend will ensure the Electoral Commission has clear statutory authority to continue this work. A Tiriti / Treaty clause will explicitly authorise it to have an ongoing focus on its Tiriti / Treaty obligations when undertaking its duties and prioritising its resources.
- 3.48 In practice, we expect the impact of our recommended Tiriti / Treaty clause would be:
- the Electoral Commission continues and improves its direct engagement with Māori as iwi, hapū and individuals through a range of mechanisms, including Māori advisory groups
 - barriers to Māori participation in the electoral system at all levels are identified and eliminated
 - Māori voters, candidates, and parties would be empowered to exercise political power through the electoral system equitably, and disparities in participation rates would begin to fall.
- 3.49 We believe this new general obligation, alongside our more specific recommendations, would ensure the electoral system better meets the needs of Māori and will better uphold the Crown's obligation under te Tiriti / the Treaty. Moreover, these changes would strengthen Aotearoa New Zealand's democracy for all. A democracy where all communities feel they can fully participate and are heard builds trust, confidence and, ultimately, social cohesion.

Ensuring that progress is swift and transparent

- 3.50 During our second consultation, we heard concerns about whether the scale and pace of change arising from our interim recommendations will be sufficient. To provide greater assurance, we are now also recommending that the Electoral Commission is required to publish a Tiriti / Treaty policy and strategy. The strategy should set out how the Commission will:
- improve its staff capacity and capability in the areas of Te Tiriti, tikanga, and te reo Māori
 - improve electoral participation of Māori as voters and electoral officials
 - honour the provisions and principles of te Tiriti / the Treaty as they relate to electoral administration more generally (see, for example, Māori data governance issues below).



3.51 The Electoral Commission should be required to:

- engage with Māori in creating the strategy, have regard to the feedback received, and publish a summary of this feedback in the strategy. This will uphold the principle of partnership and informed decisions
- report on the progress as part of its annual report and its statutory obligation to publish a post-election report. This will allow Māori to hold the Electoral Commission to account for what it has achieved.

The importance of Māori data governance

3.52 In administering the electoral system, data about Māori is collected and used (for example, as part of the compulsory voter enrolment, and for the Māori electoral option). We heard that for Māori, data is a taonga (under Article 2 of Te Tiriti / The Treaty) with immense value. To provide but one example, a person's name can carry great mana, as well as holding wider cultural and historical significance, such as links to tūpuna. The guarantee of tino rangatiratanga over taonga means that Māori data should be governed by and for Māori. This ensures Māori data is stored, transferred and applied in accordance with tikanga and to the benefit of those to whom it belongs.

3.53 As such, we recommend that the Electoral Commission, in line with its new objective to give effect to te Tiriti / the Treaty, prioritises establishing Māori governance over Māori electoral data. The Electoral Commission should do this in partnership with Māori communities and Māori data experts.

3.54 In doing so, the Electoral Commission should be guided by the Māori data governance model recently published by Te Kāhui Raraunga.¹⁵ This model has been specifically designed to assist the public service to implement Māori data governance in a way that is values-led, centred on Māori needs and priorities, and informed by research.

3.55 If implemented, this model would address some of the concerns raised by submitters who thought there may be risks in establishing Māori data governance. The model demonstrates that Māori data governance would strengthen the safety and integrity of all electoral data. This is demonstrated by some of the values that underpin the model – namely, to:

- nurture data as a taonga
- use data for good
- be accountable.

¹⁵ Kukutai, T., Campbell-Kamariera, K., Mead, A., Mikaere, K., Moses, C., Whitehead, J. & Cormack, D., 2023. *Māori data governance model*, Rotorua: Te Kāhui Raraunga.

- 3.56 These principles are universal – they will ensure all voters’ information is appropriately protected. Protection will strengthen trust in the electoral system, which underpins the confidence of voters to participate.
- 3.57 As a minimum first step, implementation would require the Electoral Commission to establish Māori oversight and participation as immediate priority areas, such as safeguards over access to the electoral rolls (**Chapter 16**).
- 3.58 This would likely require the Electoral Commission to work directly with Māori on how to establish the functions of appropriate and effective Māori governance. We suggest an external and independent panel of Māori data experts would be an appropriate initial step. Such a group could independently assess the Electoral Commission’s current practices and advise on the appropriate changes to roles, functions, and oversight mechanisms needed for successful Māori data governance.
- 3.59 To support implementation, we also considered whether establishing a statutory role or function relating to Māori data governance would be necessary to include in the Electoral Act. While there would be some benefits in doing so, the most important factor is to ensure the Electoral Commission dedicates sufficient funding and resourcing to establish Māori data governance as a priority. We are, therefore, strengthening our interim recommendation by requiring that the Electoral Commission prioritises establishing Māori data governance *and is funded by the government to do so*. Nevertheless, a dedicated role is worthy of exploration in future.
- 3.60 Relevantly, there is already broader work underway to consider establishing an all-of-government “Māori Chief Data Steward”.¹⁶ This position would align with the role of the Government Statistician and Government Chief Data Steward but apply a te ao Māori perspective to decision-making about Māori data.
- 3.61 It will be critical that the Electoral Commission’s work to establish Māori data governance has regard to the direction of this broader co-designed approach. However, seeking alignment should not be a reason for the Electoral Commission to delay establishing Māori data governance over Māori electoral data.

¹⁶ A detailed outline of this work programme can be found at the government’s data website: [Data.govt.nz](https://data.govt.nz), 2021. *Co-designing Māori data governance*. [Online] Available at: <https://data.govt.nz/toolkit/data-governance/maori/> [Accessed October 2023]. This work is part of the Mana Ōrite Work Programme between Stats NZ and the Data Iwi Leaders Group (DILG) of the National Iwi Chairs Forum (NICF), which was created to ensure the government’s data processes uphold Te Tiriti o Waitangi/The Treaty of Waitangi.

Changes to the Māori affiliation service

3.62 We respond to each of the Tūhono Trust's recommendations below:

- **Remove consent requirement**

We agree in principle that the Crown should remove barriers to Māori accessing and benefiting from any Māori data it collects. However, this objective must be balanced against the rights to full, prior, and informed consent, which the Māori data governance model notes is “essential to the ethical use of Māori data”.

This is particularly important because data on Māori descent in the electoral system is compulsorily acquired by the state as every eligible voter must enrol. In these circumstances, we consider that consent should always be required for discretionary secondary uses of voters' personal information (with some caveats). This is not just about the Māori affiliation service, but access to electoral information more broadly. Our recommendations to strengthen the protections around who can access the electoral roll in **Chapter 16** reflect this. Our approach aligns with the submission from the Office of the Privacy Commissioner, which stated that Māori should be given choices about how their data is used.

- **Remove prohibition on whakapapa**

We only received one submission on this issue. The purpose of the Māori affiliation service is to connect Māori electors to iwi they affiliate with, so they can contact each other. Making this connection does not require the collection of whakapapa information and so would be a significant expansion of the Māori affiliation service. We did not hear from other Māori organisations that this expansion was necessary or desirable. We suggest that this issue be explored in the ongoing review of the Māori affiliation service, led by Te Puni Kōkiri.

- **Remove requirement for recipient organisations to be listed in regulation**

If consent is given by a Māori elector, the Māori affiliation service allows their details to be passed on to relevant iwi and other Māori organisations. Before receiving any information, however, a recipient iwi or Māori organisation must be listed in regulations made under the Electoral Act 1993.¹⁷

¹⁷ The Electoral (Iwi Organisation and Other Māori Organisation) Regulations 2018 define what organisations can receive information through the Māori affiliation service.

Tūhono Trust thought this process was unnecessary and that instead the Electoral Act should allow information on Māori electors to be shared with any iwi included in the StatsNZ iwi classification list.¹⁸

While we recognise that the current approach is inflexible, it is an important safeguard over any expansion of who can receive electoral data via the Māori affiliation service. We did not hear any concerns from iwi about the current process. Nevertheless, we encourage the government to engage regularly with Tūhono and other Māori organisations to identify if the regulations need updating (perhaps after any updates StatsNZ makes to the iwi classifications). The iwi classifications are primarily a statistical standard, so this additional step is an appropriate safeguard.¹⁹

The Panel recommends:

- R4. Requiring decision-makers to give effect to te Tiriti o Waitangi / the Treaty of Waitangi and its principles when exercising functions and powers under the Electoral Act. This obligation should apply generally across the Act and be explicitly included in the Electoral Commission's statutory objectives.**
- R5. Requiring the Electoral Commission to publish a Tiriti / Treaty policy and strategy and report on progress as part of its statutory obligation to publish a post-election report.**
- R6. The Electoral Commission prioritises establishing Māori governance over data collected about Māori in the administration of the electoral system, and is funded by government to do so.**

¹⁸ This is a statistical list of iwi and iwi-related groups throughout New Zealand that are recognised by Stats NZ Tatauranga Aotearoa. It provides a standard approach for grouping and reporting iwi and iwi-related groups.

¹⁹ Stats NZ, 2018. Purpose of the Iwi Statistical Standard and Classification. [Online] Available at: <https://www.stats.govt.nz/methods/purpose-of-the-iwi-statistical-standard-and-classification> [Accessed October 2023].

2

PART 2

The Voting System

This part covers:

- representation under MMP (Chapter 4)
- the parliamentary term and setting the election date (Chapter 5)
- vacancies in parliament (Chapter 6)





4. Representation Under MMP

Composition of parliament

- 4.1 In 1993, Aotearoa New Zealand moved to the Mixed Member Proportional system (**MMP**), following a Royal Commission report on the electoral system and endorsement through public referendums. The first MMP election was held in 1996.
- 4.2 Under this voting system, people have two votes: one for the candidate they want to represent the area they live in and one for the political party they want to represent them.
- 4.3 Our parliament typically has 120 seats, made up of a combination of electorate seats and list seats. Currently, there are 65 general electorates and seven Māori electorates.¹ This means that, in the absence of any overhang seats, there would be 48 list seats.²
- 4.4 Both types of seats are important: electorate seats ensure local areas are represented, and list seats are primarily used to ensure the seats won by a party reflect its share of the nationwide party vote. List seats may also be used to represent diverse interests and groups.

Allocation of seats

- 4.5 After each general election, the Electoral Commission follows the Sainte-Laguë method of seat allocation, and the steps prescribed in sections 191 to 193 of the Electoral Act, to determine the number of seats that each party is entitled to.³

¹ The number of electorates can change. The Representation Commission reviews and adjusts electorate boundaries after each 5-yearly population census. The next boundary review will take place before the 2026 General Election.

² Following the 2023 General Election, the 54th Parliament had an overhang of two seats. A further seat was added after the Port Waikato by-election on 25 November 2023, which increased the number of list seats to 51 and the total number of seats to 123.

³ Currently, the law requires the allocation of 120 seats amongst qualifying parties using the Sainte-Laguë method. There is not a dedicated provision for how seats in parliament should be allocated if the election for one or more electorate seat is cancelled due to the death of a candidate. We discuss this briefly at the end of this chapter.

- 4.6 Electorate seats go to the candidates who win the most votes in each electorate. Candidates can represent a political party or be independent. List seats are added to any electorate seats won by each party until its share of seats in parliament reflects its proportion of the nationwide party vote, so long as it passed one of either:
- the **party vote threshold**: where a party receives at least five per cent of the nationwide party vote – this was about 142,500 votes in the 2023 election, **or**
 - the **one-electorate seat threshold**: where the party’s candidates win at least one electorate seat.⁴
- 4.7 Where a party does not pass either threshold, it receives no list seats. The party votes for these parties are not included in the list seat allocation process.
- 4.8 The total number of seats a qualifying party is entitled to – electorate and list seats combined – reflects its share of the nationwide party vote. The party’s entitlement is first filled by any electorate seats its candidates have won. Any remaining seats go to candidates from the party list, in the order that the party ranked them before the election (excluding any successful electorate candidates).
- 4.9 Where a party wins more electorate seats than it would be entitled to through its share of the party vote, it keeps the extra seat or seats, and the size of parliament is increased by that number of seats until the next election.⁵ These are called overhang seats. Further seats are allocated to other parties until the next election to make sure the number of seats those parties have remain in proportion to their share of the nationwide vote. However, if an electorate seat is won by an independent candidate, no additional seats are allocated.

Our consideration of MMP

- 4.10 The way seats are allocated determines the composition of parliament. Any changes to the MMP rules need to consider how they work in combination; changing or removing one component is likely to affect how the others operate, influencing voting habits and impacting election outcomes.
- 4.11 In the sections below, we consider the party vote threshold, the one-electorate seat threshold, overhang seats, and the ratio of electorate to list seats in turn. However, when coming to our recommendations, we considered the effect of each proposed change on the others.

⁴ Electoral Act 1993, section 191(4).

⁵ This right is protected by section 192(5) of the Electoral Act 1993. It provides that a party shall not receive any allocation of list seats if its representation through electorate seats is equal to or greater than the share of the party vote it would be entitled to, but that its electorate seats will not be affected or reduced accordingly.

- 4.12 We have also considered their overall impact on proportionality,⁶ representation (including Māori representation), the effectiveness of parliament, and the ability to form stable governments.
- 4.13 With these interactions in mind, our recommendations in this part of the report form a package and should be read together. We also note our recommendation in **Chapter 2** to entrench the calculation and allocation of seats in parliament and the party vote threshold.
- 4.14 As we note in the **Introduction**, this report was being finalised during the 2023 general election. Where possible, we have incorporated any information that was available about election results into relevant parts of this chapter. However, that information came too late to be part of our consideration of MMP, including our modelling to assess the impact of our recommendations on previous election results.

Party vote threshold

- 4.15 Under MMP, the primary representation threshold for parties is to win five per cent of the party vote. (The exception to this rule is where a party wins an electorate seat, which we discuss in **One-electorate seat threshold**, below.)
- 4.16 The party vote threshold allows parties to enter parliament without needing to win an electorate seat. In the 10 MMP elections so far, from 1996 to 2023, between three and six parties have crossed this threshold.
- 4.17 At the same time, the party vote threshold is a barrier to smaller or newly formed parties entering parliament. Permitting such parties in parliament would be more representative of voters' preferences. However, a proliferation of too many parties in parliament could lead to difficulties forming governments, unstable governing arrangements, and ineffective parliaments.
- 4.18 The party vote threshold aims to balance these two competing factors:
- a parliament that represents a wide range of interests
 - a parliament that is stable enough to allow for effective government and law-making.
- 4.19 To some extent, any representation threshold represents a compromise between these competing considerations.

⁶ Proportionality is the degree to which a party's share of the party vote corresponds with that party's share of the seats in the House.

Earlier recommendations

1986 Royal Commission on the Electoral System

The Royal Commission recommended:

- setting the party vote threshold at four per cent. It considered five per cent as “too severe” a barrier for new and emerging parties
- no threshold for parties primarily representing Māori interests (although this was recommended in the context of wider constitutional change that did not take place).

1993 Electoral Reform Bill

When the Bill that established MMP was introduced into the House, it set the party vote threshold at four per cent. The Select Committee report on the Bill recommended raising the threshold to five per cent but did not give a reason for this change.

2001 Justice Select Committee Inquiry into the Review of MMP

There was no agreement between the parties on the threshold, and no recommendation was made.

2012 Electoral Commission Review of MMP

The Commission:

- advised that the five per cent threshold was higher than it needed to be
- recommended it was lowered to four per cent. It thought this lowering could be done without risk to effectiveness or stability
- argued that reducing the threshold to three per cent could be implemented without significant risks, but that would be a step too far at that stage
- considered that the new threshold of four per cent be reviewed and reported on after three general elections.

The Commission’s view was that a party vote threshold below three per cent would be too large a departure from the balanced approach recommended by the Royal Commission and affirmed in referendums. It stated it would be contrary to public opinion, and in effect constitute a new voting system.⁷

⁷ Electoral Commission, 2012. *Report of the Electoral Commission on the Review of the MMP Voting System*, Wellington: Electoral Commission, p. 16.

Is there a case for change?

Arguments against change

- 4.20 In the first consultation, many submitters who answered our question about the party vote threshold supported the status quo. These submitters thought that the five per cent threshold ensured that parties represented in parliament appeal to significant numbers of people, which avoids fragmenting the political system and undermining the effectiveness of parliament and government.
- 4.21 Other arguments against changing the party vote threshold include:
- Governments and parliaments could become less effective with a lower threshold if more parties are involved in our governing arrangements. For example, more parties could lead to coalition arrangements that do not last the term of parliament. It could be harder for a government to agree on policies and take decisive action where appropriate.
 - A lower threshold could also lead to more deal-making between parties seeking to form a coalition government, either in electorate seats or after the election. This behaviour may be unpopular with voters.
 - A lower threshold may hamper the ability of parliament to function effectively. For example, a large number of parliamentary parties could impact on the Business Committee's ability to agree on the parliamentary timetable. It could also fragment the opposition, decreasing its ability to counter and debate government decisions, and deliver parties with too few members to participate in parliament effectively.
 - While broad representation and having diverse voices in parliament is an important feature of our system, a lower threshold risks electing extremist parties that may not share Aotearoa New Zealand's democratic ideals. A proliferation of such parties could detract from the effectiveness of parliament.

Arguments for change

- 4.22 Most submitters to the first consultation wanted a lower party-vote threshold, for several reasons:
- A lower party vote threshold makes it easier for parties to enter parliament, which increases the diversity of views represented and may also increase representation of Māori and other numerical minority populations.
 - The current threshold presents a high barrier for those parties. In the four elections before 2023, only four parties crossed the five per cent threshold, while between nine and 13 parties fell below it.

- Lowering the threshold would reduce the number of votes that do not count toward the allocation of seats and increase the representativeness of our parliaments.
 - Increasing the number of parties in parliament may also increase the choice of coalition partners, providing more routes to a parliamentary majority and reducing the likelihood that any one party can decide who will govern.
 - A lower threshold could still allow for the election of sufficient Members of Parliament (**MPs**) for a party to be able to operate effectively in parliament.
- 4.23 In its 2012 report, the Electoral Commission considered that about five MPs would be sufficient for a political party to be effective in parliament. This number of seats would be likely under a four per cent or under a 3.5 per cent threshold, for example.⁸
- 4.24 Some submitters supported a higher party vote threshold. These submitters argued the current threshold gives small parties undue influence when forming a coalition – undermining fairness in representation and potentially leading to government instability.

Our initial view

- 4.25 In our interim report, we recommended a party vote threshold of 3.5 per cent. In coming to this recommendation, we considered several different party vote thresholds, earlier reviews, the views of experts, submissions to our first consultation, data modelling, and academic research.
- 4.26 Our aim was to set the party vote threshold at the lowest possible level that would be consistent with maintaining an effective parliament and stable government, to achieve greatest representation in parliament. We acknowledged the merits of a four per cent or three per cent threshold but concluded that 3.5 per cent struck the best balance.

Feedback from second consultation

- 4.27 In the second consultation, submitter views on the party vote threshold were strong and divided but largely consistent with the arguments raised during the first consultation.
- 4.28 Submitters who supported our draft recommendation thought it would make parliament more representative of New Zealanders and their diverse political views and help build trust in our political institutions. A few submitters thought a lower party vote threshold may support more Māori MPs to enter parliament.

⁸ Ibid, p. 15.

- 4.29 Other submitters thought the threshold could be even lower (or removed altogether) and still provide for a stable government and effective parliament, but they generally considered 3.5 per cent to be a step in the right direction.
- 4.30 The Clerk of the House of Representatives noted that a threshold of 3.5 per cent may have implications for parliament's rules and procedures, House time, and select committees, which would need to be considered as part of implementation.
- 4.31 Many submitters supported the status quo of five per cent and a few thought it should be higher. These submitters were concerned about government stability, the fragmentation of parliament, small parties having undue influence over government formation, and single-issue or extremist parties entering parliament.
- 4.32 Some submitters thought a four per cent threshold would strike a better balance between increasing representation and ensuring the effectiveness of parliament. These submitters noted that this threshold would not fragment the vote as much and would reduce the risk of extremist parties entering parliament. It is also the threshold recommended by the Royal Commission in 1986.
- 4.33 A few advocacy groups raised concerns that more parties may run and be elected to parliament on platforms that seek to marginalise some communities, and that this may be seen as legitimising those views, bringing harm to those communities. They gave examples such as a party focused on anti-migrant policies.
- 4.34 Some submitters advocated strongly for second-choice voting to be introduced for the party vote (that is, an optional "back up" vote for another party if your first-choice vote did not pass the threshold), whether the threshold is lowered or not. They differentiated this idea from a full preferential voting system and noted it may improve voter participation rates, support sincere voting rather than tactical voting, reduce the proportion of votes that go to parties that cross neither threshold, reduce barriers for small and newly established parties, and only require a simple change to the ballot paper.
- 4.35 Some submitters called for broader changes to the voting system, such as a return to First-Past-the-Post, which were out of scope of the review.

Our final view

- 4.36 In response to submitter feedback to the second consultation, we reconsidered whether a four per cent or three per cent party vote threshold would strike a better balance between a representative parliament and an effective parliament. We acknowledge the strong arguments in favour of each option, and we note these below.
- 4.37 We maintain our view that a party vote threshold of 3.5 per cent – around 100,000 votes at the 2020 and 2023 elections – is the best compromise for Aotearoa New

Zealand at present. Political parties receiving 3.5 per cent of the party vote would be entitled to at least four seats in parliament, and most likely five.⁹

- 4.38 To some extent, any representation threshold is a compromise between competing considerations. In our view, lowering the threshold to four per cent does not go far enough in providing for a representative and proportionate parliament, while three per cent has a higher risk of ineffective and unstable governments and parliaments.
- 4.39 The current threshold presents a high barrier to small and emerging parties that has in practice operated to stop them gaining representation in parliament. A party vote threshold of 3.5 per cent would improve prospects for such parties to enter parliament, without significant risk of a proliferation of small parties in parliament. In the 10 elections since MMP was introduced, parties have only won between three per cent and 4.99 per cent of the party vote six times. The majority of parties contesting the party vote have won less than one per cent (see **Figure 4.1**).

Figure 4.1: The number of parties and their share of the party vote in MMP elections (1996 to 2023)

Year	5% or above	4 – 4.99%	3 – 3.99%	2 – 2.99%	1 – 1.99%	0 – 0.99%
2023	5	-	1	1	1	9
2020	4	-	-	1	4	8
2017	4	-	-	1	1	10
2014	4	-	1	-	2	8
2011	4	-	-	1	3	5
2008	3	1	1	1	-	13
2005	4	-	-	2	2	11
2002	6	-	-	-	4	4
1999	5	1	-	1	2	13
1996	5	1	-	-	1	14

- 4.40 A 3.5 per cent threshold could increase both voter choice and the choice of coalition partners for majority parties. This might in turn increase the diversity of views represented in our parliament.
- 4.41 A lower threshold may also reduce the number of votes excluded from the process for allocating list seats at each election (often referred to as “wasted votes”). The

⁹ Depending on the number of votes cast for parties that do not pass the party vote threshold.

number of votes discarded from the calculation of seats in parliament is sizeable. At the 2023 general election, about 160,000 votes (5.58 per cent of valid votes) went to parties that did not meet the party vote threshold or the one-electorate seat threshold and were, therefore, not included in the allocation of list seats. This was a considerable decrease from the 250,000 votes (7.71 per cent of valid votes) in 2020 to parties that did not cross either threshold, but an increase from the 120,000 votes (4.62 per cent of valid votes) in 2017.

- 4.42 Several countries function with a threshold between two and four per cent without instability.¹⁰ Our modelling of MMP election results before 2023 supports a 3.5 per cent party vote threshold (see **Table 2, Appendix 3**). Lowering the threshold to 3.5 per cent would only have affected the allocation of seats in 1996, 2008 and 2014. New parties would have entered parliament in 2014 (at a 3.5 per cent threshold) and in 1996 and 2008 (at either a 3.5 per cent or a four per cent threshold) but these changes would not have been likely to affect government formation, and proportionality would have been improved.
- 4.43 These results can only give an indication because a lower threshold would likely change both voter and party behaviour. However, in general, we are confident that lowering the threshold to 3.5 per cent would improve representation without leading to a proliferation of parties, avoiding either political gridlock or instability.
- 4.44 Our final view incorporates the consideration of other options that we noted but did not recommend in our interim report. We were not persuaded in our second consultation to adopt any of these options. For completeness, we repeat them here.

Representation of Māori

- 4.45 We considered retaining the party vote threshold but waiving the threshold for parties primarily representing the interests of Māori. The 1986 Royal Commission recommended this waiver instead of retaining the Māori electorates (alongside broader constitutional change). This approach could support the representation of Māori interests in parliament.
- 4.46 However, it is difficult to identify appropriate and sufficiently clear criteria for a political party representing primarily Māori interests. Concerns about this process led to the proposal being abandoned in 1993 when parliament was considering the change to MMP.
- 4.47 We share these concerns. Problems and uncertainties with a definition could affect the structure and development of parties focused on Māori and Māori interests in unforeseen ways. For example, there may be a diversity of definitions

¹⁰ For example, Denmark has a two per cent threshold, and Austria, Norway, and Sweden have four per cent thresholds.

of a “Māori party” in communities that do not fit the legislated definition, causing dispute amongst groups and harming Māori representation.

- 4.48 In **One-electorate seat threshold**, below, we discuss our recommendation to remove the one-electorate seat threshold and the impact that could have on Māori representation.

Other thresholds we considered

- 4.49 We considered retaining the five per cent threshold. In both consultations, some submitters supported this option. They felt it appropriately balanced diversity of representation and minority influence in government decision-making against the risks extremist parties might pose for the stability of government. However, we consider there is merit in a lower threshold to improve representation, and that the evidence shows the concerns around instability can be addressed.
- 4.50 We maintain our view that a threshold greater than five per cent would limit the representation of a wide range of interests, and we consider there is no evidence that a higher threshold is needed to maintain an effective parliament and stable government.
- 4.51 We heard from some submitters that the party vote threshold should be removed altogether, with all parties eligible for list seats. In practice, a default threshold of around 0.4 per cent would operate, simply because there are a limited number of seats available for allocation. With this default threshold there would be very few votes that did not count towards the final result, meaning the resulting parliaments would be highly proportional and represent a wide range of parties and viewpoints.
- 4.52 However, this default threshold would likely lead to numerous parties being represented in parliament, including small parties with very limited nationwide support. This outcome would fragment and could render ineffective both parliament and government. For example, in 2020 a party could have won a seat in parliament with as few as 12,000 votes, which likely would have resulted in 10 of the 17 parties contesting the party vote being elected to parliament (four more parties than the actual result).
- 4.53 We acknowledge the consistent support for a four per cent threshold from the Royal Commission, the Electoral Commission, the Justice Select Committee, and by some academics and submitters to this review. Lowering the threshold is often cited as the first of two steps, with a subsequent decision about whether it can be lowered further. A four per cent threshold would have made a significant difference to representation at the time that the Royal Commission recommended it. However, now with the advantage of 10 MMP election results to consider, we think that four per cent – requiring approximately 114,000 votes at the 2023 election – would still be higher than it needs to be.



- 4.54 We also considered whether the party vote threshold could be lowered to three per cent or if this amount of change (a 40 per cent reduction) would be too great a step to take in one go.
- 4.55 During engagement, we heard a lot of concerns about extremism and disinformation, particularly in relation to lowering the party vote threshold. We understand these concerns and note that these risks are higher in the current political climate than when MMP was reviewed by the Electoral Commission in 2012.
- 4.56 We think civics education has a significant role to play in mitigating extremism and disinformation, by supporting the health of our democratic institutions and supporting voters to make informed decisions. However, we agree with experts and the Electoral Commission's 2012 view that changes to the party vote threshold should be put in place incrementally.¹¹ Therefore, although the data supported the possibility of the threshold being lowered to three per cent (as the data did in 2012) without too much risk of a fragmented parliament, we do not recommend it at this time.

Preferential voting

- 4.57 We considered both full and partial preferential voting, in response to feedback from submitters that it should be introduced for either or both the party vote and electorate vote.
- 4.58 Full preferential voting would allow voters to rank their preferred parties or candidates (for example, they could select a first, second, and third choice). If a voter's first choice did not succeed, their vote would transfer to their next ranked party or candidate (and so on). Second-choice voting is an example of partial preferential voting, where voters have the option of selecting a "back-up" party or candidate. Both types of preferential voting could make it easier for smaller parties to get into parliament because voters could support smaller or newly established parties or candidates without fear their vote will not count in the make-up of parliament.
- 4.59 We acknowledge the strong support these options received from some submitters during consultation, particularly second-choice voting. However, we remain wary of changes that would complicate the voting process. Adding complexity to how MMP works could be counterproductive, particularly if introduced at the same time as other changes. For these reasons, we think improvements to representation are better realised by lowering the party vote threshold without adding additional complexity.

¹¹ Electoral Commission, above n 7, p. 16.

Interaction with our other recommendations

- 4.60 Lowering the party vote threshold interacts with our remaining recommendations in this chapter. We discuss these interactions as we work through the next topics.
- 4.61 In **Chapter 19** we express the view that education is a better way to counter extremist views about the electoral system than addressing them through the party vote threshold.

The Panel recommends:

- R7. Lowering the party vote threshold for list seat eligibility from five per cent of the nationwide party vote to 3.5 per cent.**

One-electorate seat threshold

- 4.62 If a registered party wins at least one electorate (a general or Māori electorate), it is eligible for list seats even if it did not pass the party vote threshold.¹²
- 4.63 The one-electorate seat threshold is often referred to as the “coat-tail provision” because a party with strong support in a single electorate can bring in other MPs on the back of that support.
- 4.64 In six of the 10 elections held under MMP between 1996 and 2023, this provision has enabled at least one smaller party to gain additional representation in parliament. In most cases, the party or parties only gained one list seat but, in two cases, a party gained four list seats.¹³

Is there a case for change?

Arguments against change

- 4.65 In its 2012 review of MMP, the Electoral Commission noted that one rationale for maintaining the one-electorate seat threshold was that it can help increase the effectiveness of smaller parties entering parliament by enabling the workload to

¹² Electoral Act 1993, section 191(4).

¹³ The New Zealand First party was allocated four list seats in 1999 and the ACT party was allocated four list seats in 2008.

Earlier recommendations

1986 Royal Commission on the Electoral System

The Royal Commission recommended a one-electorate seat threshold as part of its MMP model. (In later years, several Commissioners identified this recommendation as a mistake.)

2012 Electoral Commission Review of MMP

The Commission:

- Recommended the abolition of the one-electorate seat threshold due to the arbitrary and inconsistent way it supported proportionality, and that it compromised MMP's core principles of equity and fairness.
- Reasoned that the one-electorate seat threshold confuses the purposes behind the two votes under MMP, and considered that any benefit to proportionality is outweighed by the negative impact on fairness. The abolition of the one-electorate seat threshold would result in all parties being treated in the same way, that is all having to cross the same party vote threshold.
- Stated that the purpose of the electorate vote is to elect a local representative. However, the one-electorate seat threshold goes beyond this purpose, and can significantly influence the make-up of parliament, by bringing in list MPs that would not otherwise be elected.

2017 and 2020 Electoral Commission post-election reports

In these reports, the Commission considered that the 2012 Review of MMP recommendations (addressing this aspect and others) would improve Aotearoa New Zealand's voting system and recommended that they be considered by parliament.

be shared amongst more MPs.¹⁴ Since the introduction of MMP, the one-electorate seat threshold has helped avoid seven instances of single-MP parties. It also happened to increase the number of MPs of Māori descent in some recent elections.

- 4.66 In the first consultation, many submitters who responded to our question on the one-electorate seat threshold supported keeping it. People who favoured retaining the one-electorate seat threshold considered it supports proportionality and representation. This view was held because parties that win an electorate but are under the party vote threshold nationally are still allocated list seats rather than having their party votes discarded.

¹⁴ Electoral Commission, above n 7, p. 19.

- 4.67 Some academics have noted that through the mechanism of the one-electorate seat threshold, local support leads to proportional representation at a nationwide level. For example, in 2002, the Progressives won a list seat with 1.7 per cent of the party vote after winning the Wigram electorate. Without the electorate threshold, the party votes for the Progressives would have not been included in the allocation of list seats.

Arguments for change

- 4.68 As noted by the Electoral Commission in its 2012 report, the one-electorate seat threshold has long been unpopular among a majority of people, particularly for the way it enables parties to gain additional representation in parliament on the back of strong support in a single electorate.¹⁵ People with this view see the threshold as unfairly favouring parties who have their support clustered in one electorate, sometimes as the result of political deal-making, rather than having significant nationwide support.
- 4.69 Almost all electoral experts and academics who responded to our question on the one-electorate seat threshold during the first consultation thought it was unfair or undermined the idea that the party vote should primarily determine the overall make-up of parliament in MMP elections. A widely used example of this effect is the 2008 election result, where the ACT party was awarded four list seats after winning the Epsom electorate, but the New Zealand First party did not get any MPs in parliament even though it received more party votes than the ACT party.
- 4.70 Many submitters to our first consultation called for change, with some noting the inconsistency in how the threshold supports smaller parties and, therefore, produces unequal election results. Another criticism of the one-electorate seat threshold is that it can result in excessive focus on a few electorates, as parties target these seats as a route to representation in parliament. There is a view that this threshold results in the voters in key electorates having a disproportionate influence over the final shape of parliament.
- 4.71 A few submitters thought the one-electorate seat threshold should be retained only in the Māori electorates to support the Crown's obligations under te Tiriti / the Treaty because Māori (as a numerical minority) are at a disadvantage when contesting the nationwide party vote.

Our initial view

- 4.72 In our interim report, we discussed the advantages and disadvantages of the one-electorate seat threshold, concluding that it is fundamentally unfair and should be removed.

¹⁵ Electoral Commission, above n 7, pp. 18, 20.

- 4.73 As an alternative, we considered and sought feedback on whether the threshold should be retained only for the Māori electorates to support the equitable participation and representation of Māori.

Feedback from second consultation

- 4.74 In our second consultation, submitters were strongly divided on whether the one-electorate seat threshold should be removed.
- 4.75 Both groups of submitters were concerned about fairness but had different views on what could be considered a fair election outcome:
- Those in favour of its removal thought it undermines the primacy of the party vote threshold, is open to manipulation by parties, and creates inconsistencies around which parties enter parliament.
 - Those opposed to its removal thought it had been good for smaller parties, supported proportionality, and provided a legitimate alternative pathway to representation in parliament to the party vote threshold.
- 4.76 A few submitters discussed the option of retaining the threshold for the Māori electorates. They raised concerns about how this would be perceived, and the impact it could have on future consideration of Māori political representation. At the same time, they felt a 3.5 per cent threshold would be a barrier for parties representing Māori interests. One suggestion was to raise the threshold to two electorate seats for the Māori electorates and remove it for the general electorates.

Our final view

- 4.77 We maintain our view that the one-electorate seat threshold should be removed if the party vote threshold is lowered to 3.5 per cent. This would mean parties that do not meet the party vote threshold are ineligible for any list seats but would keep any electorate seats they have won.
- 4.78 We recognise that, in several respects, the one-electorate seat threshold has contributed positively to our electoral system. It has:
- led to more representative parliaments than if it had not been in place and the votes for the relevant party discarded
 - supported the effectiveness of smaller parties by bringing in additional MPs to share the load.
- 4.79 However, the one-electorate seat threshold has led to disproportionate focus being placed on some electorates over others. This has resulted in the electorate vote of some voters having more power than others, which clouds the important principle that, in an MMP election, it is the party vote that should primarily determine the make-up of parliament.



- 4.80 It has also led to situations where two parties receive a similar number of party votes, yet only one party is represented in parliament because of where that support was located.
- 4.81 While the one-electorate seat threshold aims to support the effectiveness of parliament by reducing the number of parties with only one MP in parliament, in most cases parties have not gained any further seats. Over the 10 MMP elections between 1996 and 2023, parties with less than five per cent of the party vote passed this threshold 22 times but only gained additional list seats on seven of these occasions (that is, around a third of cases).

Representation of Māori

- 4.82 We acknowledge the concerns that some submitters raised about the impact that removing the one-electorate seat threshold could have on Māori representation, whether or not the party vote threshold is lowered.
- 4.83 If the threshold was retained only for those who won a Māori electorate seat, this would not necessarily guarantee increased Māori representation. The one-electorate seat threshold has on occasion resulted in more MPs of Māori descent entering parliament than would have occurred otherwise. However, crossing the threshold does not guarantee further seats – this depends on a party's share of the nationwide party vote. For these reasons, we do not think the one-electorate seat threshold should be retained as is, nor increased to two seats, for the Māori electorates only.
- 4.84 We think there are other, more reliable avenues to ensure Māori representation. In **Chapter 3**, we set out the recommendations that we think will better support Māori political participation and representation.

Interaction with our other recommendations

- 4.85 Currently, the one-electorate seat threshold compensates the five per cent party vote threshold by providing smaller and new parties with an alternative route to representation in parliament. In several previous MMP elections, parliament would have been less representative if the one-electorate seat threshold was not in place.
- 4.86 On its own, removing the one-electorate seat threshold would have a negative impact on proportionality and representation. However, these impacts are mitigated through our recommendation to lower the party vote threshold, so we recommend these changes as a package.
- 4.87 Our modelling shows that combining a lower 3.5 per cent party vote threshold with removing the one-electorate seat threshold achieves a good balance (compare **Table 1** with **Tables 2** and **3, Appendix 3**). Based on previous election results, three more small parties would have gained seats in parliament. Parliaments would also



have been more proportional and, in general, the outcomes of those elections would have been fairer.

The Panel recommends:

- R8. Abolishing the one-electorate seat threshold, provided the party vote threshold is lowered to 3.5 per cent.**

Overhang seats

- 4.88 An overhang seat occurs if a party wins more electorate seats than its share of the party vote otherwise would have entitled it to. This allocation can happen, for example, when a party's candidates win one or more electorate seats, but their party wins only a small number of party votes.¹⁶
- 4.89 When this occurs, that party keeps all the electorate seats it has won, but the number of list seats allocated to other parties is increased until the next election. Therefore, the size of parliament may vary depending on the election results.
- 4.90 Aotearoa New Zealand's first three MMP elections did not result in an overhang. However, five of the seven elections between 2005 and 2023 have required an overhang: one seat after the 2005, 2011, and 2014 elections, and two seats after the 2008 and 2023 elections.¹⁷

Is there a case for change?

Arguments against change

- 4.91 In the first consultation, many submitters who responded to our consultation question about overhang seats thought they should be retained. They saw the overhang seats as important for ensuring the proportionality of parliament. They considered overhang seats supported the primacy of the party vote in determining the composition of parliament, and reduced any distortions created by parties with local support that is greater than their national support. They also thought

¹⁶ For example, in 2014 United Future won one electorate but only won 0.22 per cent of the nationwide party vote, which would not have qualified it for any seats in parliament.

¹⁷ A further seat was added to the 54th Parliament after the Port Waikato by-election on 25 November 2023, bringing the total number of seats in parliament to 123.

Earlier recommendations

1986 Royal Commission on the Electoral System

The Royal Commission recommended that if a party won more electorate seats than its overall entitlement, extra seats should be created in the House until the next election. It stated that this was to be an “unlikely event.”

2012 Electoral Commission Review of MMP

The Commission:

- Recommended that if the one-electorate seat threshold was abolished, the provision for overhang seats should also be abolished. For example, in 2011, without the one-electorate seat threshold there would have been six overhang seats, which the Commission viewed as likely to be publicly unacceptable. Its modelling of previous election results indicated that removal of the overhang seats would have had a minimal impact on proportionality.
- Noted that there would be little point in abolishing overhangs if the one-electorate seat threshold remained.

that overhang seats ensure all parties receive the seats they are entitled to, either through winning electorates or through their share of the party vote.

4.92 We noted these further arguments against changing the overhang provisions:

- Removing the overhang provisions would unfairly favour parties with strong local support. Parties that win more electorate seats than they are entitled to (based on their share of the party vote) would get a “windfall”: they would retain their additional seats and get a proportional benefit because other parties would receive fewer seats.
- Abolishing the overhang provisions could encourage parties, candidates, and voters to act strategically in ways that could undermine proportionality.

Arguments for change

4.93 Many of the submitters to the first consultation who called for overhang seats to be abolished referred to the arguments made by the Electoral Commission in 2012. The Commission noted that if the one-electorate seat threshold were abolished, there would be a greater chance that parties would win more electorate seats than their party vote would entitle them to. That would then lead to more overhang seats being created to achieve a parliament reflecting party proportionality. The Commission argued that large overhangs would likely be unpopular with the public and create issues for governing.



Our initial view

- 4.94 In our interim report we noted that if the one-electorate seat threshold were abolished, as we have recommended, it may increase the frequency and number of overhang seats. This is because without the compensating effects of the one-electorate seat threshold, every electorate won by a party that did not cross the party vote threshold would generate an overhang.
- 4.95 We recommended removing the overhang provision so long as the one-electorate seat threshold was also removed. In practice, this would mean that the number of list seats to be allocated would reduce by the number of overhang seats.

Feedback from second consultation

- 4.96 Only a few submitters commented on our draft recommendation to remove the provision for overhang seats. Some supported the proposal and noted that it fitted with our package of recommendations for MMP, whereas others were concerned that removing the provision may distort the proportionality of future parliaments.
- 4.97 An electoral academic challenged our view that overhangs may increase substantially if our other recommendations are taken up (lowering the party vote threshold and removing the one-electorate seat threshold). They noted that smaller parties would have less need to target an electorate seat with a lower party vote threshold, so overhangs could be less common. In addition, they disputed whether past overhangs have been of much public concern.

Our final view

- 4.98 We maintain our view that it is best to remove the provision for overhang seats if the one-electorate seat threshold is removed, because of the increased likelihood of an overhang occurring. This would mean that if an electorate is won by a candidate from a party that does not meet the party vote threshold, that candidate is elected as an MP but the total number of list seats allocated amongst all the parties is reduced by one. This approach currently applies to seats won by independent candidates.
- 4.99 We are concerned that an increase in the number and frequency of overhang seats, with the associated unpredictable fluctuations in the size of parliament, could affect government formation and the running of parliament. Whenever an overhang is created, the government would need more votes to form and maintain the confidence of the House (for example, in a 126-seat Parliament, 64 votes would be needed). The unpredictable fluctuations to the size of parliament would also affect the costs of running parliament in an uncertain way.
- 4.100 When the Electoral Commission considered the abolition of overhang seats in 2012, it modelled what the impact would have been on the proportionality of

previous elections results and found it to be minimal.¹⁸ We repeated this modelling for elections up to 2020 and found the same result. While caution is required when using past election results to assess different arrangements, due to the impact different rules would be expected to have on voting behaviour, we think the modelling provides a reasonable indication that the abolition of overhang seats would not have an undue impact on the proportionality of our electoral system.

Interaction with our other recommendations

- 4.101 Due to the interdependencies between our recommendations, the changes we suggest to representation under MMP should be considered as a package:
- **Lowering the party vote threshold to 3.5 per cent** will lower the barrier to representation for smaller and newly established parties.
 - **Abolishing the one-electorate seat threshold** will improve the fairness of our electoral system, but it should only be removed if the party vote threshold is lowered to provide other avenues to representation for smaller parties.
 - **Abolishing the overhang provisions** will mitigate the risk of an increase in the number of overhang seats that might result if the one-electorate seat threshold is abolished.
- 4.102 We modelled the cumulative impact of our recommendations on previous election results up to 2020. We found that, generally, the changes would have resulted in more proportional and fairer elections (**Table 1, Appendix 2**).
- 4.103 For example, under the Gallagher Index (a widely used measure of proportionality), a perfectly proportional parliament has a disproportionality rate of zero.¹⁹ In 2012, the Electoral Commission noted that a rate of less than three per cent is generally an indication that an electoral system is, on balance, fair.²⁰ The bigger the number, the more disproportionate the parliament. First-Past-the-Post parliaments from 1946 to 1990 had an average rating of 10.66 per cent. Our modelling showed improved proportionality in most elections compared to current settings – for example, with our recommended changes, the parliament after the 2014 election would have rated 1.40 on the disproportionality index (down 2.32 from 3.72). However, proportionality would have been unaffected in the 2017 and 2020 elections.

¹⁸ Electoral Commission, above n 7, p. 22.

¹⁹ Gallagher, M., 1991. Proportionality, disproportionality and electoral systems. *Electoral Studies*, 10(1), pp. 33–51.

²⁰ Electoral Commission, above n 7, p. 22.

- 4.104 Another effect of our combined recommendations on previous election results is greater representation of small parties, although this effect is mixed, with fewer seats for the larger parties resulting in a transfer of seats from one smaller party to another. For example, in the 2014 election, our modelling shows that under our package of changes, there would have been three fewer seats for the National Party, one fewer seat for the Labour Party, the Green Party and Te Pāti Māori, with five seats going to the Conservative Party (**Table 1, Appendix 2**).
- 4.105 Further, there would have been two elections where the government of the day would have required an additional party to reach a parliamentary majority. We accept that, given the range of behaviour changes expected due to changing several key settings at the same time, the models may not accurately predict what might happen in the future. Nevertheless, these models provide added confidence of the overall effect of changing these settings.

The Panel recommends:

- R9. Removing the existing provision for extra seats to compensate for overhang seats, in line with our other recommendation to abolish the one-electorate seat threshold, which would result in fewer list seats being allocated.**

Ratio of electorate to list seats

- 4.106 When Aotearoa New Zealand shifted to the MMP voting system in 1993, the number of MPs was increased from 99 to 120.²¹ The Electoral Act does not specify a fixed number of electorate or list seats.
- 4.107 For the first MMP election there were 65 electorates (60 general electorates and five Māori electorates) and 55 list seats. Over time, changes in population have resulted in 72 electorates (65 general electorates and seven Māori electorates) and 48 list seats.

²¹ In its 1986 report, the Royal Commission noted that the ideal size for the House would be about 140 seats, but recommended that it increase to 120 seats. It saw 120 members as the minimum needed to provide for an effective parliament and maintain a strong relationship between constituents and their representatives. Royal Commission on the Electoral System, 1986. *Report of the Royal Commission on the Electoral System*, Wellington: House of Representatives, pp. 126–127.

- 4.108 The Electoral Act establishes a boundary review process that takes place every five years to see whether the population of each electorate remains about the same or if changes are needed.²² One or more general electorates may be added if the North Island population grows more quickly than the South Island population. Equally, changes to the Māori Electoral Population may result in changes to the number of Māori.²³
- 4.109 Each time a new electorate is created, the number of list seats to be allocated reduces by one. This raises several concerns because:
- list seats create a more diverse and representative parliament
 - list seats ensure proportionality – that is, that the composition of parliament reflects the party vote.
- 4.110 After an election, a party's electorate seats are tallied first, then list seats are used to ensure each party has a total number of seats in proportion to its share of the party vote. For this aspect of MMP to work, there needs to be enough list seats available to allocate.
- 4.111 If the rules stay the same and population growth continues in an uneven fashion, we will likely reach a point where there are insufficient list seats to maintain proportionality or a diversity of representation in parliament between list and electorate seats.

Is there a case for change?

Arguments against change

- 4.112 In our first consultation, some submitters who answered our question about the ratio of electorate to list seats supported maintaining the status quo. Many of these submitters had concerns about the role of list MPs and their perceived lack of accountability to voters.
- 4.113 Some submitters also considered that parliament has too many MPs already and that it should be reduced in size. Our Terms of Reference exclude us from

²² The boundary review process is discussed in detail in **Chapter 17**.

²³ It is uneven population growth, rather than the national population increasing, that necessitates changes to the number of electorates and their boundaries. This is because section 35 of the Electoral Act 1993 establishes that there are to be 16 South Island general electorates and that the North Island general electorates will change as needed so that the number of people in each electorate remains about equal across the two islands. Section 45 of the Electoral Act 1993 establishes a similar process for determining the number of Māori electorates. Section 191 of the Electoral Act 1993 provides that the remaining seats will be list seats.

Earlier recommendations

2012 Electoral Commission Review of MMP

The Commission suggested consideration be given to a 60:40 ratio of electorate to list seats to maintain both diversity of representation and prevent problems arising in maintaining proportionality in parliament. It considered it prudent to opt for a ratio of electorate seats to list seats well below where a problem may arise. Making an explicit recommendation on the size of parliament was out of scope of the review.

2017 and 2020 Electoral Commission post-election reports

The Commission reiterated its 2012 recommendations in its 2017 and 2020 post-election reports.

considering the size of parliament, except in relation to the ratio of electorate seats to list seats.

Arguments for change

- 4.114 Many submitters who responded to our question in the first consultation supported a fixed ratio. Submitters were concerned about the impact of declining list seats as the number of electorates grows. If there are not enough list seats, they cannot be used to “top up” a party’s seats to achieve proportional representation. Our parliaments would become less representative of the nationwide party vote over time.
- 4.115 A common argument is that list seats have also been important for widening demographic representation. Fewer list seats could, therefore, also result in a narrower range of demographic representation in parliaments.
- 4.116 Most of the submitters who indicated their preferred ratio supported a ratio of 60:40 for electorate-to-list seats, as recommended by the Electoral Commission in 2012. However, a few submitters preferred a 50:50 ratio.
- 4.117 Many of these submitters also supported the Electoral Commission’s recommendation to allow the number of MPs to rise with population changes. A few academics added that the size of parliament should always be an odd number to avoid deadlocks that may impact the formation of government.
- 4.118 If there are fewer list seats available to compensate for overhang seats, then the frequency and size of overhangs may increase significantly. If an election result generates several overhang seats, and there are insufficient list seats available, then extra seats would need to be awarded (under current settings). As the number of electorates and the chance of overhang seats increases, more overhang seats and larger parliaments are likely.

Our initial view

4.119 In our interim report, we recommended that the ratio of electorate to list seats should be fixed at 60:40 to ensure there are enough list seats to maintain parliament's proportionality and the representation of diverse communities. To maintain this ratio, the size of parliament would increase gradually in step with predicted population growth. We also recommended that there should always be an uneven number of MPs to avoid the possibility of a hung parliament (the situation where no party or coalition of parties can form an absolute majority).²⁴

Feedback from second consultation

4.120 Some submitters to our second consultation supported our draft recommendation to have a fixed ratio of electorate to list seats and to increase the size of parliament. These supporters thought it would preserve the proportionality of parliament over time, as well as the diversity brought by list seats. Some submitters also commented on the high workloads of MPs and thought that more MPs would support the effectiveness of parliament. The Clerk of the House noted funding would need to rise in line with the House size increasing.

4.121 Only a few submitters commented on the proposal for an uneven number of MPs. However, they strongly supported it and singled it out as a recommendation that could make a significant difference to future election outcomes by removing the possibility of a hung parliament.

4.122 Many submitters were strongly opposed to the size of parliament increasing. Most were comfortable with the status quo, in which the number of electorate MPs increases at the expense of the number of list MPs, and some were concerned about the cost to taxpayers. Other submitters suggested there should be fewer than 120 MPs, with some commenting that New Zealanders are overrepresented compared with other countries. A few submitters thought the size of parliament could be reviewed and changed periodically instead.

Our final view

4.123 Under the current law, the number of list seats in parliament is expected to continue to decrease due to changes in population growth, risking the proportionality and diversity of parliament.

4.124 At present, we have 72 electorate seats and 48 list seats in parliament, which is the same as a ratio of 60:40 (that is, three electorate seats for every two list seats). We

²⁴ We noted that the Terms of Reference for our review identify matters relating to the current size of parliament as being out of scope, except as it relates to the Electoral Commission's 2012 Review recommendation relating to the ratio of electorate to list seats. As such, we considered both matters in our draft recommendation to be within scope.

think that the ratio of electorate to list seats should be fixed now, so that the number of list seats does not decline further.

- 4.125 We did not receive any feedback during the second consultation that has persuaded us to shift from the initial view we provided in the interim report. Therefore, we confirm our recommendations to set the ratio of seats at 60:40, unfix the size of parliament, and require an uneven number of seats.

Fixing a ratio of electorate to list seats

- 4.126 Without a fixed ratio, the electorate vote could begin to have an outsized impact on the make-up of parliament, incrementally moving us away from the major benefits of MMP.
- 4.127 The diversity of demographic representation for some groups in parliament has increased considerably under MMP, largely due to the election of MPs from party lists. For example, between 1996 and 2011:
- 43 per cent of MPs elected from party lists were women, compared with 24 per cent of MPs elected from electorates
 - 21 per cent of MPs elected from party lists were of Māori descent, compared with 14 per cent of electorate MPs, including the Māori electorates— only five per cent of general electorate MPs were of Māori descent
 - MPs who openly identified as LGBTQIA+, Pasifika MPs, and MPs of Asian descent also increased.
- 4.128 Although it is difficult to assess with any precision, we may already be approaching the ratio of electorate to list seats at which proportionality may be at risk. There are different views on when this point is reached:
- International literature suggests that risks to proportionality can be expected at a 75:25 ratio of electorate to list seats.²⁵
 - In 2012, the Electoral Commission suggested problems might arise at ratios of electorate seats to list seats of 67:33 – that is, 80 electorate seats and 40 list seats in a 120-seat parliament – or even lower.²⁶
 - The Commission thought it was important to set the ratio well below where a problem may arise and suggested 60:40 (which is equal to the 72 electorate seats and 48 list seats that we have at present).²⁷

²⁵ Taagepera, R & Shugart, M.S., 1989. *Seats and Votes: The Effects and Determinants of Electoral Systems*. New Haven: Yale University Press, p. 131.

²⁶ Electoral Commission, above n 7, p. 25.

²⁷ *Ibid*, p. 27.

- 4.129 Our modelling of population growth scenarios suggests there may need to be 78 electorates by 2044 (and six fewer list seats than at present), resulting in a ratio of 64:36.
- 4.130 While there are differing views on what the exact ratio of electorate to list seats should be to avoid issues with proportionality, we think it is best to set the ratio lower than where problems are expected to arise. Therefore, we recommend setting the ratio at 60:40, which aligns both with the recommendations of the Electoral Commission and reflects the current composition of seats in parliament.

Allowing the size of parliament to change in line with population change

- 4.131 We acknowledge the strongly held views on how many MPs our parliament should have. However, if the ratio of seats is fixed without allowing parliament to increase in size, the number of people per electorate would become unequal, affecting representation and undermining fairness (the idea that each electorate MP represents roughly the same number of people).
- 4.132 The number of South Island general electorates is fixed at 16. If no more electorates could be created to reflect population growth differences, the number of people in each North Island general electorate and Māori electorate would become significantly greater than in the South Island general electorates.
- 4.133 Under a medium population growth scenario, by 2044 the South Island general electorates would each have about 76,000 people in them, but the North Island general electorates and Māori electorates would have 81,000 to 83,000 people. The South Island would be overrepresented in parliament. This inequity in the number of voters represented in each electorate could also be inconsistent with the active protection of Māori electoral rights under te Tiriti / the Treaty.
- 4.134 As an alternative, we considered whether to unfix the number of South Island general electorates. The change would allow all electorates to remain equal in terms of the population they represent, but modelling suggests the South Island would lose an electorate from 2038 onwards. This impact would exacerbate the existing issue of geographically large electorates in the South Island. This option would compromise the effectiveness of local representation (as each electorate MP would need to represent an increased geographic size, potentially reducing the quality of representation), so we do not support it. It would be unfair to South Island electors to further reduce their access to representation.²⁸
- 4.135 We recommend unfixing the size of parliament, so that it gradually grows in line with population changes. This would be similar to the approach followed under

²⁸ It should be noted that these challenges exist already in most of the Māori electorates, particularly Te Tai Tonga which spans the entire South Island, Stewart Island, the Chatham Islands, and parts of Wellington City and the Hutt Valley.

First-Past-the-Post between 1965 to 1993 (which saw parliament increase from 80 seats to 99 seats). It would continue to allow more electorates to be created over time, with extra list seats added to maintain a 60:40 ratio between electorate and list MPs.

- 4.136 Our modelling suggests the House would undergo incremental change from the current 120 seats to around 130 seats in 2044, based on a medium population growth scenario and before adjustment for an uneven number of seats, as discussed below (**Table 4, Appendix 3**). At this size, the numbers of representatives for the country's population would be in line with many other democracies.²⁹
- 4.137 Under our recommendation, if the boundary review process remains the same, the number of seats would be reviewed every five years, so would not necessarily change ahead of every election. We considered the suggestion raised by some submitters of manually adjusting the number of list seats from time to time. This change is unlikely to make a significant difference to how frequently the size of parliament changes, except that it would be reliant on the government being able to progress an amendment bill through parliament.
- 4.138 Although a larger parliament may be unpopular with some people, many would also oppose electorates either representing more people or a bigger geographic area, or electorates representing uneven numbers of people. We think the shift to an unfixed parliament balances fairness, representation, and proportionality and provides an enduring response to population growth. It ensures electorates contain similar numbers of voters and preserves the representation function of the list seats.

Requiring the House to have an uneven number of seats

- 4.139 In a parliament with an even number of seats, it is possible for an election to result in deadlock, where no party or group of parties can form a government because they each hold an equal number of seats. If this outcome eventuated, it could require another election to be held.
- 4.140 Our recommendation to require the House to have an uneven number of seats supports our objective of having an effective government and parliament.
- 4.141 A further step would be required after the boundary review process to implement this change. Whenever the total number of seats came to an even number (once the number of electorates had been determined and the number of list seats adjusted to meet the 60:40 ratio), a further list seat would be added.
- 4.142 As part of our modelling of different population growth scenarios and the impact on the size of parliament, we also looked at the additional impact of requiring an uneven number of seats. However, our modelling indicates that an additional seat

²⁹ For example, Norway, Sweden, Denmark, and Ireland each have around one representative per 30,000 people.

might not be needed very often. On the basis of the medium population growth scenario provided by Stats NZ, a compensating seat might need to be added on only three occasions over the next two decades to maintain an uneven number of MPs (**Table 4, Appendix 3**).

Interaction with our other recommendations

- 4.143 This recommendation has implications for the size of electorates and the boundary review process, which we address in **Chapter 17**.

The Panel recommends:

- R10. Fixing the ratio of electorate seats to list seats at 60:40, requiring parliament to be an uneven number, and allowing the size of parliament to grow in line with the population.**

Death of candidate during voting period

- 4.144 We note the unfortunate death of an electorate seat candidate during the advance voting period of the 2023 general election.
- 4.145 Currently, section 153A of the Electoral Act provides that when an electorate candidate dies or becomes incapacitated before election day, voters in that electorate continue to cast their party vote. However, the electorate vote is cancelled, and a by-election is called for that electorate. Similar provisions exist for candidates who die on election day or before final results are declared.
- 4.146 There is no dedicated provision for how seats in parliament should be allocated following the cancellation of an election for an electorate seat in these circumstances. Under the current law, the rest of the parliament is elected, and seats are allocated between parties that meet the representation threshold using the formula set out in sections 191 to 193 of the Electoral Act. This formula still requires the full allocation of 120 seats despite the cancellation of an election for an electorate seat. In practice, this means allocating one less electorate seat and one more list seat. The successful candidate in the subsequent by-election will then be an additional MP, creating an overhang in parliament.
- 4.147 We think this recent event necessitates an examination of the provisions for dealing with the death or incapacity of electorate candidates and the way that seats should subsequently be allocated. It is inconsistent with the current provisions in the Act for the treatment of independent candidates who are elected



to an electorate. The creation of a parliamentary overhang is also inconsistent with our recommendation that these should be removed. Equally, adding an additional MP after the election is complete would undermine our recommendation that parliament always have an odd number of MPs.

- 4.148 Given this event occurred as we were finalising our report, and we did not previously receive any submissions on this topic, we have not been able to consider all the implications of any potential changes. Rather than make a recommendation, we simply raise the issue as one requiring further consideration.

5. Parliamentary Term and Election Timing

The parliamentary term

- 5.1 Regular elections are a critical part of any democracy. Limiting the term of parliament ensures that voters have a regular opportunity to choose who represents them and to hold parliament and the government to account.¹
- 5.2 In Aotearoa New Zealand, the longest a parliament can run is three years from the return of the writs for the previous election.² At the end of this three-year period, unless it has already been dissolved, parliament expires. However, while the Constitution Act 1986 sets a maximum length for the parliamentary term, there is no minimum length. A shorter period is possible if the prime minister calls an early election (we discuss that issue further in the next section **Election Timing**).
- 5.3 The length of the parliamentary term must balance two objectives:³
- **Effectiveness:** allowing parliaments and governments enough time between elections to do their jobs. For governments, this means enough time to develop, consult on, and implement their policies. Parliaments, meanwhile, need time to scrutinise governments and examine legislation.

¹ A number of international instruments reference the importance of the periodic nature of elections including the *Universal Declaration of Human Rights* GA Res 217A (1948), art 21; *International Covenant on Civil and Political Rights* GA Res 2200A (1966), art 25(b); *General comment no. 25, The right to participate in public affairs, voting rights and the right of equal access to public service (article 25)* UN Doc CCPR/C/21/Rev.1/Add.7 (27 August 1996), p. 4 states “elections must be held at intervals which are not unduly long and which ensure that the authority of government continues to be based on the free expression of the will of electors”. The right to vote in genuine periodic elections is also found in the New Zealand Bill of Rights Act 1990, section 12(a).

² Constitution Act 1986, section 17(1). The return of the writ is the day on which a writ, containing the name of every electorate candidate elected, is returned to the Clerk of the House of Representatives.

³ Effectiveness and accountability are both objectives of our review (Terms of Reference: Independent electoral law review, paragraph 5, found at **Appendix 2**).

- **Accountability:** elections hold politicians accountable to the people they serve. The ballot box provides the ultimate accountability. The term of parliament needs to be short enough to provide this opportunity regularly, but long enough for the public to be able to understand and assess the performance of the government and Members of Parliament (**MPs**). This accountability also helps to maintain trust in public institutions and uphold the legitimacy of the democratic system.
- 5.4 We have specifically been asked to consider whether the current three-year term of parliament continues to be appropriate for Aotearoa New Zealand, including:
- whether a longer parliamentary term would improve the effectiveness of government, parliament and MPs
 - if the term of parliament was longer, whether voters would still have an appropriate level of influence over government and MPs
 - other related changes (such as the dissolution and expiry of parliament).

Is there a case for change?

Arguments against change

- 5.5 Many submitters answering this question in our first consultation supported keeping a three-year term. Submitters who supported the status quo thought that it holds politicians and political parties to account and ensures they remain responsive to voters. The ballot box is a powerful safeguard in democracies. These submitters were concerned that the current restraints on governmental authority were too weak, and they emphasised the need to ensure political accountability.
- 5.6 For some submitters to this first consultation (and for several experts), the lack of checks and balances in the constitution makes frequent (that is, three-yearly) elections more important. Unlike many other countries, Aotearoa New Zealand:
- has one central government (rather than state and federal governments)
 - has a single-chamber parliament (rather than having an upper and a lower House)
 - does not have a written constitution
 - does not have the power for the courts to strike down laws made by parliament
 - has the ability for parliament to move into urgency with a majority vote, giving governments the ability to pass laws with less parliamentary scrutiny than is normally the case.



Earlier recommendations

1986 Royal Commission on the Electoral System

The Royal Commission found the arguments on the length of the term finely balanced and that any change needed to sit alongside other restraints, particularly the introduction of its recommended Mixed Member Proportional (**MMP**) voting system. The Commission recommended a public referendum on whether the term should be extended to four years soon after MMP was introduced.

Earlier public referendums

Referendums in 1967 and in 1990 rejected extending the term by just over a two-thirds majority. Of those who voted in the 1967 referendum (69 per cent of registered electors), 68 per cent favoured retaining the three-year term. Of those who voted in the 1990 referendum (85 per cent of registered electors), 69 per cent supported the three-year term.⁵

2013 Constitutional Advisory Panel

The Constitutional Advisory Panel:

- noted a reasonable level of support for a longer term among those it consulted
- recommended further public consultation on what additional checks and balances might be desirable if a longer term was implemented.

- 5.7 A few submitters argued a stronger and more independent parliament (for example, one with stronger Select Committees and more MPs) is needed before extending the term of parliament. Some submitters noted that they would be more comfortable supporting a four-year term if such changes were made before or alongside it.⁴
- 5.8 In theory, a longer term may lead to better consultation and more considered law-making. However, some people question whether this has happened in other countries with longer parliamentary terms.
- 5.9 A longer term would also mean some young people would have to wait longer to vote. We consider the voting age in **Chapter 7**.

⁴ This view was also found by the Constitutional Advisory Panel, 2013. *New Zealand's Constitution: A Report on a Conversation He Kōtuinga Kōrero mo Te Kaupapa Ture o Aotearoa*, Wellington: Constitutional Advisory Panel, p. 61.

⁵ Roberts, N., 2020. Referendums - Constitutional referendums. *Te Ara - the Encyclopedia of New Zealand* [Online]. Available at: <https://teara.govt.nz/en/referendums/page-5> [Accessed October 2023].

Arguments for change

- 5.10 Aotearoa New Zealand’s parliamentary term is one of the shortest in the world: three-year terms are rare. Only two other countries with one House of Representatives – El Salvador and Nauru – have a three-year term.⁶ In contrast, 49 countries with single Houses have a four-year term.
- 5.11 Some people, including some submitters to this review, consider three years does not provide enough time for governments and parliaments to be effective.⁷
- 5.12 Some submitters to our first consultation noted that the actual “working period” is shorter than three years, once pre- and post-election rules and election campaign times are factored in. Submitters and others have argued that this creates imperfect and rushed law-making (including the use of urgency in the House), resulting in poor quality laws and piecemeal reform. Consultation times can become short, and a lack of parliamentary time can result in laws being passed under urgency, with fewer checks on their content.⁸
- 5.13 Many submitters answering this question in the first consultation supported a four-year term. Some of these submitters thought a four-year term would be better for busy communities and organisations with multiple goals and interests because there would be more time to consult. Many submitters thought a longer term could help governments to tackle difficult issues requiring longer-term transformational change. These submitters included diverse community-based organisations and Māori groups.
- 5.14 With a three-year term, the influence of an approaching election operates for a greater portion of the parliamentary term. As the costs of new policies can be felt immediately by some sectors of society – unlike the benefits – governments may be less willing to make long-term, significant policy decisions. Some argue that this dynamic creates a barrier to major policy projects that may encourage longer-

⁶ Additionally, there are three bicameral lower chamber parliamentary systems with a three-year parliamentary term. These are Australia, Philippines, and Mexico. (There are no upper chambers with a three-year term). Inter-Parliamentary Union, 2023. *Compare data on Parliaments*. [Online] Available at: https://data.ipu.org/compare?field=chamber::field_parliamentary_term&structure=any_lower_chamber [Accessed October 2023].

⁷ Joseph, P., 2011. The Future of Electoral Law. In: C. Morris, P. Butler & J. Boston, eds. *Reconstituting the Constitution*. London & New York: Springer Heidelberg Dordrecht, pp. 219-242.

⁸ Geiringer, C., Higbee, P. & McLeay, E., 2011. *What's the Hurry?: Urgency in the New Zealand Legislative process 1987-2010*. Wellington: Victoria University Press.

term strategic planning for topics such as housing, climate change, or economic inequality.⁹

- 5.15 There would also be some cost savings because elections would be held less often. Savings would include direct savings for the Crown and parties, opportunity costs accrued when time is spent on campaigning over running the country, and indirect economic costs caused by uncertainty drops in business confidence, and delayed investment.
- 5.16 Of the submitters to our first round of consultation who expressed a view on whether an extension to the parliamentary term should be decided by parliament or public referendum, most supported a referendum with an appropriate educational programme.

Other impacts

The term of parliament is entrenched

- 5.17 Changing the term of parliament requires a 75-per-cent majority vote in parliament or by a bare majority at a public referendum. In **Chapter 2**, we recommend the term of parliament remains an entrenched provision.

Changing the parliamentary term would impact local government elections

- 5.18 Changing to a four-year term would have an impact on local government elections. These also take place every three years, meaning the two elections always take place in different years. If parliament is elected every four years, local body and general elections would sometimes fall in the same year.
- 5.19 The report of the Future for Local Government Review recommends that local elections should move to a four-year cycle.¹⁰ This change would allow general and local body elections to take place alternatively, so that one was held two years after the other.

Te Tiriti o Waitangi / the Treaty of Waitangi implications

- 5.20 Te Tiriti o Waitangi / the Treaty of Waitangi (**te Tiriti / the Treaty**) resulted in the Crown obtaining the power to establish a government in Aotearoa New Zealand – but only on the basis that the government upheld the other rights and interests Māori were guaranteed in te Tiriti / the Treaty.

⁹ Boston, J., Bagnall, D. & Barry, A., 2019. *Foresight, insight and oversight: Enhancing long-term governance through better parliamentary scrutiny*, Wellington: VUW Institute for Governance and Policy Studies, p. 38.

¹⁰ Review into the Future for Local Government, 2023. *He piki tūanga, he piki kotuku: The future for local government*, Wellington: Review into the Future for Local Government, p. 94.

- 5.21 Regular elections are an important opportunity for Māori to hold the government to account on whether these rights and interests have been upheld. Extending the term of parliament will reduce the opportunities Māori have to do so. This could be seen as undermining electoral rights protected by te Tiriti / the Treaty because it changes the nature of the kāwanatanga arrangements.
- 5.22 We also heard that a three-year term requires a more frequent 'reset' of the Crown Māori relationship, which makes a sustained partnership more difficult.
- 5.23 Given these potential positive and negative implications, it is important that Māori communities have an opportunity to be heard on this topic.

Our initial view

- 5.24 In our interim report, we noted that the arguments for and against a longer parliamentary term were finely balanced, but that we had heard enough to recommend that a referendum on the term of parliament should be held, supported by a well-resourced information campaign.

Feedback from second consultation

- 5.25 Most of those who responded to our online form supported holding a referendum on the term of parliament. Other submitters making written submissions were fairly evenly split between wanting to retain a three-year term and moving to a longer term, such as four years. A few submitters mentioned other term lengths, particularly five years. Submitters who supported a three-year term considered a referendum on the parliamentary term a waste of money or inappropriate to hold at this time.
- 5.26 We did not hear any new arguments for a referendum or for a longer term in this second consultation. Some submitters were unclear about whether they supported a longer term or supported having a referendum about one. Some submitters preferred a 75-per-cent majority vote in parliament to a referendum. A few submitters wanted the introduction of ways to make governments more accountable to parliament before, or alongside, a change to a longer term.
- 5.27 We received some feedback that the information campaign accompanying the referendum should include detailed engagement with other communities in addition to Māori.
- 5.28 The Electoral Commission suggested a longer term may not necessarily lower its costs. The Commission noted that the number of elections would reduce from 10 to eight across a 30-year period, but that cost savings may be offset by cost increases elsewhere. For example, more resources would need to be invested in keeping voter enrolment up to date between elections over a longer parliamentary term.



Our final view

- 5.29 As we did in our interim report, we recommend a referendum should be held on the term of parliament.
- 5.30 We consider that the arguments between a three- or four-year term of parliament are finely balanced. Throughout our review, we heard legitimate concerns about whether the current three-year term is enough time for government, parliament, and MPs to be effective. We considered that the arguments in favour of a four-year term – that it would improve the ability of parliament to scrutinise the government, produce better laws and more effective governments – were strong arguments, in line with our objectives.
- 5.31 On the other hand, we also heard that there was no certainty that a four-year term would deliver the promised benefits when compared to a three-year term. A longer term would allow more time to develop and make new laws but might not improve the law-making process. We also heard that, in the absence of greater checks on how governments exercise power, more frequent elections help voters hold governments to account. Some experts consider that the introduction of MMP has indeed shifted the balance of power between governments and parliament, increasing the ability of parliament to more effectively hold the government to account.¹¹
- 5.32 Given that it is not appropriate for parliament to determine its own length, the public, not MPs, are best placed to decide what the most appropriate and effective term is. It is timely for the public to have an opportunity to do so – the last referendum took place 33 years ago.
- 5.33 We agree with submitters to both consultations that this referendum should be supported by a well-resourced information campaign.
- 5.34 As described above, extending the term of parliament has impacts on Māori. A longer term of parliament has Tiriti / Treaty implications and changes the nature of the kāwanatanga relationship. In addition, the referendum process requires majority support, heightening the need to engage with Māori, as the Treaty partner with a numerical minority of the vote. It is therefore important that the information campaign should include dedicated engagement with Māori leaders and communities.
- 5.35 We note the call from some submitters for detailed engagement with other communities in addition to Māori. We support wide engagement with all

¹¹ Wallace, J., 2002. Reflections on Constitutional and Other Issues Concerning Our Electoral System: The Past and the Future. *Victoria University of Wellington Law Review*, 33(3 and 4), p. 742; Geddis, A., 2013. New Zealand's Ill-fated Review of MMP Working Paper No. 13. *Electoral Regulation Research Network Democratic Audit of Australia Joint Working Paper Series*, p. 3; Miller, R. & Lane, P., 2010. Future of the MMP Electoral System. In: R. Miller, ed. *New Zealand Government and Politics*. 5th ed. Melbourne: Oxford University Press, p. 181.

communities, but our recommendation to engage with Māori is based on the Crown's obligations under te Tiriti / the Treaty. Engaging Māori as Tiriti / Treaty partners is especially pertinent given the constitutional impact of changing the term of parliament.

Interaction with our other recommendations

- 5.36 Holding a referendum on the term of parliament should be considered as one part of our package of recommendations. Taken together, our recommendations aim to improve democracy in Aotearoa New Zealand. A greater gap between elections may be more acceptable to some people if our other recommendations were adopted. For example, our recommendation to lower the party vote threshold to 3.5 per cent (**Chapter 4**) will result in a more representative parliament. This recommendation could counter-balance less frequent elections.
- 5.37 Our recommendation to retain the ability of the prime minister to call an early election (discussed below in **Election Timing**) means that shorter terms would still be possible.
- 5.38 Our recommendation to develop a funding model to support community-led education and participation initiatives (**Chapter 11**) should help to inform voters in a referendum.
- 5.39 Other parts of this report cover matters that are linked to the three-year term, and so they would need to be changed if the term is extended to four years. One example is voter eligibility requirements (**Chapter 7**). At the moment, disqualification from voting for those citizens living overseas or those people on the Corrupt Practices List last for three years because they are linked to the current term of parliament.

The Panel recommends:

- R11. Holding a referendum on the parliamentary term, supported by a well-resourced information campaign (including dedicated engagement with Māori as Tiriti o Waitangi / Treaty of Waitangi partners).**



Election timing

- 5.40 In Aotearoa New Zealand, we have a maximum parliamentary term (every parliament expires after three years), but no minimum term.¹² A general election can be called at any time before the end of the three-year term. The governor-general – acting under prerogative powers in the Letters Patent as the Sovereign’s representative – has the constitutional role of dissolving parliament and calling a general election. By constitutional convention, this task is carried out on the advice of the prime minister who has the ultimate decision-making power to choose the election date.
- 5.41 The prime minister can call an early election at any time within the three-year term, although this has only happened three times:
- In 1951 the prime minister sought to gain a fresh mandate from the people after major national strikes on the wharves. The prime minister announced the election on 11 July, and election day was eight weeks later on 1 September. This occurred with 15 months remaining in the three-year term.¹³
 - In 1984 the prime minister called a snap election after two and a half years into the term, following the loss of a vote in the House. The loss of this vote did not mean that the confidence of the House had been lost and constitutionally did not necessitate a general election. The prime minister called the election on 14 June, and the election was four weeks later on 14 July.
 - In 2002 the prime minister called an early election two and a half years into the parliamentary term, following the collapse of the junior coalition partner in government. The prime minister called the election on 12 June, and election day was six weeks later on 27 July.
- 5.42 On three occasions, parliaments have run longer than three years:
- the first and second world wars (delayed elections and formation of parliament)
 - 1935 (four-year term following an extension legislated by the Forbes Coalition).
- 5.43 There is no requirement for a period of notice. In 1984 a snap election was called with four weeks’ notice; in 2002 it was six weeks. However, in recent years a practice has developed where the prime minister announces the election date

¹² Constitution Act 1986, section 17(1).

¹³ Joseph, *The Future of Electoral Law*, above n 7, p. 236.

early in the third calendar year of parliament, providing many months' notice for the Electoral Commission, parties and candidates to prepare.¹⁴

- 5.44 The constitutional convention around the prime minister choosing the election date relies on the government and prime minister still having the confidence of the House.¹⁵
- 5.45 The government or prime minister may lose the confidence of the House through not having majority support for any vote of confidence and supply. This situation has yet to happen under MMP. If such a situation arose, and there was no alternative head of government or parliamentary majority, then the governor-general would be obliged to call an election. If such an alternative parliamentary majority did exist, the governor-general could refuse to call an early election to allow for this alternative parliamentary majority to govern.¹⁶

Is there a case for change?

Arguments against change

- 5.46 Many submitters who answered our first consultation question about setting the election date supported the status quo. These submitters were concerned about the difficulties that might arise when governments lose the confidence of the House of Representatives if the election date was fixed.
- 5.47 There is a view that current arrangements recognise the degree of flexibility required by the Westminster system of parliament and by MMP. For example, if a coalition government proved to be unstable, or a minority government arrangement became untenable, or an election result meant a government could not be formed, there might be a need to call another election right away. Although a new grouping of governing parties could be formed instead, under the status quo it would be possible to call an early election in any of these circumstances.
- 5.48 Current political practice, which may have become a constitutional convention, is that the prime minister announces the election date early in the last calendar year of the parliamentary term. There is no need to fix the date in law while this practice is followed.

¹⁴ Prime Minister Key arguably broke with the earlier tradition by announcing the 2011 election date nine months beforehand, the 2014 election seven months before election day and the 2017 date eight months before election date. Prime Minister Ardern took the same approach announcing the 2020 election date eight months before the selected date.

¹⁵ Geddis, A., 2023. *Electoral Law in Aotearoa New Zealand*. 3rd ed. Wellington: LexisNexis New Zealand Ltd, p. 42.

¹⁶ Cabinet Office, 2023. *Cabinet Manual 2023*, Wellington: Department of the Prime Minister and Cabinet, p. 9.

Earlier recommendations

1986 Royal Commission on the Electoral System

The Royal Commission favoured setting a minimum term in the context of having a longer, four-year term. The Commission did not feel a longer term could be implemented without restraint on the right to dissolve parliament. It preferred a minimum term of three and a half years (unless a government could no longer govern because it had lost the support of the House, in which case an earlier election could be called).

2013 Constitutional Advisory Panel

The Constitutional Advisory Panel recommended public consultation on a fixed election date, together with consultation on a longer parliamentary term. It identified two specific options for setting the election date:

- limiting the prime minister's discretion to set the election date, for example, to the last year of the term
- codifying the (then) current practice of holding the election on a Saturday toward the end of November.

2017 and 2020 Electoral Commission post-election reports

In both reports, the Commission invited further discussion of legislative change to provide for a fixed election date or a minimum notice period for the general election.

Arguments for change

- 5.49 Some experts hold the view that current arrangements favour the prime minister's party.¹⁷ The prime minister can choose an election date that maximises the partisan interest of their party. However, the impact that this power has in practice is difficult to quantify, and academics have differing opinions about problems with the status quo.¹⁸ Some submitters to our first consultation were concerned about this possibility. An election called at very short notice might be unfair to other political parties who need time to prepare for the campaign. Currently, there is uncertainty over when the polling date will be and when the prime minister will make the announcement.
- 5.50 Submitters to the first consultation who wanted to change the process for setting the election date thought it would provide certainty and reduce the risk of

¹⁷ See, for example, Geddis, above n 15, p. 41.

¹⁸ Ibid; Joseph, *The Future of Electoral Law*, above n 7, pp. 236, 241.

governments calling elections at politically convenient times. The changes they suggested included:

- allowing for others besides the prime minister and governing party to be involved in the decision to dissolve parliament early
- having the prime minister retain the power but setting a minimum notice period for elections
- legislating for a minimum term
- limiting the length of the parliamentary term after an early election to the remaining time of the original term
- restricting the circumstances in which an early election can be called (for instance, after the defeat of the budget)
- having a default election date that a majority vote in the House could move if needed.

5.51 The Electoral Commission noted in its report on the 2020 general election that it needs at least 14 weeks' notice before election day to prepare for running an election. In that report, the Commission invited discussion on whether there should be a minimum notice period.

Our initial view

5.52 In our interim report, we considered whether to keep the status quo, or to make changes, to the process for setting the election date. After consideration, we did not recommend change.

5.53 We were of the view that the current practice (followed for the past five elections) of the prime minister announcing the election date early in an election year provides ample notice for political parties, candidates, voters and the Electoral Commission.

Feedback from second consultation

5.54 A few submitters to our second consultation offered explicit support for our draft recommendation to continue allowing the prime minister to choose the timing of the election, although they provided few reasons.

5.55 A few submitters wanted an alternative process or a statutory timeframe. Two academics considered our recommendation was insufficiently future-proofed, especially if a referendum resulted in a longer parliamentary term.

5.56 The Electoral Commission was concerned about the practical implications of a snap election, which it said were significant. The Commission was also concerned about how the current flexibility to call an election would interact with our proposal to legislate for an advance voting period of a minimum of 12 days. The



Commission reiterated that as advance voting has grown in recent elections, it has become more difficult to deliver an election with less than 14 weeks' notice.

Our final view

- 5.57 As in our interim report, we do not recommend any changes to the process for setting the election date. We maintain the view that the current practice (followed for the past five elections) of the prime minister announcing the election date early in an election year is a suitable approach.
- 5.58 Our view is that the process for setting the general election date needs to be flexible enough to work in practice while also having enough certainty so that it does not create unfairness. Certainty and plenty of notice are beneficial to parties, candidates, and advocacy groups who need to build a campaign and engage with voters, and the Electoral Commission that must deliver the election. Generally, providing more notice may help participation as it gives voters more time to enrol to vote and to learn about policies and candidates. However, overly lengthy campaigns may have the opposite effect, so a balanced approach is called for.
- 5.59 When we initially looked at the options for change, we considered that each option could create problems in practice. For example, if a government loses the confidence of the House, an early election should be called. If a fixed date was in place, and confidence was lost very early in the parliamentary term, the country could be stuck with a government that could not govern.
- 5.60 We are also not convinced that the current settings create a problem. MMP allows new coalitions to form without the need to call an election. Both the Westminster system and MMP have inbuilt flexibility, but they also need the flexibility to respond to changing conditions. We are satisfied that the status quo provides this flexibility.
- 5.61 As we discuss in **Chapter 9**, we consider some flexibility or reasonable accommodation to adjust advance voting services should be provided in a snap election, similar to the flexibility we propose for polling place standards.

Interaction with our other recommendations

- 5.62 Setting the election date affects:
- when by-elections no longer need to be held if an electorate seat vacancy arises (**Chapter 6**)
 - the Māori electoral option. Māori electors can currently change rolls up until three months before a general election. Without a fixed time for calling an early election, an election could be called with less than three months to run – removing this option for Māori voters. However, our recommendation to allow the exercise of the option up to and including on election day, will address this issue (**Chapter 8**)

- the regulated period for spending on election advertising (**Chapter 14**)
- the timing for boundary determinations (**Chapter 17**).

The Panel recommends:

- R12. Continuing to allow the prime minister to call a general election at any time before the end of the parliamentary term.**



6. Vacancies in Parliament

Grounds for vacancies

- 6.1 Under section 55 of the Electoral Act 1993, there are 14 circumstances in which a Member of Parliament's (**MP's**) seat must be vacated (that is, when a person ceases to be an MP). It is important that any grounds to remove an MP are based on objective and reasonable criteria and follow fair procedures.¹
- 6.2 The most common reason for vacancies in both electorate and list seats is MPs resigning from parliament. This ground covers resignation for any reason, such as retirement from politics, illness, taking up other employment, or public pressure.
- 6.3 The other grounds in section 55 cover a variety of situations, including death, non-attendance, "mental disorder", certain changes to citizenship, allegiance, or employment, conviction of a serious crime, and an MP's election being declared void. A few of these grounds warrant further explanation and consideration, which we do below. We did not identify any issues with the other grounds, nor were any issues raised by submitters.
- 6.4 An MP may also be required to vacate their seat if they cease to be a parliamentary member of the political party from which they were elected. We discuss this rule separately in **Electoral integrity rules**.
- 6.5 In this section, we discuss whether any of the grounds for vacancies should be changed.

¹ General comment no. 25, *The right to participate in public affairs, voting rights and the right of equal access to public service (article 25)* UN Doc CCPR/C/21/Rev.1/Add.7 (27 August 1996), p. 6.

Earlier recommendations

2020 Electoral Commission post-election report

The Commission stated that it would be opportune to review archaic language and provisions that relate to mental health detention in the Electoral Act. The report refers to examples like “mental impairment” for voter registration. This review could also include the mental incapacity grounds for MPs to vacate their seat.

Disqualification for non-attendance

- 6.6 MPs are obliged to attend the House of Representatives and their attendance is recorded by the Clerk of the House.² An MP’s seat is vacated if they fail to attend the House for an entire session of parliament, unless they are absent in accordance with the rules of the House, including being granted leave.³
- 6.7 When this ground was introduced, a session of parliament usually lasted for a calendar year. However, since 1993 sessions have lasted for the whole term of parliament (that is, for three years).⁴
- 6.8 This ground does not affect MPs who attend the House but who do not otherwise carry out their responsibilities.

Is there a case for change?

Issues identified

- 6.9 The current ground has flexibility – an MP can seek leave to be absent from the House in various circumstances, such as serious illness or for parental leave. Permission can be granted by party leaders, party whips, or the Speaker, at their full discretion. As a result, disqualification on attendance grounds has been extremely rare, occurring only twice.⁵
- 6.10 In practice, there are other constraints that ensure attendance, including party discipline, public pressure, and salary deductions (which occur after an MP has been absent for more than three sitting days in a calendar year).

² Wilson, D. & Bagnall, D. eds., 2023. *Parliamentary Practice in New Zealand*. 5th ed. Wellington: Clerk of the House of Representatives, p. 180.

³ MPs are exempt from the attendance requirements if appointed to head a diplomatic mission or post. Section 55(1)(a) of the Electoral Act refers.

⁴ Wilson & Bagnall, above n 2, p. 181.

⁵ Thomas Fraser lost his seat in 1862 and Patrick Charles Webb lost his seat in 1918.

- 6.11 Nevertheless, the shift to sessions lasting the whole term of parliament has made this vacancy ground completely ineffective. However, it is still undesirable for an MP to be absent from the House for an extended period and yet retain their seat. If this happens, it could erode public confidence in our democracy, particularly if the MP was representing an electorate.

Our initial view

- 6.12 In our interim report, we noted that the current non-attendance ground is effectively redundant because it allows an MP to be absent for an entire term of parliament. We proposed that a better ground would be to require an MP to vacate their seat if they have been absent from the House for a set time without permission. We thought a three-month period of absence would be appropriate and sought feedback on this idea.

Feedback from second consultation

- 6.13 Only a few submitters commented on our draft recommendation to change the rule for disqualification for non-attendance to three months. Most people who commented were in favour of our recommendation, including the Clerk of the House of Representatives who thought it would support the effective functioning of parliament.
- 6.14 One submitter thought the period should be reduced to two months. Other submitters thought it should be longer, or that the rule should be removed entirely so that MPs are not prohibited from using non-attendance as a form of protest and expression of free speech.
- 6.15 The Clerk of the House of Representatives also noted that leave to be absent from the House can be given by a party whip, party leader, or the Speaker in various circumstances.
- 6.16 In addition, a few submitters commented on their expectations for MPs generally, emphasising that MPs should be hardworking, accountable, and only able to be absent from parliament in exceptional circumstances.

Our final view

- 6.17 During consultation, we heard different views on how long is reasonable for an MP to be absent without permission and at what point non-attendance should be grounds for disqualification. However, there was consensus among submitters that MPs should be held to a high standard.

- 6.18 We maintain our view that there should be a specific vacancy ground for non-attendance. MPs should attend the House to carry out their roles as our elected representatives.⁶
- 6.19 The existing ground does not work, nor reflect public expectations of MPs. An updated ground will set a clear expectation around attendance, rather than leaving this up to parties to enforce.
- 6.20 We acknowledge that any period of non-attendance is going to seem too generous to some people and too restrictive to others. We think that three months strikes the right balance, given other factors already discourage non-attendance and MPs will still be able to seek the House's permission for a longer leave of absence.
- 6.21 We do not think a change is needed to the exception for MPs who head a diplomatic mission or post. The creation of an automatic vacancy would not be justified, given the range of missions or posts that might be captured.

The Panel recommends:

- R13. Updating the ground for non-attendance so that the seat of any Member of Parliament becomes vacant if they are absent from parliament for three months without permission.**

Mental incapacity

- 6.22 An MP's seat is vacated if they are found to be "mentally disordered" (under the Mental Health (Compulsory Assessment and Treatment) Act 1992) for a period of more than six months. We are not aware of any instances where the ground has been used.

⁶ We note that after the 2023 review of parliament's Standing Orders, rule 38A now allows for the Business Committee to make rules for remote participation. Participating remotely is regarded as attending the House, except for ministers, who must be present during all sittings and for personal votes. The Standing Orders Select Committee report noted that remote participation should be considered only where it is necessary for public health or where an emergency makes it impracticable for members to travel to Wellington. Members should otherwise attend in person to facilitate cooperation and development for all members. Standing Orders Committee, 2023. *Review of Standing Orders 2023: Report of the Standing Orders Committee*, Wellington: New Zealand Parliament, p 15.

- 6.23 Section 56 of the Electoral Act establishes a detailed process that must be followed before the MP's seat is vacated. It requires the Speaker of the House to be informed if an MP is subject to a compulsory treatment order or an inpatient order. The Speaker will then inform the director-general of health, who must, together with a medical practitioner named by the Speaker, visit and examine the MP and report on whether the MP is "mentally disordered". If so, a second report is prepared after six months. If the second report concludes that the MP is still "mentally disordered", both reports are laid before the House of Representatives and the seat becomes vacant.

Is there a case for change?

Issues identified

- 6.24 The ground and the process aim to protect MPs who are unable to carry out their duties on mental health grounds. The ground also protects representation by allowing the seat to be vacated and filled by another representative.
- 6.25 The process is not appropriate. It invades privacy unnecessarily and also requires the director-general of health to personally visit and examine the MP, but the director-general of health no longer needs to be a qualified medical practitioner.
- 6.26 The current law has a very high threshold. It is extremely rare for anyone to be subject to a compulsory treatment order or an inpatient order for six months or more, even in the event of serious mental illness. The ground is unlikely to ever be met in the present day.
- 6.27 In addition, the language used in this ground is outdated. Though consistent with wording in the Mental Health (Compulsory Assessment and Treatment) Act 1992, that Act is under review by the Ministry of Health and is expected to be repealed and replaced.

Our initial view

- 6.28 Our initial view was that this ground is out of date and not fit for purpose. It only applies to very serious cases of mental illness, and the process it requires is not appropriate. We thought the situation would be better resolved through the new ground for non-attendance that we proposed, if resignation was not an option.

Feedback from second consultation

- 6.29 We received mixed feedback on our draft recommendation to repeal the "mentally disordered" vacancy ground. The Office of the Privacy Commissioner and a few other submitters supported this change, noting the current ground takes an outdated approach to mental health, is privacy invasive, and has such a high threshold that it would never be used.
- 6.30 A few submitters opposed the change, most of whom were concerned that it would result in MPs under significant mental distress remaining in parliament, unable to



perform their duties as a representative. These submitters wanted the ground to be retained, as a last resort. One submitter thought a physician should determine an MP's capacity, rather than other members of their party or voters.

Our final view

- 6.31 We maintain our view that this vacancy ground should be repealed because it is outdated, invasive, and unnecessary.
- 6.32 We acknowledge the concerns we heard about what repeal could mean, but we reiterate that such a threshold is unlikely to ever be met.

The Panel recommends:

- R14. Repealing mental incapacity as a ground to remove a Member of Parliament.**

Citizenship

- 6.33 Candidates must be New Zealand citizens to stand for and be elected to parliament but can hold dual or multiple citizenships.⁷
- 6.34 An MP loses their seat if they lose their New Zealand citizenship, as well as if they:
- become a citizen or subject of a foreign state (unless by birth right or marriage)
 - make a declaration of allegiance to a foreign state, or
 - apply for a foreign passport (renewing an existing one is permitted).⁸

⁷ Electoral Act 1993, section 47(3).

⁸ Electoral Act 1993, section 55AA.

Is there a case for change?

Issues identified

- 6.35 Different foreign citizenship rules apply to candidates than for sitting MPs. As people can move between the status of candidate and MP, the differing rules create somewhat incongruous scenarios, such as:
- A person can stand as a candidate for parliament while they hold dual citizenship, but they must vacate their seat if they apply for citizenship in another country after being elected as an MP.
 - If an MP vacated their seat because they had applied for citizenship in another country, they would then be qualified to stand for election again. For example, they could stand for that seat in any subsequent by-election (if it is an electorate seat) or at the next general election.
 - A sitting MP would also disqualify themselves if they applied for a new foreign passport but, if re-elected, would be able to renew that passport without losing their seat.
- 6.36 An MP's actions in seeking citizenship (or a passport or other rights associated with citizenship) can be seen as inconsistent with the oath of allegiance they take when they are sworn in. In contrast, there is seen to be greater transparency and opportunity for public scrutiny where a candidate has dual citizenship. Voters could, for example, choose not to vote for that candidate if they were concerned about dual allegiance, but would have no such ability where a sitting MP sought citizenship of another country.

Our initial view

- 6.37 We proposed that the current MP citizenship grounds should remain because they were appropriate, and consistent with an MP's oath of allegiance.

Feedback from second consultation

- 6.38 We did not receive any substantive feedback on our draft recommendation for this vacancy ground (either in support or in opposition).

Our final view

- 6.39 We maintain our view the current ground should be retained. As we noted in our interim report, although different from the requirements for candidates, we think this standard is appropriate for MPs and consistent with the oath of allegiance MPs take.
- 6.40 An MP should lose their seat if they lose their New Zealand citizenship because this only occurs when citizenship was fraudulently obtained or when citizenship of another country is acquired, and the person acts in a way that is contrary to Aotearoa New Zealand's interests.

Criminal convictions

- 6.41 Currently, an MP's seat is vacated if they are convicted of a crime punishable by imprisonment of two years or more (that is, a category three or four offence under the Criminal Procedure Act 2011), or if found by the High Court to have committed a corrupt practice under the Electoral Act.⁹
- 6.42 Corrupt practices are deliberate acts that seek to unduly influence election outcomes (for example, bribery). They are punishable by a term of imprisonment of up to two years or a fine of up to \$40,000 (or \$100,000 for candidates, party secretaries or registered promoters when relating to election expenses). The level of penalty is lower than for category three and four offences. We discuss corrupt practices further in **Chapter 18**.

Is there a case for change?

Issues identified

- 6.43 The current ground may not be broad enough. It does not include category one or two offences, which some people may see as serious enough to warrant disqualification as an MP (for example, recidivist drink driving, indecent act in a public place, or contempt of court).¹⁰
- 6.44 On the other hand, the ground does not distinguish between a maximum sentence and the sentence actually imposed by the court. A vacancy is created when an MP is convicted of a serious offence where the maximum penalty is two years' imprisonment or more, regardless of whether a light sentence or one at the higher end of the scale is imposed.

Our initial view

- 6.45 In our interim report, we expressed the view that the grounds for criminal convictions should be retained, reflecting that MPs should be held to a high standard of conduct. We also took the view that MPs should continue to lose their seat if they are found to have committed a corrupt practice.
- 6.46 Noting that the current ground applies to serious crimes, we also sought feedback on whether the current ground is sufficient.

⁹ Electoral Act 1993, sections 215 to 218.

¹⁰ In 2004, the High Court found a sitting MP to be in contempt of court, but the Speaker ruled it was not ground for disqualification as an MP. The law was modernised with the Contempt of Court Act 2019. For more information on this case, see *Solicitor-General v Smith* [2004] 2 NZLR 540 (HC); (6 April 2004) 616 NZPD (Speaker's Rulings, Contempt Finding – Hon Dr Nick Smith); and Letter from DG McGee (Clerk of the House of Representatives) to Rt Hon Jonathan Hunt (Speaker of the House of Representatives) (6 April 2004).

Feedback from second consultation

- 6.47 Very few submitters commented on our draft recommendation to retain the existing criminal conviction vacancy ground, despite this being an area on which we sought specific feedback.
- 6.48 The Clerk of the House of Representatives agreed it would be useful to have clarity on whether a vacancy would arise on conviction or after all appeals. The Department of Internal Affairs emphasised the ground must continue to be based on the maximum sentence, rather than the sentence imposed, otherwise electoral consequences could influence (or be perceived to influence) the sentencing decision.

Our final view

- 6.49 We maintain the view that MPs should be held to a high standard and consider it is appropriate that MPs convicted of sufficiently serious crimes should be removed from parliament. We have not received any feedback to suggest that the current threshold – which applies only to serious crimes where the penalty is two years or more in prison – is insufficient.
- 6.50 We also maintain our view that MPs should continue to lose their seat if they are found to have committed a corrupt practice. Breaches that undermine the integrity of the electoral system appropriately carry both a criminal law consequence and an electoral system-level consequence. This ground acts as a deterrent to candidates and MPs, helping to preserve the integrity of our electoral system.
- 6.51 We recognise that the law is not clear about when the vacancy arises (whether on conviction or once all appeals have been exhausted) and recommend that when the Electoral Act is redrafted, it is made clear that the vacancy arises on conviction.
- 6.52 We note that, in practice, an MP who is convicted of a serious crime is likely to face significant pressure from the public and their party to resign in any case.
- 6.53 Although our recommended changes to voter eligibility will create different rules for voters compared with MPs (allowing all prisoners to vote, including those

convicted of category three and four offences), we think this difference reflects the greater responsibilities and expectations of MPs.

The Panel recommends:

- R15. Retaining the remaining grounds for when a Member of Parliament vacates their seat, including the ground of citizenship.**
- R16. Amending the ground for criminal conviction to make clear that a vacancy arises upon conviction.**

Electoral integrity (party-hopping) rules

- 6.54 A number of MPs have changed party during the term of parliament under the Mixed Member Proportional (**MMP**) system, including to form new political parties.
- 6.55 In 2018, the Electoral (Integrity) Amendment Act restricted an MP's ability to change party or become independent by introducing a new vacancy ground.¹¹
- 6.56 Sections 55A to 55E of the Electoral Act establish that an MP who ceases to be a parliamentary member of the political party for which they were elected must vacate their seat, provided they or the leader of their political party give notice to the Speaker.
- 6.57 These rules have not been used but have been the subject of much commentary and debate. In 2020, a member's bill was introduced to repeal the provisions, but it was unsuccessful.

Is there a case for change?

Arguments against change

- 6.58 The current rules were introduced to support public confidence in the integrity of the political system by ensuring the proportionality of parliament is not significantly altered by MPs changing political affiliations after an election. The rules mean that voters, through their party vote at the last election, can continue

¹¹ The Electoral (Integrity) Amendment Act 2001 provided for similar rules. It had a sunset clause and expired in 2005. In 2006, a bill was introduced to make the provision permanent, but it did not progress.

Earlier recommendations

2013 Constitutional Advisory Panel

The Constitutional Advisory Panel noted that between 2005 and 2013, only a small number of MPs left their parties. It concluded that this meant the proportionality of parliament (the key reason for electoral integrity legislation) was not under threat.

to determine the share of seats each party gets in parliament throughout the parliamentary term.

- 6.59 During the first consultation, some submitters supported the current rules, taking the view that an MP's accountability to voters through their political party is more important than their independence, particularly because of the central role of political parties under MMP. A few submitters thought that the provisions could be retained if the criteria for when a party leader can give notice to the speaker is narrowed.¹²
- 6.60 Other submitters thought that MPs elected from a party are obliged to continue to serve that party for the term of parliament and this is the expectation of voters.
- 6.61 The current rules provide some flexibility. An MP's seat does not automatically become vacant if they leave their party. Therefore, parties that do not support the vacancy process do not have to use it and others can use it as a "last resort" only. Flexibility minimises the potential for vacancies or by-elections resulting from these rules.

Arguments for change

- 6.62 Restrictions on party hopping may not be necessary. As noted above, the Constitutional Advisory Panel concluded that the proportionality of parliament was not under threat.
- 6.63 Likewise, some academics have argued the electoral system functioned well when party hopping was permitted, because defections were few and were resolved at the resulting by-election or next general election by voters.¹³ Most defecting MPs were not re-elected; those that were had obtained voters' support for leaving their party.

¹² Electoral Act 1993, section 55D.

¹³ Morris, C., 2018. Party-hopping Déjà vu: Changing Politics, Changing Law in New Zealand 1999-2018. *Public Law Review*, 29(3), pp. 210 - 214.

- 6.64 Most submitters who commented on the current provisions during our first consultation were opposed to them and wanted them to be abolished. These submitters considered that the rules privilege political parties over voters, weaken accountability, undermine public trust and democratic principles, and prevent MPs from acting in an independent and principled way.
- 6.65 Many submitters to our first consultation thought that electorate and list MPs should be treated differently. They considered electorate MPs should stay on in parliament, because they had a local mandate from voters. The same local mandate did not apply to list MPs who should therefore have to leave parliament if they left or were expelled from their party.
- 6.66 In addition, some academics argue that the party-hopping regimes have not been effective. For example, when the Alliance Party split under the 46th Parliament (1999 to 2002), the defecting MPs were the majority of the party, so the remaining MPs did not have the numbers required to trigger the party-hopping provisions.¹⁴ Under the current law, it can also be unclear whether the “reasonable belief that proportionality has been distorted” threshold, as outlined in the Act, has been met.
- 6.67 Repealing the rules would mean that an MP who ceases to be a member of their party could stay in parliament as a member of another party or as an independent MP. Some submitters were in favour of allowing MPs to exercise their individual judgement and conscience, reflecting that an MP may choose to defect for a multitude of reasons, some of which could be seen as a principled or necessary departure.
- 6.68 Academics have noted that the current rules give a lot of power to parties and their leaders to stifle debate and dissent – either directly by forcing a dissenting MP from parliament, or indirectly by influencing MP behaviour.¹⁵ An MP might feel unable to express contrary views to the views of the party, even where the views they are expressing are supported by their constituents. This impact impinges on MPs’ right to freedom of association and expression.
- 6.69 Some academics have argued that party defection or disloyalty is a political problem and that it is not appropriate to have set rules.¹⁶ In 2003, in *Awatere Huata v Prebble*, the courts were faced with making a decision where a party wanted a member expelled from parliament, while the member claimed to still represent the party. This drew the courts into inherently political matters, even though Aotearoa New Zealand’s constitution places importance on keeping the parliament and the courts separate.

¹⁴ Ibid, p. 211.

¹⁵ Ibid; Geddis, A., 2005. All power to the Party! *New Zealand Law Journal*, Volume 13; Willis, E., 2018. *Electoral (Integrity) Amendment Bill: Submission to the Justice Select Committee*.

¹⁶ Morris, above n 13, pp. 216 - 218.

Our initial view

- 6.70 Our initial view was that the rules should be repealed. We considered the rules unfairly limit an MP's freedom of association and expression. We also thought the provisions created uncertainty in instances where MPs leave or are suspended or expelled from their party, which potentially has a chilling effect on free speech.
- 6.71 Repeal would also recognise the inherently political nature of internal party disputes and keep them out of the courts.

Feedback from second consultation

- 6.72 A few submitters to the second consultation supported our recommendation to repeal the party-hopping rules. These submitters considered that the current law has been ineffective, creates confusion, and is constitutionally inappropriate. They noted the current law limits the free speech and freedom of conscience of MPs, which may restrict their ability to represent constituents, and that the ability for MPs to defect is an important check on the power of political parties.
- 6.73 Some other submitters did not support our recommendation or thought that list MPs should remain subject to the party-hopping rules. These submitters considered that electorate MPs can be elected as individuals and have an obligation to represent their constituents, where list MPs are elected on the basis of being a member of a party. In the view of these submitters, that means list MPs should not be able to defect from the party they were elected to represent. A few submitters were concerned that the ability of list MPs to defect could change the proportionality of parliament and which parties can command the confidence of the House.
- 6.74 A few submitters wanted the rules strengthened so that list MPs must leave parliament if they leave their party, while one organisation considered that list MPs should only be able to remain in parliament if they have the support of the party they were elected for. Another submitter thought electorate MPs should only be allowed to become independent, not change party.

Our final view

- 6.75 During consultation, we heard differing views from submitters about whether the party-hopping rules should be abolished, retained, or modified to apply in more limited circumstances.
- 6.76 We considered retaining, adjusting, or abolishing the party-hopping rules. We also considered retaining the rules for list MPs only.
- 6.77 The freedom of MPs to dissent can provide an important constitutional check on political parties and the government. We maintain our view that the party-hopping rules should be abolished in their entirety. The rules unfairly limit an MP's



freedom of association and expression, which are fundamental rights in any democracy and under the New Zealand Bill of Rights Act 1990.

- 6.78 We are also mindful of the fact that, at the moment, the party-hopping rules are applied inconsistently, which has led to an unsatisfactory level of uncertainty. We consider that repealing the party-hopping rules would create clarity for MPs, political parties, parliament, and the public.
- 6.79 The share of seats each party gets at a general election is not immutable and can change for several reasons throughout the term of a parliament, most obviously as a result of by-elections. Party hopping is simply another way in which changing political dynamics might be reflected in the parliament.
- 6.80 While we understand the view of some submitters that list MPs should be subject to different rules when they leave or are expelled from their parties, we do not see a strong basis for drawing such a distinction. Electorate MPs, while elected individually, often strongly represent the views of their parties. As well as representing their parties, list MPs often also represent local areas and other communities. We consider that individual MPs, whether elected on the list or by an electorate, should be able to exercise the same freedom to dissent. The public, not political parties, are best placed to judge whether those MPs are justified in doing so.

The Panel recommends:

- R17. Repealing the restriction on Members of Parliament remaining in parliament if they cease to be a member of the party from which they were elected.**

Process for filling vacancies

- 6.81 The process for filling vacancies is set out in Part 6 of the Electoral Act and varies depending on whether it's an electorate seat or a list seat, as well as how close it is to the next election when the vacancy arises.
- 6.82 By-elections are held to fill electorate seat vacancies, which a sitting list MP can choose to stand in as a candidate.¹⁷ The election is held in the same way as a general election, except that voters do not cast a party vote.

¹⁷ Electoral Act 1993, sections 129 – 133.

Earlier recommendations

2012 Electoral Commission Review of MMP

The Commission:

- recommended list MPs should continue to be able to contest by-elections
- did not support electorate vacancies being filled from the party list.

- 6.83 List seat vacancies are filled from the party list.¹⁸ The Electoral Commission checks that the next candidate on the list is still a member of the party and whether they agree to be an MP. If necessary, the Electoral Commission moves on to the next person on the party list. If there is no one left on the list, the seat remains vacant until the next election.
- 6.84 If either an electorate or list seat vacancy arises within six months of a general election, a 75 per cent majority of parliament can decide not to fill the vacancy.¹⁹ No decision is required if the vacancy arises after parliament has been dissolved.

Is there a case for change?

Arguments against change

Electorate seats

- 6.85 Since the first MMP election in 1996, there have been 15 by-elections to fill vacancies.²⁰ Although by-elections come at a cost, if the seat remained vacant this would leave an electorate without representation in parliament.
- 6.86 Many submitters who provided feedback on vacancies during our first consultation supported keeping the status quo. Submitters who supported by-elections generally considered the connection between electorate MPs and their constituents to be meaningful. They saw by-elections as an important means of continuing this relationship and ensuring that constituents continued to have representation in parliament.

¹⁸ Electoral Act 1993, sections 134 – 138.

¹⁹ Electoral Act 1993, sections 131 and 136.

²⁰ This figure includes the by-election held in Port Waikato on 25 November 2023, which was held following the death of an electorate candidate during the 2023 General Election.

- 6.87 There is an increasing trend of electorate MPs retiring from parliament during the six-month period before the general election. In each case the House has resolved to not hold a by-election. It could be argued that this process is working well and saving taxpayer funds.

List seats

- 6.88 As with electorate seats, if a list seat was not filled when vacated, a party would have fewer MPs to do the work of parliament and would no longer have a share of MPs that is proportional to its nationwide support.
- 6.89 We also note that, in every instance to date that a list seat has become vacant, there has been another person on that party's list able to fill the vacancy, which could be seen as the current process working well.

Arguments for change

Electorate seats

- 6.90 Although there have been 15 by-elections during the 27 years of MMP, by-elections have been more frequent in some parliaments than in others: four were held during the 49th Parliament (2009 – 2011) and three during the 51st Parliament (2014 – 2017).
- 6.91 Some submitters who provided feedback during our first consultation considered that MPs should always complete the full parliamentary term, apart from in exceptional circumstances. Several of these submitters suggested that disincentives could be put in place, such as not filling list seat vacancies, or requiring by-elections to be paid for by the vacating MP or their party.
- 6.92 Some submitters thought that by-elections were a waste of taxpayers' money and that electorate seats should remain vacant if an MP left. Some submitters also thought that leaving seats vacant would incentivise MPs to stay on.
- 6.93 One alternative to by-elections would be to fill vacancies in electorate seats from party lists. This is a process used in some other countries and was suggested by some submitters. Parties could be required to consider local representation when filling a seat from the list.
- 6.94 By-elections come at a considerable cost – each by-election costs around \$1.2 million, though the cost varies depending on the electorate – and can change the proportionality of parliament. For example, in 2022 the National Party's win in Hamilton West gave it one more seat in parliament and Labour one less seat, meaning the make-up of parliament was no longer as proportional to the party votes won by these parties at the 2020 general election. A few submitters noted that allowing by-elections, while restricting **Party hopping** (discussed above), applied an inconsistent approach to proportionality throughout the parliamentary term.



- 6.95 In some cases, a change to the proportionality of parliament could affect overall majorities in parliament. In such situations, by-elections can give voters in the relevant electorate disproportionate influence over who is able to form the government.

List seats

- 6.96 It has become common for MPs intending to step down at the next election to resign in the final year of the parliamentary term and be replaced from the party list. This trend could be viewed as making way for a candidate who is expected to have an ongoing interest in a parliamentary career. However, if the rules around replacing list MPs were changed, MPs would be incentivised to stay on through to the election.
- 6.97 Most submitters to our first consultation supported the current way that vacant list seats are filled from the party list, but other submitters considered that list seats should remain vacant if an MP resigns.

Our initial view

- 6.98 In our interim report, we recommended leaving the process for filling vacancies unchanged. We noted that filling vacant electorate and list seats supports parliamentary effectiveness and provides voters with representation. In addition, by-elections fill an important democratic function, ensuring voters elect their preferred candidate as their local representative.

Feedback from second consultation

- 6.99 Very few submitters commented on our draft recommendation to retain the existing process for filling vacancies. A few submitters supported filling electorate seat vacancies through by-elections, noting that filling those seats using the party list could result in an MP with little to no connection to an electorate being appointed.
- 6.100 A few other submitters were opposed to by-elections, arguing they can be disruptive and costly, and can change the proportionality of parliament (which in some circumstances could affect the stability of government). These submitters preferred that electorate seat vacancies be filled using party lists, which would be less costly and more likely to have diverse candidates.

Our final view

- 6.101 We maintain the view that the existing process for filling vacancies should be retained to support parliamentary effectiveness and voter representation.
- 6.102 We considered whether there were circumstances in which a seat could remain vacant if the House agreed. However, this option would result in some voters not

being represented by an electorate MP and could have a major impact on parliamentary effectiveness and government stability. For example, a government with a majority of only one MP could lose the confidence of the House through a single vacancy. These impacts seem severe where a seat is vacated involuntarily, such as if an MP dies or becomes unwell.

- 6.103 Although by-elections can be unpopular, removing them is also likely to be unpopular. By-elections are important for ensuring local representation. Representatives with sufficient links to the electorate are especially significant for Māori electorate vacancies, where relationships and whakapapa links are particularly important considerations.
- 6.104 Because of the importance of local representation for electorates, we do not think that using party lists to fill electorate seat vacancies would be appropriate. Although by-elections can change the proportionality of parliament, as noted above in our final view on **Party hopping**, the party vote determines the make-up of parliament post-election but does not guarantee it through the whole term.
- 6.105 We consider the status quo is consistent with our review objectives. The current rules are practicable and enduring, and able to produce effective parliaments and governments. Retaining the current rules upholds and promotes the legitimacy and integrity of Aotearoa New Zealand's democratic electoral system.
- 6.106 If the length of the parliamentary term is changed to four years (discussed in **Chapter 5**), we consider that six months is still the maximum length of time that it is justifiable for a vacancy to not be filled in an electorate or list seat. Therefore, we do not propose a change to the exception period.

The Panel recommends:

- R18. Retaining the current rules for filling vacant electorate seats and list seats, including the processes for a seat that is vacated within six months of a general election.**



3

PART 3

Voters

This part covers:

- **voter eligibility** (Chapter 7)
- **enrolling to vote** (Chapter 8)
- **voting in elections** (Chapter 9)
- **counting the vote and releasing results** (Chapter 10)
- **improving voter participation** (Chapter 11)



7. Voter Eligibility

- 7.1 Voter eligibility determines who can vote in general elections. A person must first enrol to be eligible to vote.¹
- 7.2 To be eligible to enrol, a person must be 18 years or older, a New Zealand citizen or permanent resident, and have lived in Aotearoa New Zealand continuously for at least one year at some time in their life.²
- 7.3 For electoral purposes, a permanent resident is defined as someone who resides in Aotearoa New Zealand and can stay here indefinitely.³ This differs from the definition for immigration purposes, where a permanent resident is someone who holds a permanent resident visa. To avoid confusion, one of our recommendations, discussed below in **Voting rights for residents**, is to change the Electoral Act's use of the term "permanent resident" to "resident for electoral purposes". We use the latter term throughout this chapter for clarity.
- 7.4 Some people who would otherwise be eligible to enrol are disqualified if:⁴
- they are a citizen living overseas who has not been in Aotearoa New Zealand within the last three years
 - they are a resident for electoral purposes living overseas who has not been in Aotearoa New Zealand within the last 12 months
 - they are in prison serving a life sentence, preventive detention, or a sentence of three years or more
 - they have committed a crime but are not in prison for reasons relating to mental health or intellectual disability (for example, because they have been found unfit to stand trial or they have been committed to a hospital or secure facility upon conviction). In these situations, a person loses the right to vote if they are detained in a hospital or secure facility for more than three years

¹ Electoral Act 1993, section 60.

² Electoral Act 1993, section 74.

³ Electoral Act 1993, section 73.

⁴ Electoral Act 1993, section 80.

- they have been found to have committed an electoral offence that places them on the Corrupt Practices List.

Our approach to voter eligibility

- 7.5 A key focus for this review was how to improve participation and accessibility in the electoral system. This objective needs to be balanced with ensuring the rules are clear, fair and support the transparency and integrity of elections.
- 7.6 As discussed in **Chapter 1**, the right of citizens to vote is a fundamental right, protected by international and domestic human rights law. This right is built on the idea that democratic governments serve with the consent of those they govern.
- 7.7 The United Nations Human Rights Committee, in its General Comment on Article 25 of the International Covenant on Civil and Political Rights, states that any conditions on the right to vote must be objective and reasonable, and no distinctions are permitted in the enjoyment of this right between citizens on a number of grounds, including sex, race, religion, and national or social origin.⁵ Likewise, section 5 of the New Zealand Bill of Rights Act 1990 provides that the rights and freedoms it contains may be subject only to such reasonable limits as can be demonstrably justified in a free and democratic society.
- 7.8 When considering voter eligibility, our starting point was that all citizens should have the right to vote unless there is a strong case to limit that right. This approach also supports our objective of encouraging participation.
- 7.9 The basis for limiting voting rights has changed over time. Previous eligibility rules based on owning property, race, sex, or being a British subject have been removed. The remaining restrictions on citizens relate to a person's age, the time they have spent away from Aotearoa New Zealand, and the length of time that they are being detained in prison or mental health care due to their criminal offending. We assessed whether these still form a reasonable basis for limiting voting rights.

⁵ *General comment no. 25, The right to participate in public affairs, voting rights and the right of equal access to public service (article 25)* UN Doc CCPR/C/21/Rev.1/Add.7 (27 August 1996), p. 3. The UN Human Rights Committee (HRC) further notes that it is unreasonable to restrict the right to vote on the ground of physical disability or to impose literacy, educational or property requirements at pp. 4, 5.

Earlier recommendations

1986 Royal Commission on the Electoral System

The Royal Commission recommended:

- the voting age should be reviewed by parliament from time to time, taking account of public opinion (it also noted there was a strong case for lowering the voting age to 16)
- prisoners who have been sentenced to a term of three years or more should not be allowed to vote
- patients in psychiatric hospitals who have, following criminal proceedings, been detained for three years or more should not be allowed to vote.

It did not propose changes to the requirement to live in Aotearoa New Zealand for one year, the overseas disqualification, the Corrupt Practices List disqualification, or the right of residents for electoral purposes to vote. (It did suggest that residents for electoral purposes should be able to stand as candidates.)

2011, 2014, 2017 and 2020 Justice Select Committee

In its interim report on the 2020 election, the Justice Select Committee recommended holding a public debate on whether 18 remains the best age for enfranchisement and the role of civics education. It previously discussed the voting age and youth participation rates in its reports on the 2011, 2014 and 2017 elections.

Following the 2020 election, the Justice Select Committee also recommended changing overseas voter eligibility criteria to address situations such as pandemics that prevent people from returning to Aotearoa New Zealand.

2020 Electoral Commission post-election report

The Commission:

- recommended further public and political debate on the voting age
- suggested that references to “permanent residents” should be replaced with a clearer definition
- considered the overseas voting eligibility criteria should address situations where people have been prevented from returning to Aotearoa New Zealand by circumstances outside their control, such as a pandemic.

2023 Review into the Future for Local Government

The report of the Review into the Future of Local Government recommended that the voting age for local body elections should be lowered to 16.

- 7.10 Aotearoa New Zealand is unusual in extending voting rights to some residents.⁶ We considered whether the current eligibility rules take account of the difference in voting interests for citizens, who have a fundamental right to vote, and residents for electoral purposes, who are granted voting rights as a result of living here. Taken together, our recommendations seek to appropriately reflect these claims by easing the voting restrictions for citizens and modestly tightening the requirements for residents for electoral purposes.

Interaction with our other recommendations

- 7.11 In **Chapter 2**, we discuss our recommendation that voter eligibility provisions should be entrenched.
- 7.12 Candidate eligibility is generally based on voter eligibility. We consider candidate eligibility in **Chapter 12**.
- 7.13 Voter eligibility for general elections also applies to local elections, so the changes we propose in this chapter would extend to local elections unless the government chose to make separate rules.⁷

⁶ Ibid, p. 3. The UN HRC has noted that *International Covenant on Civil and Political Rights* GA Res 2200A (1966), which includes the right to vote, specifically protects the rights of “every citizen”. The other rights and freedoms recognised by the Covenant are ensured to all individuals within the territory and subject to the jurisdiction of the State.

⁷ The Electoral (Lowering Voting Age for Local Elections and Polls) Legislation Bill was introduced to parliament in August 2023. The bill would lower the voting age from 18 to 16 for local elections and polls, while the voting age would remain 18 for general elections.

The voting age

- 7.14 A minimum voting age is used as a proxy for whether voters are mature enough to understand and exercise the right to vote responsibly. Setting the voting age will always be somewhat arbitrary. There are a range of voting ages around the world – for example, the voting age is 16 in Scotland and Austria, while it is 21 in Singapore and 25 in the United Arab Emirates.
- 7.15 In Aotearoa New Zealand, the voting age was originally set at 21. It was lowered to 20 in 1969 and to 18 in 1974, which it remains today. The voting age is no longer linked to the legal age of majority, which is currently 20 years old.⁸

Is there a case for change?

- 7.16 The age at which people should be allowed to vote has been the subject of recent debate in many countries, including in Aotearoa New Zealand. This topic attracted a lot of attention from submitters to our first consultation. More people commented on the voting age than on any other topic during that consultation.

Arguments against change

- 7.17 Most submitters to our first consultation thought that 18 was still the appropriate age for people to gain the right to vote. Submitters who supported the current voting age generally argued that 18 aligns with when a person becomes an adult and takes on other legal responsibilities. They pointed out that 18 is the most common voting age in comparable democracies. Some submitters noted that many people leave home at 18 to begin full-time work and paying taxes.
- 7.18 Some submitters thought that people younger than 18 did not have the ability, education, or life experience to make a decision as important as how to vote. They thought young people may not have enough knowledge or interest in politics to make an informed choice and could be more easily influenced by their parents, teachers or the media.
- 7.19 A few submitters also doubted whether lowering the voting age would improve participation outcomes if young people were not motivated to vote.

Arguments for change

- 7.20 Many submitters to our first consultation wanted to lower the voting age to 16. Very few submitters proposed a voting age lower than 16 or higher than 18.
- 7.21 Supporters of lowering the voting age said that young people have already begun to take on a range of responsibilities and to participate in society by 16. These

⁸ See the Age of Majority Act 1970, section 4(1).

submitters noted that, like all voters, 16- and 17-year-olds may have different levels of political knowledge and interest but are still capable of voting.

- 7.22 Many submitters to our first consultation who supported a lower voting age considered that it might improve democratic participation. They thought allowing people to vote from 16 could help to build life-long voting habits and pointed to positive participation outcomes in other countries that have lowered the voting age. Some submitters referred to overseas evidence that young people may be more likely to vote when they are still at home and at school. In these circumstances, young people may have better opportunities to learn first-hand from the voting habits of their parents, families and schoolmates than when they are navigating the big life changes that come with leaving home.
- 7.23 Those submitters who favoured a lower voting age also thought it supported intergenerational fairness. They noted that young people will have to deal with the consequences of the long-term challenges facing our society and our planet. Giving them a voice in elections means they can help shape our response to these challenges.
- 7.24 Some submitters to our first consultation noted that the current voting age may negatively impact the representation of communities with proportionately younger populations, such as Māori. For example, we note that with a voting age of 18, about 78 per cent of Aotearoa New Zealand's Pākehā population is eligible to vote, compared to 63 per cent of Māori. Therefore, some argued that lowering the voting age would help to enable Māori participation, upholding te Tiriti o Waitangi / the Treaty of Waitangi (**te Tiriti / the Treaty**). During engagement with Māori communities, we heard about the importance of instilling voting habits in rangatahi Māori when many are still at home, at school and within their community, given their high rates of residential mobility.
- 7.25 Other submitters pointed out that similar arguments hold for Pasifika populations, who are also proportionately younger than other populations, with 61 per cent being able to vote with a voting age of 18. We heard that in some communities there can be flow-on benefits when young people get involved with voting, as they can encourage and motivate older generations to participate too.
- 7.26 In November 2022, the Supreme Court found the current voting age to be unjustified age discrimination under the New Zealand Bill of Rights Act 1990.⁹ We discuss the Supreme Court's decision below.

Our initial view

- 7.27 Having reviewed the evidence available to us, we recommended in our interim report that the voting age should be lowered to 16. We were convinced by the evidence that 16-year-olds are just as capable of making informed decisions about

⁹ *Make It 16 Incorporated v Attorney-General* [2022] NZSC 134, [2022] 1 NZLR 683.

how to vote as 18-year-olds. We also thought that lowering the voting age could have positive benefits for participation, based on emerging research from other countries.

Feedback from second consultation

- 7.28 During our second consultation, we heard many strong views on lowering the voting age. Submitters raised arguments both supporting and opposing our recommendation that built on the arguments we previously heard in our first consultation.
- 7.29 People who supported lowering the voting age to 16 talked about the potential benefits, such as improving participation, instilling voting habits at a younger age, and building civic responsibility in young people. They thought that young people are capable of making an informed vote, citing youth political movements, other legal responsibilities that take effect at 16, and a lack of conclusive evidence to the contrary. They noted that many 16- and 17-year-olds are already working and paying taxes. A few submitters commented on the absence of capacity assessments for any other groups of voters.
- 7.30 Some submitters thought a lower voting age would be good for our democracy as it would broaden the diversity of representation and encourage a longer-term horizon for political decision-making. We heard that empowering young people to choose their representatives and influence issues that impact them contributes to intergenerational fairness and equity. Supporters of lowering the voting age also talked about the disproportionate impacts on communities with younger population age structures, particularly Māori communities.
- 7.31 Most people who completed our online form opposed lowering the voting age. They thought that 16-year-olds are not mature or educated enough to make an informed vote. Before they turn 18, young people might lack life experience and have little understanding of or interest in politics.
- 7.32 Some submitters who thought the voting age should remain 18 pointed to research showing cognitive development is not complete until a person's mid-20s and public opinion polls showing a lack of support for lowering the voting age in Aotearoa New Zealand. They also thought that young people are more easily influenced and more likely to vote for certain political parties or causes.
- 7.33 Some submitters didn't think there was a strong case for change. A few commented on the arbitrary nature of the voting age and that the arguments for making the voting age 16 could equally be used to argue the voting age should be 14, 12 or even younger. There were several comments on other legal ages set at 18, particularly noting the inconsistency with how young people are treated in the criminal justice system. A few submitters were doubtful that lowering the voting age would improve participation, given low turnout rates among 18- to 24-year-olds. Some disagreed that the disproportionate impacts on Māori in light of demographic trends should be a consideration.

- 7.34 A few submitters supported reducing the voting age below 16, while others proposed raising it above 18. Some submitters thought that a lower voting age should be accompanied by compulsory civics education in schools, but others thought these two issues should not be dependent on each other.
- 7.35 The Department of Internal Affairs and Local Government New Zealand commented on the desirability of having a consistent voting age for general and local elections.

Our final view

- 7.36 As we have noted, the right to vote is a fundamental right, recognised and protected by law. Universal suffrage, which means that every citizen should have the right to vote without unreasonable restrictions, is affirmed in international law through Article 25 of the International Covenant on Civil and Political Rights. The United Nations Convention on the Rights of the Child also affirms that those under 18 years who are capable of forming their own views have the right to express those views freely in all matters affecting them and have the right to freedom of expression.¹⁰
- 7.37 A minimum voting age is a commonly accepted restriction on the right to vote.¹¹ In Aotearoa New Zealand, the New Zealand Bill of Rights Act 1990 guarantees the right to vote for citizens aged 18 and older.¹² We did not see any reason to consider raising the voting age, which would be a clear breach of this right.
- 7.38 However, the New Zealand Bill of Rights Act 1990 also protects the right to freedom from discrimination on any of the grounds set out in the Human Rights Act 1993.¹³ These grounds include discrimination against those aged 16 and over on the basis of age.¹⁴ For this reason, we have focused our consideration primarily on whether the voting age should be lowered to 16, rather than any other age.
- 7.39 In 2022, Make It 16 Incorporated took a case against the attorney-general to the Supreme Court that argued that the current voting age breaches the right to be free from age-based discrimination. The Supreme Court determined that the current voting age is inconsistent with the right of 16- and 17-year-olds to be free from age discrimination. Under the New Zealand Bill of Rights Act 1990, rights can be subject to limits if they are reasonable and justified in a free and democratic society.¹⁵ The Supreme Court found that the inconsistency had not been justified,

¹⁰ *Convention on the Rights of the Child* GA Res 44/25 (1989), art 12 and art 13.

¹¹ UN HRC, above n 5, p. 4.

¹² New Zealand Bill of Rights Act 1990, section 12.

¹³ New Zealand Bill of Rights Act 1990, section 19.

¹⁴ Human Rights Act 1993, section 21(1)(i).

¹⁵ New Zealand Bill of Rights Act 1990, section 5.



based on the evidence submitted to the court. It left open the possibility that it could be justified in the future, as the attorney-general had not attempted to justify the existing age limit.

- 7.40 Based on the evidence we have seen, discussed below, we do not think the current voting age is justifiable, given its discriminatory effect on 16- and 17-year-olds. We maintain our view that the voting age should be lowered to 16.
- 7.41 The main argument we heard for keeping the current voting age is that 18 is when people become adults, and enfranchising adolescents who do not have the knowledge or ability to exercise the right to vote responsibly could cause harm to the integrity and legitimacy of our democracy.
- 7.42 A particular individual's right to vote is not, and should not, be based on a competency test. However, when it comes to deciding at what age the right to vote should be recognised, general assessments of capacity are a relevant consideration.
- 7.43 In response to concerns raised by submitters, we have reviewed the evidence to assess whether there was a case that 18-year-olds are capable of making informed decisions about how to vote in a way that 16- and 17-year-olds are not. We caution, however, that there are limits to how directly cognitive neuroscience and behaviour science research can be applied to establish real-life competency, where environment, context and variations in individual development play important roles.
- 7.44 Some submitters opposed to lowering the voting age pointed to research showing that cognitive development, particularly in the prefrontal cortex, continues into people's mid-20s.¹⁶ This ongoing development can affect impulse control, risk-taking and decision-making in teenagers.
- 7.45 That said, the question is not when cognitive development is complete, but whether there is any relevant difference between cognitive development at ages 16 and 18 for the purpose of being able to vote. We have seen research that indicates adolescents are capable of making informed and rational choices about the future, as compared to making more impulsive decisions when they are faced with more immediate personal choices or emotionally charged situations.¹⁷ By 16, adolescents' cognitive capacity is essentially the same as adults, while their

¹⁶ Arain, M. et al, 2013. Maturation of the adolescent brain. *Neuropsychiatric disease and treatment*, Volume 9, pp. 449 – 461; Johnson S.B., Blum R.W. & Giedd, J.N., 2009. Adolescent maturity and the brain: the promise and pitfalls of neuroscience research in adolescent health policy. *The Journal of adolescent health*, 45(3), pp. 216 – 221.

¹⁷ Casey B.J., Jones, R.M. & Hare, T.A., 2008. The adolescent brain. *Annals of the New York Academy of Sciences*, Volume 1124, pp. 111 – 126.

psychosocial capabilities (such as impulse control) can be slower to develop.¹⁸ These different capacities are sometimes distinguished as “hot” cognition, which takes place in charged situations, and “cold” cognition, which allows for rational deliberation.¹⁹

- 7.46 Whether people are mature enough to vote should, therefore, be assessed based on that specific decision-making context, rather than a broad-brush approach to determining cognitive maturity or adulthood. Voting falls squarely in the category of “cold cognition”, which supports the position that 16-year-olds are generally as capable of making a rational decision about how to vote as 18-year-olds. As such, we see no justification for denying them the right to vote on this basis.
- 7.47 Any minimum age will always include some individuals who are not yet ready to vote and exclude some who are. But voting is a choice, not an obligation, as Aotearoa New Zealand does not have compulsory voting. In our assessment, the risks (which we consider to be small) of giving the vote to some young people who may not be ready to exercise that right are outweighed by the potential benefits of enfranchising those who are.
- 7.48 We also respond to some other common arguments we heard against lowering the voting age during consultation:
- **Legal ages:** We heard arguments, both for and against lowering the voting age, that were based on what young people can or cannot legally do at different ages. Determining legal ages is often based on the prevailing science, law and societal norms at the time. Just as the voting age has changed in our history, and just as we have been asked to look at it again, so too might other legal ages and the rationale behind them evolve over time. We therefore did not find looking at other legal ages particularly instructive, compared to evaluating the case for lowering the voting age on its own merits.
 - **Public opinion:** A few submitters noted that public opinion polls in recent years have indicated most New Zealanders oppose lowering the voting age. They argued that a change to lower the voting age would, therefore, lack democratic legitimacy. However, where the rights of a specific community are involved, public opinion should not be the only determinative factor. Public perceptions can also change: we note for instance that while only a

¹⁸ Steinberg, L., Cauffman, E., Woolard, J., Graham, S., & Banich, M., 2009. Are adolescents less mature than adults?: minors' access to abortion, the juvenile death penalty, and the alleged APA "flip-flop". *The American Psychologist*, 64(7), pp. 583 – 594.

¹⁹ Icenogle, G., et al, 2019. Adolescents' cognitive capacity reaches adult levels prior to their psychosocial maturity: Evidence for a "maturity gap" in a multinational, cross-sectional sample. *Law and human behaviour*, 43(1), pp. 69 – 85.

third of adults in Scotland supported a voting age of 16 before its introduction, public support rose to 60 per cent after it was lowered.²⁰

- **Political affiliation:** Some submitters said that younger people are more likely to vote for certain parties or policies. We do not see voting preferences as a valid reason to deny anyone the right to vote, whatever their age. All parties and candidates should be motivated to develop policies that will appeal to and reflect the diverse communities that make up Aotearoa New Zealand's society.
- **Work and taxes:** Some submitters said that young people should not be able to vote if they are not working and paying taxes. But the evidence indicates that many 16- and 17-year-olds already are, including some who are in full-time work. We were provided data in our second consultation that showed that over 87,000 16- and 17-year-olds paid nearly \$72 million in income tax in 2020 to 2021, while all New Zealanders pay GST irrespective of their age.

- 7.49 Lowering the voting age supports our objectives of an electoral system that is fair and encourages participation. Studies overseas have shown that voting when newly eligible is an important factor in becoming a life-long voter. Environment is a factor – young people who are still at school and living at home with their families are likely to have higher rates of voter turnout compared to those who have moved out on their own.²¹ Research suggests that voting can be habit forming, and so voting early in life might in turn support the development of life-long voting habits, though these findings can depend on other contextual factors.²²
- 7.50 Evidence from Austria and Scotland, both of which have lowered the voting age to 16, shows higher turnout rates among 16- and 17-year-olds compared with people in their late teens and early twenties.²³ A recent report from Scotland found that in the 2021 Scottish Parliament election, people who were able to vote at 16 for the first time had higher levels of turnout in subsequent elections than those who

²⁰ Eichhorn, J & Hübner, C., 2023. *Votes-at-16 in Scotland 2014-2021*, Edinburgh: University of Edinburgh, p. 5.

²¹ Bhatti, Y. & Hansen, K., 2012. Leaving the Nest and the Social Act of Voting: Turnout among First-Time Voters. *Journal of Elections, Public Opinion and Parties*, 22(4), pp. 380-406; Bhatti, Y., Hansen, K. M. & Wass, H., 2012. The relationship between age and turnout: A roller-coaster ride. *Electoral Studies*, 31(3), pp. 588-593.

²² Plutzer, E., 2004. Becoming a Habitual Voter: Inertia, Resources, and Growth in Young Adulthood. *American Political Science Review*, 96(1), pp. 41-56.

²³ Aichholzer, J. & Kritzing, S., 2020. Voting at 16 in Practice: A Review of the Austrian Case. In: J. Eichhorn & J. Bergh, eds. *Lowering the Voting Age to 16 – Learning from Real Experiences Worldwide*. Basingstoke: Palgrave MacMillan, pp. 81-101; The Electoral Commission, 2014. *Scottish Independence Referendum: Report on the referendum held on 18 September 2014*. United Kingdom: The Electoral Commission.

were able to vote for the first time at 18, indicating a lasting positive effect on turnout.²⁴ While this limited evidence is from countries with different populations and histories to ours, it is still encouraging.

- 7.51 Keeping the voting age at 18 could be viewed as a proportionately greater unjustified age discrimination against Māori, making it an inequity under te Tiriti / the Treaty. The eligible voters of a given population – and those who turn out to vote – get to choose who represents them. A greater proportion of the Māori population is aged 16 or 17, relative to non-Māori. This means there are proportionately fewer votes to represent the entire Māori population.
- 7.52 Lowering the voting age would also broaden political representation. If 16- and 17-year-olds were given the right to vote, they would make up about 3 per cent of the eligible voting population. Letting 16- and 17-year-olds vote means that the perspectives of young people on issues that affect them – now and into the future – are more likely to be reflected and represented in parliament.

Other considerations

- 7.53 Some young people in Aotearoa New Zealand have shown strong civic engagement and participation through campaigns such as the School Strike 4 Climate and Make It 16. But we are aware that many of our young people face barriers to civic engagement including voting, and more work is needed to support them to participate.
- 7.54 Voting is an inherent right, so the decision to lower the voting age should not be conditional on other changes. We do, however, see the benefits in lowering the voting age in parallel with other changes to the electoral system that increase equity in the participation rates across groups. As discussed in **Chapter 11**, these changes include strengthening civics education, improving community engagement, and reducing other barriers to participation, particularly in communities with relatively lower turnout rates. Together, these changes give the best chance of empowering young people to exercise the right to vote fully and meaningfully.
- 7.55 Information about voting and democratic processes should be made available to young people from diverse backgrounds – such as disabled youth – in formats that are most accessible and relevant to them.
- 7.56 The Crown's responsibility to uphold te Tiriti / the Treaty makes this information essential for rangatahi Māori. If they are not supported and encouraged to participate, then there is a risk that current inequities could continue.

²⁴ Eichhorn & Hübner, above n 20.

Interaction with our other recommendations

- 7.57 The voting age is an entrenched provision of the Electoral Act, meaning it can only be changed by public referendum or by 75 per cent of parliament. We discuss our recommendations on entrenchment in **Chapter 2**.
- 7.58 In **Chapter 5**, we recommend a referendum is held on the term of parliament. If the term of parliament were extended to four years and the voting age were to stay at 18, some people would not be able to vote for the first time until they were nearly 22. In our view, a longer term would make lowering the voting age even more important.
- 7.59 Some submitters shared views about the impact of our recommendation to lower the voting age on candidate eligibility, which we discuss in **Chapter 12**. In a similar vein, changing the voting age would affect jury service eligibility as anyone who is registered as an elector is liable to serve as a juror.²⁵ While outside the scope of this review, consideration would be needed of whether 16- and 17-year-olds should be exempt from jury service if the voting age were lowered.

The Panel recommends:

- R19. Lowering the voting age to 16.**

²⁵ Juries Act 1981, section 6.

Voting rights for overseas citizens

- 7.60 Citizens who live overseas can vote,²⁶ but they are disqualified unless they return to Aotearoa New Zealand every three years.²⁷ There are some exemptions to this rule for diplomats and Defence Force members serving overseas and their families.²⁸ Overseas citizens immediately regain the right to vote upon re-entry to Aotearoa New Zealand, even if they only return for a single day.
- 7.61 An estimated 1 million New Zealanders live abroad. About 78,000 overseas votes were cast in the 2023 election, representing about 2.7 per cent of the total votes cast.

Is there a case for change?

Arguments against change

- 7.62 In our first consultation, many submitters who commented on this topic supported the current eligibility rules for overseas citizens.
- 7.63 Some submitters thought that citizens living abroad who have not visited Aotearoa New Zealand in the past three years would not be as connected with what is going on here. They argued that such people would not be directly affected by the outcome of elections, so they should not be able to unduly influence election results. They believed that it was fairer to voters who live in Aotearoa New Zealand for there to be limits on the right to vote for those living overseas.

Arguments for change

- 7.64 Most of the submitters who commented on the rules for overseas voters in our first consultation recommended extending the time overseas voters remain eligible to vote before they must return to Aotearoa New Zealand. A few submitters thought that the rule should be more restrictive.
- 7.65 Some submitters argued that the current rule was an unreasonable limit on the right of citizens to vote. They said that if a person is a New Zealand citizen, then they should be able to participate in elections, no matter where they live. This position reflects the symbolic importance of being able to vote to a person's sense of belonging to their home country. Aotearoa New Zealand also benefits in many

²⁶ Citizens must also have lived in Aotearoa New Zealand continuously for at least 12 months at some point in their life to be eligible. We discuss how these rules interact below.

²⁷ Parliament temporarily extended this timeframe to six years for the 2023 election only, due to the impact of COVID-19 restrictions on travel. The timeframe will revert to three years in December 2023.

²⁸ Electoral Act 1993, section 80(3).

ways from the links its overseas citizens provide to the wider world. Some submitters emphasised the importance of this issue given that around 1 million New Zealanders are overseas.

- 7.66 Other submitters thought the current rule may unfairly privilege the wealthy and disadvantage people who are unable to return to Aotearoa New Zealand regularly, whether for financial, family or health reasons.
- 7.67 Some submitters discussed the impacts of the COVID-19 travel restrictions. These restrictions illustrated how citizens abroad can still be affected by government policy decisions made within Aotearoa New Zealand. We heard about the emotional impact experienced by overseas citizens who felt cut off from their home community by the COVID-19 travel restrictions, which may have affected their ability to contribute to democratic processes.
- 7.68 Some other arguments that could justify change include:
- It is now easier for New Zealanders living overseas to stay connected – by keeping in touch with family and friends digitally or by following local news and politics online. Given these changes, the current rule may be an arbitrary way to assess a person’s connection to Aotearoa New Zealand.
 - Many Māori live overseas, and the current disqualification may not reflect the more enduring connection they have with Aotearoa New Zealand based on whakapapa and being tangata whenua.

Our initial view

- 7.69 In our interim report, we considered that the current overseas disqualification was too restrictive on the voting rights of citizens. We recommended that the timeframe should be extended to two electoral cycles (either six or eight years, depending on the term of parliament).

Feedback from second consultation

- 7.70 Views from our online form in our second consultation were fairly evenly divided. Some submitters who supported our recommendation echoed the arguments in our interim report. They considered that many overseas citizens remain invested in and connected to what is happening “back home”. Others thought that the current provisions were burdensome and unfair to those who cannot travel regularly. A few submitters pointed out that other countries have more permissive voting regimes for their overseas citizens.²⁹
- 7.71 Other submitters did not support extending the timeframe. They thought that overseas voters do not have enough of a stake in what happens here. They said

²⁹ For example, Canada has removed restrictions on the voting rights of overseas citizens in recent years, and similar changes to the law are underway in the United Kingdom.

that overseas voters may not be paying taxes or otherwise contributing to Aotearoa New Zealand's society. Some were sceptical that overseas citizens keep up with local news even if they have the means to do so, or that local news was sufficient to help them understand what is going on here if they don't live here.

- 7.72 One submitter raised concerns about how citizens can re-establish their eligibility with as a little as a stopover in Aotearoa New Zealand, rather than having to reside here. They thought this rule would benefit wealthy citizens and disadvantage citizens who are less financially well off. They proposed requiring an intent to return as an alternative option, if restrictions of any kind were retained.
- 7.73 A few submitters suggested alternative timeframes to what we recommended, such as nine years, while one submitter proposed removing the disqualification entirely. Another submitter proposed having dedicated representation for overseas citizens (where citizens living overseas can elect their own electorate MP rather than voting in the electorate where they last lived), as some other countries do.
- 7.74 At an engagement meeting, one attendee noted that these rules affect Māori voting rights, given the large number of Māori living in Australia.

Our final view

- 7.75 We maintain our view that the timeframe for overseas voter eligibility should be extended. The rationale that overseas citizens lose their connection to Aotearoa New Zealand over time is not sufficient to justify the current short timeframe of three years for disqualification. People have more ways than ever before to stay connected to Aotearoa New Zealand while overseas. We are not convinced that a person's relationship to their home country is likely to fade enough after three years to warrant losing their voting rights. It seems entirely reasonable that a citizen overseas would continue to be invested in and affected by government policies beyond a single electoral cycle.
- 7.76 The current rule may also be unfair to some people who, for many valid reasons including health, family and financial circumstances, may not be able to return home regularly. Having and exercising the right to vote is an important way that people can express their membership of a community, and it should not depend on the ability to afford international airfares.
- 7.77 From a te ao Māori perspective, connections to whenua for tangata whenua are powerful and draw from deep, intergenerational histories. With this perspective in mind, losing the right to political participation after only three years away from Aotearoa New Zealand seems too limiting. Māori voters living overseas may not always be able to return regularly based on their personal circumstances.
- 7.78 We recommend that overseas citizens should only lose the right to vote after they have been abroad without returning for two electoral cycles, rather than three



years. This period would be six years if the term of parliament remains at three years, or eight years if the term of parliament is extended to four years.

- 7.79 This extended timeframe would address some of the inequities in the current rule and future-proof for international crises and disasters like COVID-19. From a practical perspective, the number of people who have been away for longer than this time and who still want to vote may be relatively small. And if a person was disqualified for being away for longer than two electoral cycles, it wouldn't be permanent – their voting rights would continue to be restored as soon as they returned to Aotearoa New Zealand.
- 7.80 We considered whether this restriction should be removed entirely, giving overseas citizens the right to vote no matter how long they have been away. We concluded, however, that returning home is still an essential way of showing a commitment to Aotearoa New Zealand. While people may be able to keep up with family and current affairs from a distance, coming back allows people to reconnect in a deeper way with the people, the land and the nation.
- 7.81 We also considered the suggestion that re-establishing eligibility after being overseas should require more of a connection to Aotearoa New Zealand than simply visiting. We were concerned, however, that it would introduce greater complexity into the eligibility requirements for limited benefit, given that the more permissive timeframes we have recommended should mean that more people remain eligible for longer.

Other considerations

- 7.82 To be eligible to enrol, a person must have lived in Aotearoa New Zealand continuously for at least one year at some point in their life. This rule applies to people who are born overseas but who are New Zealand citizens by descent as well as to migrants.
- 7.83 We think it is important that a person has experience living in Aotearoa New Zealand before gaining the right to vote, even if they are already a citizen. It would be difficult to create and maintain a strong connection to this country and an understanding of its electoral system without having lived here for a meaningful length of time, even if a person has family connections and visits regularly.
- 7.84 We considered possible adjustments, such as the length of time required to live in Aotearoa New Zealand or when in a person's life it must occur. Ultimately, however, we concluded that the current rule is working well for citizens and that there is no strong case for change. We discuss our proposed changes to this rule for eligible residents below in **Voting rights for residents**.

Interaction with our other recommendations

- 7.85 We discuss the term of parliament in **Chapter 5**. If the term of parliament were extended to four years after a public referendum, the timeframe for our recommendation would be extended because it is based on electoral cycles.
- 7.86 Our proposed changes to political donations would mean that only registered electors would be able to make donations to parties and candidates. These proposals are discussed in **Chapter 13**. As a result, any changes to overseas voter eligibility would have flow-on impacts for the regulation of donations.

The Panel recommends:

- R20. Extending the time that New Zealand citizens can spend overseas without losing the right to vote to six years (or eight years if the term of parliament is extended).**

Voting rights for permanent residents

- 7.87 In the Electoral Act 1993, a permanent resident is defined as someone who resides in Aotearoa New Zealand and is not obliged to leave immediately or within a specified time.³⁰ This definition is broader than the definition of permanent resident in the Immigration Act 2009, which defines a permanent resident as someone who holds a permanent resident visa.³¹ The electoral definition includes people who only hold a resident visa, which often grants a person the right to live in Aotearoa New Zealand indefinitely if the visa conditions are met.
- 7.88 Given these differing definitions, and as noted at the beginning of this chapter, we recommend changing the Electoral Act's use of the term “permanent resident” to “resident for electoral purposes” to avoid confusion. We use this latter term in this chapter.
- 7.89 Aotearoa New Zealand is one of the few countries in the world that allows eligible residents to vote. This policy was introduced in 1975, when the eligibility

³⁰ Electoral Act 1993, section 73.

³¹ Immigration Act 2009, section 4.



requirement to be a British subject was removed.³² It arose in part so that British subjects from other countries who were already living here but who were not citizens would not lose their right to vote. Since then, immigrants to Aotearoa New Zealand have increasingly come from a much wider range of countries.

- 7.90 Like citizens, residents for electoral purposes must live in Aotearoa New Zealand continuously for at least one year before gaining the right to vote.³³ Some people may be granted residence visas before arriving in Aotearoa New Zealand. In these cases, they would still need to meet the requirement to live here for one year before being eligible to vote.
- 7.91 Residents for electoral purposes who become eligible to vote are disqualified if they spend more than 12 months overseas without returning to Aotearoa New Zealand.³⁴ They regain eligibility once they have re-established residency in Aotearoa New Zealand, as defined by section 72 of the Electoral Act.

Is there a case for change?

Issues identified

- 7.92 In our first consultation, only a few submitters commented on voting rights for residents. Views were mixed. Some submitters questioned whether the right to vote should be restricted to citizens only and if the requirement to live in Aotearoa New Zealand for one year is too short. We also heard that allowing non-citizens to vote can create a risk of other countries trying to influence election outcomes in their own interests through their overseas citizens.
- 7.93 Other submitters noted the positives of allowing residents for electoral purposes to vote, including that:
- These residents are subject to our laws and taxes and contribute to the community even if they aren't citizens, so it is fair that they should be able to be represented in parliament.
 - It encourages social integration and political participation.

³² McMillan, K., 2015. National Voting Rights for Permanent Residents: New Zealand's Experience. In: D. Acosta Arcarazo & A. Wiesbrock, eds. *Global Migration: Old Assumptions, New Dynamics*. Santa Barbara: Praeger.

³³ Electoral Act 1993, section 74(1)(b).

³⁴ Parliament temporarily extended this timeframe to four years for the 2023 election only, due to the impact of COVID-19 restrictions on travel. The timeframe will revert to 12 months in December 2023.

- Many immigrants decide to live in Aotearoa New Zealand permanently but choose not to become citizens for different reasons – for example, because their country of birth doesn't allow dual citizenship.

7.94 As already noted, the different definitions of “permanent resident” in the Electoral Act and the Immigration Act 2009 have created confusion. The Electoral Commission has recommended using a clearer term, such as “resident for electoral purposes”, in the Electoral Act.

Our initial view

7.95 While we considered that residents for electoral purposes should continue to be able to vote, we thought that the bar was set too low for how long they must live in Aotearoa New Zealand before becoming eligible. In our view, one year was not long enough to establish a sufficient connection to Aotearoa New Zealand. We recommended extending the timeframe from 12 months to one electoral cycle (that is, to three or four years, depending on the term of parliament).

7.96 We thought that the time that residents for electoral purposes can spend overseas without being disqualified should stay at 12 months, on the basis that voting rights for these residents are based on actually residing in Aotearoa New Zealand. We also adopted the Electoral Commission's suggestion to use a clearer term than “permanent resident” in the Electoral Act to avoid confusion.

Feedback from second consultation

7.97 Our second consultation revealed that many people found both the current rules for residents for electoral purposes and our recommended changes confusing. Some submitters seemed to think that a person needed a permanent resident visa to be eligible to vote. Others thought that the requirement to live in Aotearoa New Zealand for a certain amount of time only began to run *after* a person obtained the relevant visa, no matter how long they had already been in the country. There was also a lack of clarity over how residents for electoral purposes who go overseas can re-establish their eligibility. These misunderstandings have made it somewhat difficult to gauge views on our recommendations, but they do show that the rules would benefit from clarification.

7.98 Some submitters were concerned that the changes we proposed to the time that residents for electoral purposes must spend in Aotearoa New Zealand to be eligible would be unfair and discriminatory. They thought that a year was sufficient to have a stake in our society and to learn enough about our system of government to vote. Some pointed to voting as an important way for immigrants to connect with their new home and to have a voice on issues and laws affecting them. A few said extending the timeframe would send a message to residents that they were valued for their contribution to New Zealand's workforce and economy but not trusted to have input into decisions that affect them.



- 7.99 A few submitters questioned what qualified as a “sufficient connection” and whether an extended time in the country was needed to prove that connection. There were some concerns that this change would go against the trend of expanding the franchise and could diminish Aotearoa New Zealand’s standing as an inclusive democracy.
- 7.100 Other submitters supported our recommendation to extend the time requirement. They thought that one year was too short to build familiarity with Aotearoa New Zealand’s political system, culture or language. An attendee at our group meeting with organisations representing ethnic communities noted that a short timeframe creates a risk of people selling their votes or being susceptible to pressure about how to vote.
- 7.101 A few submitters proposed alternatives to our recommendation – for example, requiring a permanent resident visa to be eligible, or suggesting different timeframes for gaining eligibility ranging from two years to 10 years.
- 7.102 Some submitters thought that only citizens should be allowed to vote, arguing that citizenship demonstrates allegiance and commitment to Aotearoa New Zealand. A few submitters noted the risks of foreign interference if non-citizens are allowed to vote. Conversely, a few raised concerns that holders of temporary work visas may live in Aotearoa New Zealand long term without being allowed to vote.
- 7.103 We received less feedback on our recommendations about the time that residents for electoral purposes can spend overseas and clarifying the term “permanent resident”, but those who did comment were generally supportive. One attendee at an engagement meeting was concerned about the difference in voting rights that would result if citizens could spend six to eight years overseas without being disqualified while residents for electoral purposes could only spend 12 months overseas.

Our final view

- 7.104 We consider it reasonable for residents who live in Aotearoa New Zealand and have the right to stay here indefinitely to be eligible to vote, so long as they meet the other eligibility requirements. Granting a person the right to stay in Aotearoa New Zealand without limitation essentially invites them to make their life here.
- 7.105 Our diverse migrant communities make valuable contributions to our society, and they should continue to be able to participate in elections in Aotearoa New Zealand. If residents are paying taxes, living under our laws, and participating in our community in other ways, then they should also be able to have a say in the election of the government.
- 7.106 We have noted already that the use of the term “permanent resident” in this context is confusing. This confusion creates the risk that people – including those who hold resident visas – could be incorrectly turned away from voting or not understand that they have the right to vote here. We maintain our

recommendation that the term “permanent resident” in the Electoral Act should be replaced with a clearer term, such as “resident for electoral purposes”.

- 7.107 We considered the option of linking the electoral definition to holders of a “residence class visa”, as defined in the Immigration Act 2009, to make the eligibility requirements even clearer. We were concerned, however, that changes to immigration law could then have unintended flow-on effects for voter eligibility, particularly if the right to vote is entrenched and, therefore, has a higher threshold for amendment (as we recommend in **Chapter 2**). As part of the redrafting of the Electoral Act, we propose considering whether the language used in the electoral definition could be more closely aligned to the immigration definition without being explicitly linked.
- 7.108 We also acknowledge the confusion we heard about our initial recommendation to extend the time that a resident for electoral purposes must live in Aotearoa New Zealand to become eligible from one year to a full electoral cycle (three or four years). Many people mistakenly believed that this time would only begin to count *after* a person becomes a resident for electoral purposes. We would like to clarify that the time requirement starts from when a person first begins living here, regardless of whether they are on a temporary or resident visa at that time.
- 7.109 On that basis, we confirm our recommendation to extend the time that residents for electoral purposes must live in Aotearoa New Zealand before gaining the right to vote to three years (or four years if the term of parliament were extended). We emphasise that this extension would only affect people who are granted residency within their first three to four years in Aotearoa New Zealand. It would not create any additional time requirements for people who are granted residency after this timeframe, as shown in the scenarios below:

<i>If the term of parliament remains three years</i>		
If a person arrived in Aotearoa New Zealand with a residency class visa, they would need to live here for three years before becoming eligible to vote.	If a person moved to Aotearoa New Zealand and gained residency after only living here for two years, they would need to wait one more year before becoming eligible to vote.	If a person moved to Aotearoa New Zealand and gained residency after they had lived here for five years, they would immediately be eligible to vote on gaining residency, as they would have already met the requirement to have spent three years here.

7.110 This requirement is intended to ensure that a person has some knowledge and lived experience of Aotearoa New Zealand, including its laws, customs and politics. In our view, the current requirement of one year creates risks:

- People who are granted residency before arriving in Aotearoa New Zealand could be able to vote one year after their arrival, whether or not they are committed to staying here longer term.
- One year may not be sufficient to become adequately acquainted with the political system to be able to responsibly exercise such an important right as voting.³⁵ This knowledge includes understanding our MMP voting system, te Tiriti / the Treaty, as well as our system of representation for Māori.
- People may be more susceptible to foreign interference, including being pressured or influenced to vote a certain way, when they are new to Aotearoa New Zealand. They may still have strong ties and connections to their home country and limited knowledge of Aotearoa New Zealand's democratic system and traditions. There is a need to future-proof against the growing threat of foreign interference in elections.

7.111 Given these risks, we consider eligibility should be based on having spent three years (or four years, if the term of parliament is extended) in the country. Aligning this timeframe to the length of the electoral cycle means that all residents for electoral purposes will have seen and experienced an election before they are able to participate in one. This position reflects that while voting is a right for citizens, it is a privilege granted to residents. We see it as important and reasonable that residents should first be exposed to our democratic traditions before being granted such a significant right. Even with this change, Aotearoa New Zealand would still have one of the most inclusive systems for non-citizen voting in the world.

7.112 While we recommend extending how long citizens can spend overseas without being disqualified, we think it should remain at 12 months for residents for electoral purposes. This approach again reflects the different nature of the voting rights of citizens, which are fundamental rights, and the voting privileges of residents. Residents for electoral purposes are granted the right to vote on the

³⁵ Research is limited, but some studies have indicated that a lack of political knowledge can be a barrier to participation for new immigrants but political knowledge grows over time once an immigrant has settled in a new country. Research also suggests that immigrants may be focused on more pressing practical concerns in their first few years in a new country, even if they value electoral rights. See, for example, Barker, F. & McMillan, K., 2017. Factors influencing the electoral participation of Asian immigrants in New Zealand. *Political Science*, 69(2), pp. 139-160; Adman, P. & Strömblad, P., 2018. Political Integration in Practice: Explaining a Time-Dependent Increase in Political Knowledge among Immigrants in Sweden. *Social Inclusion*, 6(3), pp. 248-259. We talk about civics and citizenship education, including for new migrants, in **Chapter 11**.

basis that they actually reside in Aotearoa New Zealand.³⁶ By living here, they demonstrate a commitment to joining our social and political community. If they subsequently choose to live elsewhere, then their entitlement to vote no longer holds. We consider that after a year spent overseas, a person can no longer be considered to reside in Aotearoa New Zealand.

- 7.113 This underlying requirement to reside in Aotearoa New Zealand also affects how eligible residents for electoral purposes can re-establish their eligibility after being disqualified for being overseas. Unlike citizens, who can become eligible again by simply visiting Aotearoa New Zealand, residents for electoral purposes must re-establish residency here, as defined in the Electoral Act, to be entitled to vote again.³⁷
- 7.114 We acknowledge that the relationships between the provisions of the Electoral Act that collectively determine resident voter eligibility are not as clear as they could be. We propose that these rules should be clarified as part of redrafting the Electoral Act, as we have proposed in **Chapter 2**.

Interaction with our other recommendations

- 7.115 We discuss the term of parliament in **Chapter 5**. If the term of parliament were extended to four years after a public referendum, our recommendation about the time residents for electoral purposes must live in Aotearoa New Zealand to be eligible to vote would be extended because it is based on electoral cycles.
- 7.116 It's important that people who come to live in Aotearoa New Zealand have access to the information and education they need to exercise the right to vote

³⁶ Refer to the definition of “residence” or “to reside” in section 72 of the Electoral Act 1993. A key criterion of the definition is that “a person resides at the place where that person chooses to make his or her home by reason of family or personal relations, or for other domestic or personal reasons” (section 72(3)).

³⁷ To avoid confusion, re-establishing residency does *not* require a person to repeat the requirement to have lived in Aotearoa New Zealand for a certain number of years, as that requirement only needs to be met once and can be at any point in a person's life.

meaningfully. Our recommendation for stronger civics education led by and for communities (discussed in **Chapter 11**) could help to ensure that happens.

The Panel recommends:

- R21. Replacing the use of the term “permanent resident” in the Electoral Act with “resident for electoral purposes” to avoid confusion with the Immigration Act 2009.**
- R22. Keeping the time that residents for electoral purposes can spend overseas without losing the right to vote at 12 months.**
- R23. Extending the time that residents for electoral purposes must spend in Aotearoa New Zealand before gaining the right to vote to three years (or four years if the term of parliament is extended).**

Voting rights and criminal offences

- 7.117 There are three situations when a criminal offence may disqualify someone from being eligible to vote.³⁸
- 7.118 The first situation relates to prisoners. The rules for prisoner voting have changed many times since the 1850s, from all prisoners being able to vote, to no prisoners being able to vote, and several positions in between. Currently, prisoners are not allowed to vote if they are sentenced to imprisonment for life, preventive detention or prison for three years or more.³⁹
- 7.119 Second, in some cases, a person who has committed a crime may not be in prison on mental health grounds or due to an intellectual disability. This situation may occur if a person has been found unfit to stand trial, acquitted on the legal grounds of insanity, committed to a hospital or secure facility upon conviction, or is in prison and requires compulsory care or treatment. In these situations, a person loses the right to vote if they are detained in a hospital or secure facility

³⁸ UN HRC, above n 5, p. 5. The UN HRC has said that if conviction for an offence is a basis for suspending the right to vote, the period of such suspension should be proportionate to the offence and the sentence.

³⁹ Electoral Act 1993, section 80(1)(d).

for more than three years.⁴⁰ This disqualification essentially provides for consistent treatment with other offenders.

- 7.120 Finally, anyone whose name is on the Corrupt Practices List is disqualified from voting for three years.⁴¹ A person is placed on the Corrupt Practices List if they have been found guilty of a serious electoral offence, such as voter impersonation or bribery. We discuss the Corrupt Practices List and its consequences for voting rights in **Chapter 18**.

Recent history of prisoner voting in Aotearoa New Zealand

- 7.121 When the Electoral Act 1993 was passed, it had the same rules for prisoner voting as we have currently.
- 7.122 In 2010, Parliament voted to remove the right to vote for all sentenced prisoners. In 2015, the High Court declared that a blanket ban on prisoner voting was an unjustifiable limitation on the rights protected by the New Zealand Bill of Rights Act 1990.⁴² The High Court did not rule on whether the current disqualification, based on a sentence of three years or more, is inconsistent with the New Zealand Bill of Rights Act 1990.
- 7.123 The Waitangi Tribunal also considered the complete restriction of prisoner voting rights in 2020. In its report on Wai 2870, *He Aha I Pērā Ai?*, it found that the ban seriously breached Tiriti / Treaty principles of active protection and equity. The Waitangi Tribunal reached this finding because the ban disproportionately affected Māori, who are overrepresented in the prison system as a result of systemic bias and social and economic disadvantage. It also found that disenfranchisement has a wider impact than its effect on individual prisoners, impacting on their whānau and communities.
- 7.124 The Waitangi Tribunal recommended all restrictions on prisoner voting should be removed as “all Māori have a Treaty right to exercise their individual and collective tino rangatiratanga by being able to exercise their vote in the appointment of their political representatives”.⁴³
- 7.125 The blanket ban introduced in 2010 was reversed in 2020 and replaced with the current rules.

⁴⁰ Electoral Act 1993, section 80(1)(c).

⁴¹ Electoral Act 1993, section 80(1)(e).

⁴² *Taylor v Attorney-General* [2015] NZHC 1706, [2015] 3 NZLR 791. This decision was upheld by the Court of Appeal and the Supreme Court.

⁴³ Waitangi Tribunal, 2020. *He Aha I Pērā Ai? The Māori Prisoners' Voting Report*, Wellington: Legislation Direct, p. 34.

Is there a case for change?

Arguments against change

- 7.126 The current rule removes the right to vote from more serious offenders sentenced to three years or more in prison. Some submitters to our first consultation thought this rule was fair and noted that most prisoners in Aotearoa New Zealand can still vote. For the year ended 30 June 2022, nearly 90 per cent of prison sentences were for three years or less.
- 7.127 Other submitters thought that removing the right to vote was a fair consequence for criminal activity irrespective of the seriousness of the offence. Some people considered prisoners to be “outside of society” while in prison, so they should not have a say in how society is run.

Arguments for change

- 7.128 Many submitters to our first consultation supported easing, or entirely removing, restrictions on prisoner voting rights. While imprisonment involves the loss of some basic rights, most obviously freedom of movement and association, submitters in favour of change generally thought there was no justification for why the loss of voting rights should be a further part of any punishment. These submitters saw the current restrictions on prisoner voting rights as a violation of human rights and inconsistent with the New Zealand Bill of Rights Act 1990.
- 7.129 Many of these submitters noted that prisoners are affected by government decisions and continue to have a stake in the future of the country. They thought that voting may help prisoners to stay connected to their sense of citizenship and community while serving their sentence. These people considered that losing the right to vote may compound civic disengagement and negatively affect rehabilitation and reintegration into society.
- 7.130 Submitters who supported change cited a range of arguments to support their position, including that:
- Upon release, re-enrolment rates may be low among prisoners, resulting in longer-term impacts on voting habits.
 - Tying the right to vote to sentence lengths can result in unfair and arbitrary outcomes, as two people convicted of the same crime can receive different sentences depending on the circumstances.
 - Restrictions on prisoner voting are a breach of te Tiriti / the Treaty due to the disproportionate impact on Māori, as noted by the Waitangi Tribunal and others.
- 7.131 A few submitters to our first consultation suggested keeping restrictions on prisoner voting but targeting them to prisoners serving prison sentences for

particular offences. Other submitters supported removing or further reducing voting rights for prisoners.

Our initial view

7.132 In our interim report, we recommended that all prisoners should be granted the right to vote, regardless of their sentence length. We considered that this approach was most consistent with the protection of basic civil rights and supported our objectives of fairness and encouraging participation.

Feedback from second consultation

7.133 Views on prisoner voting were strongly divided in our second consultation, although the arguments on both sides were consistent with what we heard in our first consultation.

7.134 Several submitters who supported our recommendation argued that voting is a right, not a privilege. They thought the loss of this right shouldn't form part of a prisoner's punishment. Submitters noted that prisoners are still affected by the laws passed by parliament. Others commented that most prisoners will re-enter community life, and political participation could be a way of maintaining a connection to their local community. A few submitters raised the Tiriti obligations and the Waitangi Tribunal's *He Aha I Pērā Ai?* report on prisoner voting.

7.135 Many submitters who completed our online form opposed this recommendation. Most did so on the basis that they considered it appropriate that committing a serious crime should result in a loss of voting rights. They thought prisoners should have to earn that privilege again. Some submitters commented that prisoners are not contributing to society and have shown a lack of respect for the law, which they thought should disqualify them from voting. A few questioned whether prisoners have the access to information needed to make an informed vote. Some objected to the comments in the interim report about the disproportionate impact on Māori as a reason for change.

7.136 Some of these submitters opposed prisoner voting rights in general, while others thought that the current provisions, which allow prisoners serving shorter sentences to vote, were fit for purpose. One person questioned whether only people convicted of treason or terrorism, as crimes against the state, should lose their voting rights.

Our final view

7.137 We confirm our initial view that all prisoners should have the right to vote.

7.138 The New Zealand Bill of Rights Act 1990 provides for the right of citizens to vote. Voting is an inherent right that should not be removed when a person is in prison without strong justification. The law has generally moved away from the concept



of voting as a privilege and by extension the need for a person to prove their moral worth to be able to vote. What society seeks to achieve by sentencing a person to prison is fundamentally different from what it seeks to achieve through voting in elections, which upholds the principles of participation and representation. On that basis, the loss of voting rights should not generally be used as an additional form of punishment.

- 7.139 The current rule is also unfair. People may receive different sentences for the same crime, depending on a range of circumstances, which means that some people could have their right to vote affected while others do not.
- 7.140 Prisoners and their families continue to be affected by government decision-making, both during and after their sentences. It is therefore important that prisoners can still exercise the right to political participation.
- 7.141 Giving all prisoners the right to vote could support additional positive outcomes. Enrolling and voting could be an educative experience for prisoners and could contribute to their rehabilitation and reintegration by making them feel that they have a stake in the future of our society. It could help to establish positive voting habits that could be shared intergenerationally. These potential benefits could be enhanced through greater civics education and community engagement with prisoners.
- 7.142 Critically, the current rule disproportionately impacts Māori. As of June 2023, 52.7 per cent of the prison population was Māori. In 2020, the Waitangi Tribunal heard evidence that, because of systemic bias and social and economic disadvantage, Māori are sentenced to prison at a higher rate than non-Māori, are more likely than non-Māori to be given a custodial sentence, less likely to be granted leave for home detention, and more likely to be denied parole. Our Terms of Reference required us to consider how the electoral system can uphold te Tiriti / the Treaty, and from this perspective, we consider it crucial to address the impact of these inequities on voting rights.
- 7.143 We considered whether specific crimes, such as treason, should be treated differently because of the damage they seek to inflict on society. We also discussed sentences where a person is essentially removed from the community permanently. We concluded, however, that the rationale set out above still held in these circumstances.
- 7.144 The related disqualification for people with mental or intellectual disabilities who have committed criminal offences should likewise be removed. These members of our communities also have rights to political participation, as affirmed by the United Nation Convention on the Rights of Persons with Disabilities, and they could benefit from being connected to society by participating in elections.

Interaction with our other recommendations

- 7.145 We note the importance of people detained in hospitals or secure facilities having access to ways of enrolling and voting to ensure they can exercise their right to vote, as discussed in **Chapter 11**.
- 7.146 We think a different approach to voting rights is justified for people on the Corrupt Practices List because corrupt practices specifically target the integrity of the electoral system. We discuss our recommendation on this issue in **Chapter 18**.

The Panel recommends:

- R24. Granting all prisoners the right to vote.**



8. Enrolling to Vote

- 8.1 Before a person can vote, they must enrol in an electorate.¹ This is done by filling out an enrolment form, either online, by post, or in person. Since the 2020 election, enrolment can happen any time up to and including election day.
- 8.2 People can only be enrolled in one electorate at a time.² A person must enrol in the electorate that they have most recently lived in for at least a month.³ If they have never lived in one electorate for at least a month, then it is the electorate in which they last lived.⁴ People who may not have a regular place of residence can enrol at the last residential address they had, even if it was some time ago, or where they spend most of their time.⁵
- 8.3 Good enrolment processes protect the integrity of the voting process and the wider electoral system. Enrolment is a way to check that people are eligible to vote and registered in the right electorate. It also provides a way to detect if people are abusing the voting system – for example, by voting multiple times.
- 8.4 The principles underpinning enrolment – that it is accurate, accessible and accountable, while also protecting privacy – are enduring, while the methods and process involved may change over time.
- 8.5 In this chapter we discuss whether changes should be made to the enrolment process, including whether it should remain compulsory to enrol and whether enrolment should be automatic or more digitised. We also discuss the Māori electoral option.

¹ Electoral Act 1993, section 60.

² Electoral Act 1993, section 75.

³ Electoral Act 1993, section 74(c)(i).

⁴ Electoral Act 1993, section 74(c)(ii).

⁵ Providing enrolment for people experiencing homelessness is a right guaranteed under the International Covenant on Civil and Political Rights (ICCPR). The *General comment no. 25, The right to participate in public affairs, voting rights and the right of equal access to public service (article 25)* UN Doc CCPR/C/21/Rev.1/Add.7 (27 August 1996) states at p. 5 that “if residence requirements apply to registration, they must be reasonable, and should not be imposed in such a way as to exclude the homeless from the right to vote.”

Compulsory enrolment

- 8.6 Compulsory enrolment was introduced for general electorates in 1924 and for Māori electorates in 1956. Enrolment is compulsory for everyone who is eligible, except for New Zealand citizens and residents for electoral purposes living overseas who can choose to enrol.⁶ It is a criminal offence to knowingly and willingly fail to enrol, though in practice the offence is not prosecuted.⁷

Is there a case for change?

Issues identified

- 8.7 The idea behind compulsory enrolment is that it is reasonable, in the interests of facilitating a healthy democracy, for the law to require those eligible to enrol. At the 2023 election, 94.7 per cent of estimated eligible voters were enrolled.
- 8.8 Making enrolment compulsory helps ensure the electoral roll is accurate and complete, which enables electoral officials to administer elections and to prevent and detect electoral manipulation. Enrolment information is also used for other purposes, such as jury selection, political campaigning, and health and social science research, providing additional benefits to having comprehensive and up-to-date electoral rolls. We discuss access to electoral rolls in **Chapter 16**.
- 8.9 It is possible that compulsory enrolment may encourage people to enrol who would not do so otherwise, even if it is not enforced. The low penalties for failing to enrol and the light touch approach to enforcement mean it is not punitive in practice. The thinking is that a more punitive approach could inadvertently discourage participation.
- 8.10 In our first consultation, many submitters who answered our question about the enrolment process supported the status quo. We heard from a few submitters who took the view that enrolling to vote should be a choice. They thought that the right to vote is a fundamental human right that should be exercised freely rather than treated as an obligation to be enforced.⁸ Some people may find the requirement to enrol to be an imposition by the government on their freedom to make that choice.

⁶ Electoral Act 1993, section 82.

⁷ Electoral Act 1993, section 82(5). The maximum fine is \$100 for the first conviction and \$200 for any subsequent conviction. Enrolling means a voter is not liable for prosecution for their earlier failure to enrol.

⁸ The international and domestic legal framework for the right to vote is discussed in **Chapter 1**.

- 8.11 Other people noted that being enrolled does not mean that a person will vote, so compulsory enrolment may not result in higher turnout rates. Some submitters called for greater enforcement of compulsory enrolment.

Our initial view

- 8.12 In our interim report, we recommended retaining compulsory enrolment as an appropriate and reasonable requirement. We considered the issues identified and did not see a strong case for change.

Feedback from second consultation

- 8.13 We received limited feedback on compulsory enrolment – a few submitters supported compulsory enrolment while a few others did not.
- 8.14 The arguments we heard in our second consultation were largely the same as those from the first consultation. Submitters opposing compulsory enrolment considered that people should not be compelled to act for the benefit of the political system and that compulsory enrolment is inconsistent with voluntary voting. Aside from a small number of these views, there was no strong support for removing compulsory enrolment.
- 8.15 Other views expressed were that the lack of enforcement makes compulsory enrolment ineffective.

Our final view

- 8.16 Our final view is that compulsory enrolment should be retained. It could be argued that eligible voters have a civic duty to participate in elections, and requiring people to enrol to vote is a reasonable step for the state to ask of its citizens and those given the right to reside here permanently.
- 8.17 Compulsory enrolment has other benefits. It contributes to having complete and accurate electoral rolls, which supports the effective administration of elections, the calculation for the Māori electorates, and the integrity of the electoral system.
- 8.18 We also considered whether the lack of enforcement of compulsory enrolment presents a problem. There are good reasons for not strictly enforcing compulsory enrolment, including that strict enforcement may negatively impact people's experience of the electoral system. The symbolic power of the law means there is value in making enrolment a legal requirement even if it is not strictly enforced.
- 8.19 In **Chapter 18**, we recommend an overhaul and consolidation of all electoral offences to ensure they are still fit-for-purpose. This process would provide an opportunity to consider whether the offences and penalties relating to compulsory

enrolment are still appropriate. In general, we consider the penalties should be kept low for the reasons above.

The Panel recommends:

R25. Retaining compulsory enrolment.

Compulsory voting

8.20 Although enrolment is compulsory in Aotearoa New Zealand, it is not compulsory to vote. In some countries that have compulsory voting, such as Australia, people are only required to attend a polling place and they can choose to cast an informal ballot.⁹

Is there a case for change?

Issues identified

- 8.21 Some people see voting as a civic responsibility that comes with the rights of citizenship. Voting is important to ensure that government is based on broad and equal representation of its citizens. Some consider that by making participation mandatory, compulsory voting can support the legitimacy of election results and our democratic system more broadly.
- 8.22 On the other hand, some people think that compulsory voting infringes on democratic freedoms. They argue that people should have the right to choose not to vote. Some people may have good reasons for not wanting to vote – for example, they may not trust the government, or they may not like any of the candidates or parties.
- 8.23 International evidence shows that voter turnout is higher in countries that have compulsory voting. Submitters to our first consultation who supported voting being mandatory considered it would improve participation, citing Australia as an example, and some noted it may also help to reduce inequities experienced by communities with lower turnout.¹⁰

⁹ An informal ballot is a ballot paper that has not been completed correctly.

¹⁰ Communities that have lower turnout are often marginalised in other ways. We discuss improving voter participation in **Chapter 11**.

- 8.24 That said, Aotearoa New Zealand already has comparably high voter turnout without voting being compulsory. Voter turnout in the 2023 election was just over 78 per cent of enrolled electors.
- 8.25 In other countries that have compulsory voting, people can often choose to submit a blank or informal ballot. Introducing compulsory voting could result in more informal ballots and more poorly informed or random votes.¹¹

Our initial view

- 8.26 In our interim report, we supported retaining voluntary voting. We noted the improvement in voter turnout in recent elections and the importance of freedom of choice as reasons not to adopt compulsory voting.

Feedback from second consultation

- 8.27 We received only a few submissions that discussed voluntary voting. Amongst these, slightly more submitters supported voluntary voting than opposed it. The arguments on both sides largely mirrored what we heard in our first consultation.
- 8.28 A few submitters thought compulsory voting could increase distrust among some communities, including Māori who may have lower trust in government arising from breaches of te Tiriti o Waitangi / the Treaty of Waitangi (**te Tiriti / the Treaty**). Others thought that education and appealing candidates and policies were more likely to encourage turnout than compulsion.
- 8.29 Support for compulsory voting centred on lifting voter turnout leading to a stronger democracy and more legitimate parliament.

Our final view

- 8.30 We still consider that requiring people to vote may be a step too far, as it constrains freedom of choice. Compulsory enrolment does not infringe freedoms to the same extent, especially if our recommendations for increased privacy of roll information are adopted. From the perspective of te Tiriti / the Treaty, compulsory voting may represent an overstep of kāwanatanga by mandating Māori participation in this sphere.
- 8.31 Compulsory voting is often promoted as a way to improve voter turnout. However, it would be a large shift from our current approach of encouraging participation.

¹¹ In the 2022 Australian election, 3.4 per cent of votes cast for the Senate and 5.1 per cent of votes cast for the House of Representatives were informal votes. By comparison, in the 2020 New Zealand election, 0.7 per cent of party votes and 2.0 per cent of candidate votes were informal.

We do not think current voter-participation rates justify such a big change to our electoral system and our political culture.

The Panel recommends:

R26. Retaining voluntary voting.

Māori electoral option

- 8.32 The Māori electoral option allows people of Māori descent to choose whether to enrol on the general roll or the Māori roll.¹² Only people of Māori descent can enrol on the Māori roll and vote in the Māori electorates.
- 8.33 The Māori electoral option plays an important role in determining the number of Māori electorates (and therefore the number of Māori electorate MPs in parliament) and the boundaries of those electorates. The number of Māori electorates reflects the choice that Māori electors make between the Māori and general rolls. For example, if more Māori electors choose to be on the Māori roll, there may be more Māori electorates, and if more Māori electors choose to be on the general roll, there may be fewer Māori electorates.
- 8.34 The Māori electorates are constitutionally significant and have particular importance for Māori. The 1986 Royal Commission on the Electoral System noted:¹³

Although they were not set up for this purpose, the Māori [electorate] seats have nevertheless come to be regarded by Māori as an important concession to, and the principal expression of, their constitutional position under the Treaty of Waitangi. To many Māori, the seats are also a base for a continuing search for more appropriate constitutional and political forms through which Māori rights (mana Māori in particular) might be given effect.

¹² Electoral Act 1993, sections 76-78.

¹³ Royal Commission on the Electoral System, 1986. *Report of the Royal Commission on the Electoral System*, Wellington: House of Representatives, p. 86.

8.35 Similarly, the Waitangi Tribunal subsequently commented:¹⁴

The Māori [electorate] seats have come to be regarded by many Māori as the principal expression of their constitutional position in New Zealand. They have been seen by Māori as an exercise, although a limited one, of their tino rangatiratanga guaranteed to them under the Treaty of Waitangi.

8.36 Parliament recently changed the law through the Electoral (Māori Electoral Option) Legislation Act 2022, which came into effect in March 2023. Previously, Māori could only choose which roll to be on when they first enrolled and during a four-month period every five to six years (aligned to the timing of the national census). Now, the Māori electoral option can be exercised at any time except for the three months before election day for a general or local election, or after the notice of vacancy has been published ahead of a by-election in that particular electorate.¹⁵

8.37 The Electoral Commission is required to send information to Māori electors about how to exercise the Māori electoral option ahead of general and local elections (but before the enrolment update campaign, which is discussed below in **Modernising enrolment services**).¹⁶ The Electoral Commission's first information campaign under the new rules began in April 2023, and Māori electors were able to change rolls until mid-July 2023, ahead of the close-out period for the 2023 general election.

8.38 The Māori electoral option is also relevant to local body elections that have a Māori ward or constituency. In recent years, many Māori wards have been established at the local government level. If a person of Māori descent is on the Māori roll, then they vote in both a Māori electorate for the general election and in their local Māori ward for local body elections. Currently, a person of Māori descent cannot be on different rolls for general and local elections at the same time – they can either be on the Māori roll for both or the general roll for both.

Is there a case for change?

8.39 As noted above, parliament changed the rules for the Māori electoral option in 2022. We take these new rules as our starting point for considering whether further changes are needed.

Issues identified

8.40 The recent law change sought to address the most commonly raised issue relating to the Māori electoral option by providing greater flexibility on when the option

¹⁴ Waitangi Tribunal, 1994. *Maori Electoral Option Report*, Wellington: Brooker's Wellington, p. 11.

¹⁵ The exception ahead of by-elections does not apply in the lead up to local by-elections, due to the number and frequency of these elections.

¹⁶ Electoral Act 1993, section 89DA.

Earlier recommendations

2011, 2014, 2017 and 2020 Electoral Commission post-election reports

In its 2011 and 2014 post-election reports, the Electoral Commission recommended allowing voters of Māori descent to change roll type once each electoral cycle. In its 2017 post-election report, the Electoral Commission recommended that voters of Māori descent should be able to exercise their choice of roll at any time, while it recommended a review of the provisions limiting the exercise of the Māori electoral option in its 2020 post-election report.

2014 Justice Select Committee

The Justice Select Committee recommended allowing voters of Māori descent to change roll type once each electoral cycle.

can be exercised. This issue had been regularly identified as a substantial barrier to participation.

- 8.41 Many submitters to our first consultation supported these changes and did not raise further issues. However, the bill was still under consideration by parliament when our engagement closed, so submitters to our first consultation did not have an opportunity to comment on the final law as enacted.
- 8.42 The main change to the bill in its final stages was to restrict the exercise of the Māori electoral option in the three months before general and local elections (in addition to the period before a by-election). Proponents of this change argued it was necessary to prevent tactical roll-switching, which is the idea that voters might change rolls to vote in electorates where a contest is considered tight. For by-elections in particular, by switching rolls a person could become eligible to vote in an election that they would not otherwise have been eligible for.
- 8.43 However, the limit on changing between rolls in the three-month period before general and local elections may mean some people are unable to exercise the Māori electoral option. Data has shown that many more Māori electors seek to exercise the option closer to an election, when voter awareness is higher, than at other times. For example, 24,000 people requested to exercise the option outside the option period in 2020, an election year, compared with about 5,500 people total across 2018 and 2019 (non-election years).¹⁷ Of these requests in 2020, over 15,000 were in the three-month period immediately before election day. In this

¹⁷ Electoral Commission, 2021. *Report of the Electoral Commission on the 2020 General Election and referendums*, Wellington: Electoral Commission, p. 56. These figures do not include people who were able to change rolls during the four-month option period in 2018.

way, barriers to participation will persist even though the period for exercising the option has been greatly extended.

- 8.44 In addition, some people may want to be on one roll for general elections and another for local elections. As more local bodies create Māori wards, voters of Māori descent will have more occasion to exercise the option ahead of local elections. The recent law change allows eligible voters to change rolls between general and local elections. However, the current rules do not allow them to be on different rolls for different elections simultaneously. This means they would have to actively change their roll choice ahead of each election.

Our initial view

- 8.45 Our initial view was that the recent law change did not go far enough. We recommended that Māori electors should be able to change rolls throughout the voting period for general and local elections, while keeping the close-out period ahead of by-elections. We were concerned that the restriction before general and local elections would prevent Māori electors from updating their roll choice exactly when they are most likely to be engaged with elections. We also proposed better education and engagement about the Māori electoral option.
- 8.46 In addition, we recommended that people of Māori descent should be able to be on one roll for general elections and a different roll for local elections at the same time, if they choose. There are many reasons why people of Māori descent may want to be on different rolls for national and local elections, and the current system creates an extra administrative barrier to voting for some people of Māori descent.

Feedback from second consultation

- 8.47 Views were divided on our recommendation to remove more restrictions on when the Māori electoral option could be exercised. Some submitters supported our recommendation to have the Māori electoral option continuously available. They noted that it would remove barriers to participation and support the ability of Māori electors to exercise tino rangatiratanga.
- 8.48 Most submitters to our online form opposed our recommendation to extend the timeframe for the Māori electoral option. Some of these submitters were concerned that tactical roll-switching could distort election outcomes. A few thought a longer time was not necessary as people did not frequently change their choice of roll or that it was too soon to assess the impact of the recent law change. Others raised potential administrative challenges and the impact on the boundary review process, including the proportionality of representation. Some submitters opposed the Māori electoral option generally because they viewed it as unequal treatment.
- 8.49 A few submitters proposed alternative timeframes – for example, up to one month before an election, or until the day before advance voting starts.



- 8.50 Some submitters supported allowing Māori voters to be on different rolls for general and local elections simultaneously, noting that it would provide greater flexibility. One submitter noted that while it is now possible for voters to change rolls between general and local elections, the process is not easy. A few submitters opposed this recommendation, mostly on the basis that they did not support the existence of the Māori electorates.
- 8.51 The Electoral Commission, Local Government New Zealand, and the Department of Internal Affairs raised the potential operational and cost implications of allowing people to be on different rolls simultaneously. In particular, the Electoral Commission thought that a new enrolment IT system could potentially be needed to implement this recommendation.

Our final view

- 8.52 While the recent law change helps to address a long-standing issue for Māori voters, we still hold the view that the exception ahead of general and local elections is an unnecessary barrier and should be removed. This change would allow Māori voters to change rolls throughout the voting period, including on election day, for general and local elections.
- 8.53 The period just before an election is when people are most likely to be engaged in their choice of roll. In the three months immediately before the 2023 election, more than 20,000 people requested but were unable to exercise their choice to change rolls. This figure indicates that this barrier to participation has not been resolved by the recent law change.
- 8.54 The main argument we heard against removing the close-out period ahead of general and local elections was the risk of tactical roll-switching. There is no evidence that tactical roll-switching occurs since it has not been possible to date. Māori electors were previously only able to change rolls once every five to six years and are still prohibited from changing rolls close to an election. If the restrictions were removed, we think the risk of tactical roll-switching is minimal – one study has indicated that only a very small fraction of Māori voters responds to strategic incentives, such as influencing the outcome of a close election, to change rolls.¹⁸ And even if there were some tactical roll-switching, we consider it is unlikely to have any significant impact. The number of Māori electors who changed rolls before the 2023 election was under 15,000, compared with over 3.5 million people who were enrolled. The impact on overall representation would also be diminished if our recommendation to abolish the one-electorate seat threshold was adopted.
- 8.55 We do think there is a case for keeping the close-out period before by-elections. In general, we consider that by-elections should be a like-for-like exercise as far as

¹⁸ Riambau, G., 2020. Māori in New Zealand: voting with their feet? *Political Science*, 72(2), pp. 93-117.

possible, where the same voters who elected a representative in the general election choose a new representative in a by-election.

- 8.56 We also heard concerns about the administrative implications and the impact on the boundary review process if there were greater flexibility to exercise the Māori electoral option. The Electoral Commission has previously advised that it would be feasible to allow Māori voters to change rolls in the advance voting period and on election day for general elections. While the change may lead to more special votes, the Electoral Commission did not anticipate it would have any significant operational or financial impact.¹⁹ And while allowing Māori electors to change rolls at any time could have some marginal impact on the population size within electorates, there are in any case always fluctuations in electorate populations between boundary reviews (for example, from people moving).²⁰ The average number of people who changed rolls before the 2023 election (either from the Māori to the general roll or the general roll to the Māori roll) was just over 2,000 people per Māori electorate.
- 8.57 We consider that any potential negative impacts, which we consider small, are outweighed by the benefits of allowing Māori voters to exercise their roll choice at any time. This change would remove a barrier to participation and support Māori rights to political participation.
- 8.58 To be as effective as possible, the greater flexibility to exercise the Māori electoral option should be accompanied by improved information and engagement. The available evidence indicates that many people of Māori descent need to be made aware of and understand the option, and how it affects the number of Māori electorates, to be able to exercise it meaningfully.²¹ Removing the pre-election restrictions would mean engagement could be done as part of enrolment update campaigns.
- 8.59 We also maintain our recommendation that people of Māori descent should be able to be on one roll for general elections (for example, the general roll) and a different roll (for example, the Māori roll) for local elections if they so choose. With the recent growth of local Māori wards around the country, this choice has become increasingly relevant for Māori voters.

¹⁹ Ministry of Justice, 2021. *Regulatory Impact Statement: Timing and frequency of the Māori Electoral Option*, Wellington: Ministry of Justice.

²⁰ Such population changes can be quite major. For example, the Christchurch East electorate saw its population reduce significantly after the 2010 and 2011 Canterbury earthquakes – between Census 2006 and Census 2013, its population decreased by 16.6 per cent. As a result, its boundaries were expanded for the 2014 election.

²¹ Greaves, L., Hayward, J., Barnett, D., Crengle, S. & Clark, T.C., 2023. The predictors of Māori electoral roll choice and knowledge: rangatahi Māori voter enrolment in a representative New Zealand youth survey. *Kōtuitui: New Zealand Journal of Social Sciences Online*, 18(3), pp. 290-309.

- 8.60 There may be many reasons why voters of Māori descent may want to be on different rolls for national and local elections. We consider that allowing them to make separate roll choices for national and local elections, rather than having to update their roll choice between elections, will remove an administrative barrier. In this way, the Crown can uphold its Tiriti / Treaty obligations to actively protect Māori citizenship rights and participation by ensuring Māori have the freedom to choose rolls.
- 8.61 We acknowledge the Electoral Commission's comments that implementing this recommendation would require significant change to the current enrolment system, including potentially a new enrolment IT system. However, we do not consider these challenges and costs are a reason in themselves not to recommend this change, which we think would improve services to voters.

Other considerations

- 8.62 During our first consultation, we heard suggestions that Māori should be able to enrol in the rohe where they whakapapa to instead of where they currently live. Some Māori may hold a stronger connection to their tūrangawaewae and may want to have a say in who represents that community. Likewise, some Māori may leave their rohe and want to remain on the Māori roll but may feel that doing so infringes on the rights of mana whenua in the area where they reside. A few submitters endorsed further work on this idea in our second consultation.
- 8.63 We think this option is an interesting proposal to give effect to te Tiriti / the Treaty, but our view is that there are complex matters of tikanga as well as practical administration that would need to be worked through. This review does not have the means to consider these issues in appropriate depth, but we see this as an area that could benefit from further exploration by people with expertise in tikanga and electoral administration in the future.
- 8.64 In our first consultation, we also heard from people who thought that Māori should be automatically enrolled on the Māori roll if they have not stated which roll they want to be on. These submissions were premised on the idea that Māori would be enrolled on the general roll by default unless they "opt out" in favour of the Māori roll.
- 8.65 People of Māori descent are given the option to choose between rolls when they first enrol. The enrolment form has been updated so that it is not possible for a person to identify as Māori when enrolling and then not choose a roll. We therefore think this issue has been addressed at an operational level. We discuss automatic enrolment more generally below and our view that it is important that people of Māori descent get to make a choice about which roll they want to be on.

Interaction with our other recommendations

- 8.66 In **Chapter 7**, we recommend lowering the voting age to 16. This would mean 16- and 17-year-olds of Māori descent would get to choose whether to go on the Māori



roll or the general roll when enrolling. As noted above, education will be vital to ensuring that rangatahi Māori have the information they need to understand the Māori electoral option.

- 8.67 In **Chapter 11**, we recommend funding for community-led initiatives to support voter engagement and participation. These initiatives could include enrolment outreach efforts and education about the Māori electoral option.

The Panel recommends:

- R27. Allowing the Māori electoral option to be exercised at any time up to and including election day for general and local elections, while retaining the current prohibition ahead of by-elections.**
- R28. Allowing anyone of Māori descent to be registered simultaneously on one roll for general elections and a different roll for local elections.**
- R29. Improving education and engagement about the Māori electoral option.**

Modernising enrolment services

- 8.68 Currently, a person must complete and send an enrolment form to the Electoral Commission either by post, in person or online, including when they move address.²² For some, this process may be a barrier to participation.
- 8.69 Since 2019, people have been able to enrol or update their enrolment details online with valid proof of identity.²³ The number of people using digital services for enrolment has rapidly increased in recent years, driven by changing preferences and the decline of post. In our first consultation, the Electoral Commission told us that 37 per cent of all monthly enrolment transactions are now digital.
- 8.70 While digital enrolment services have grown, many enrolment processes are still required by law to be conducted by post. The Electoral Commission must provide written notice by post confirming a person's registration or any changes to their

²² Electoral Act 1993, section 83. There are special provisions to make the enrolment process more accessible for certain people: people, including those with a disability or those outside of Aotearoa New Zealand, may enrol through a representative (sections 84-86) and prison managers are required to facilitate enrolment for eligible prisoners if requested (sections 86A-86B).

²³ New Zealand driver's licence, New Zealand passport, or RealMe verified identity.

Earlier recommendations

2017 and 2020 Electoral Commission post-election reports

After the 2017 and 2020 elections, the Electoral Commission made recommendations relating to automatic enrolment and digital enrolment services. For example, it recommended:

- considering whether a new enrolment could be actioned by matching information held by other government agencies (“data-matching”) and whether new enrolments or enrolment updates could be confirmed electronically
- being able to use electronic communications for its enrolment update campaign and extending the current data-matching provisions to include email addresses and phone numbers.

These changes would allow the Electoral Commission to encourage enrolment by text or email. The proposal to extend the data-matching provisions to include email addresses and phone numbers was supported by the Privacy Commissioner in 2021, as part of a regular review of these provisions.

2014 Justice Select Committee

In its 2014 post-election report, the Justice Select Committee recommended making promoting voter enrolment a whole-of-government priority with government agencies working together to facilitate enrolment.

enrolment details.²⁴ It must also run an enrolment update campaign before every general election, where it contacts each enrolled voter to check their details are correct before voting begins.²⁵ This campaign must be delivered by post.

8.71 The number of people enrolling and updating closer to election day has grown in recent years. The number of electors added to the roll after writ day increased from 56,971 in 2011 to 185,367 in 2020.²⁶ During the 2020 election, there were:

- 130,000 digital enrolments during the voting period
- 90,000 enrolment forms issued at advance voting places
- 80,000 enrolment forms completed at voting places on election day.

²⁴ Electoral Act 1993, sections 89A and 94A.

²⁵ Electoral Act 1993, section 89D.

²⁶ Electoral Commission, above n 17, p 39.

Automatic enrolment

Is there a case for change?

Issues identified

- 8.72 At the 2023 election, over five per cent of estimated eligible voters, or about 200,000 people, were not enrolled despite enrolment being compulsory.
- 8.73 Automatic enrolment would allow public officials to enrol an eligible person with no action or consent required by that person. It can be implemented in a range of ways, including through data-matching. The Electoral Commission already uses data-matching with information held by other government agencies to identify and encourage eligible people to enrol or to update their enrolment details.²⁷ However, it cannot automatically take these actions on their behalf.
- 8.74 Many submitters who commented on enrolment during our first consultation supported automatic enrolment. In some ways, automatic enrolment can be seen as a logical extension of compulsory enrolment. If enrolment were automatic, people would no longer have to enrol themselves. Removing this barrier could improve enrolment rates, particularly for highly mobile populations – for example, students and people experiencing housing insecurity – as well as people who have low literacy or limited digital access.
- 8.75 Māori also tend to be a highly mobile population. We heard through our first consultation that keeping enrolment details up to date can be challenging and may be a contributing factor in Māori enrolment rates. Automatic enrolment could alleviate some of this burden and ensure that more Māori are enrolled with up-to-date details.
- 8.76 However, automatic enrolment raises risks relating to consent, privacy and data protection, as information people have provided for other purposes could be used to enrol them without their agreement. Some people may feel that this approach is overreach by the state.
- 8.77 Automatic enrolment would impact how people exercise the Māori electoral option. Anyone who is of Māori descent decides when they first enrol whether to register for the general roll or Māori roll. Māori electors who move between electorates may also wish to change between the Māori and general roll when they move. If people are enrolled or have their enrolment details updated automatically, there is no clear way to ensure that those who are eligible for the Māori electoral option get the opportunity to make their choice before being

²⁷ Electoral Act 1993, section 263B.

enrolled. Automatic enrolment raises issues relating to Māori data sovereignty more broadly and whether Māori have appropriate oversight of their data that is held by the Crown.

- 8.78 Introducing automatic enrolment would create many other implementation issues to work through. For example, some people have multiple addresses, and it could be difficult to determine which address should be used for enrolment purposes.

Our initial view

- 8.79 In our interim report, we did not recommend adopting automatic enrolment due to concerns about consent and data protection and the impact on the exercise of the Māori electoral option. We noted that coordinated government action could help improve enrolment outcomes.

Feedback from second consultation

- 8.80 A few submitters expressed support for automatic enrolment. They said it could help to address equity and access issues that manual enrolment can create in some circumstances (for example, people with low literacy or lack of digital access). They also considered the privacy concerns were not insurmountable, especially as data sharing across government was managed successfully now and the purpose is in the public interest. One submitter specifically supported automatic enrolment as a way to improve Māori enrolment rates, noting issues with relying on post for people who frequently change address.
- 8.81 During our second consultation, we met with the Office of the Privacy Commissioner, which noted that people should always be informed about how their data is being used and provide consent. It raised potential risks if automatic enrolment were adopted – for example, if young people were automatically enrolled when their parent was on the unpublished roll.

Our final view

- 8.82 On balance, as in our interim report, we do not recommend adopting automatic enrolment. While we acknowledge the potential benefits to participation, we are concerned about the use of personal data for enrolment purposes without free and informed prior consent. Automatic enrolment could also constrain the exercise of the Māori electoral option. Several technical issues would need to be worked through to ensure the accuracy of the rolls would be maintained.
- 8.83 We were not persuaded by feedback that because government already uses data-matching, that justifies its use in these particular circumstances. With other changes to make enrolment as easy as possible, such as allowing same-day enrolment up to and on election day, we think the risks relating to consent, data protection and implementation outweigh the benefits. Enrolment, when done by an individual or with support, also has an educative function that may be lost if it



is done by the state rather than keeping people responsible for enrolling themselves.

- 8.84 We do, however, think there are other opportunities to improve enrolment outcomes. We recommend an all-of-government approach to encourage and support people to enrol, including when accessing other government services. For example, this approach could include providing enrolment forms at government offices or having a tick-box option on other government forms to share a person's details with the Electoral Commission to receive more information about how to enrol.

The Panel recommends:

- R30. Adopting an all-of-government approach to encourage and support people to enrol, including when accessing other government services.**

Digital enrolment services

Is there a case for change?

Issues identified

- 8.85 Given changing voter preferences and the prevalence of technology, the Electoral Commission has questioned whether more enrolment correspondence – in particular, enrolment confirmations and the enrolment update campaign – can be sent digitally.²⁸ In its submission during our first consultation, the Electoral Commission outlined a range of enrolment transactions where digital correspondence could be used in place of post with varying levels of risk – for example, when an elector is only changing their name, or when they move address within the same electorate.
- 8.86 Submitters to our first consultation did not comment on this topic in detail, but some expressed a general preference for more online enrolment services and less reliance on post. Others noted the need to retain postal options as some people still rely exclusively on post.
- 8.87 The enrolment process is an important way of protecting the accuracy and integrity of the electoral rolls. The main challenge with using digital correspondence for enrolment purposes is the need to verify residence. A person

²⁸ See, for example, Electoral Commission, above n 17, pp. 44-46.

needs to be registered in the electorate where they currently reside to vote for electorate Members of Parliament (**MPs**).

- 8.88 Sending enrolment correspondence by post – whether an enrolment confirmation or as part of the enrolment update campaign – seeks to confirm that the person lives at the address where they have registered. If the correspondence cannot be delivered, the person is placed on the dormant roll.²⁹ Some communities that are highly mobile may be disproportionately impacted by this approach.
- 8.89 While many people now prefer digital services, some communities do not have regular or reliable internet access – many of these are rural or remote. Enrolment services still need to meet the needs of these communities to support access and participation.

Our initial view

- 8.90 In our interim report, we noted that it is inevitable that enrolment processes will need to become increasingly digital. However, we found issues with identifying an alternative system that would still allow a person's residence to be verified easily and accurately. We asked for feedback on this issue during our second consultation.

Feedback from second consultation

- 8.91 A few submitters to our second consultation agreed that digital enrolment needed more consideration, but they did not provide any suggestions on how it could be addressed. One submitter noted that the current method of relying on post does not strike the right balance between accuracy and accessibility.
- 8.92 A few submitters proposed ways that residence could be verified in a digital enrolment system. Suggestions included allowing digital correspondence for people with a RealMe verified identity or providing other proof of residence (such as a bank statement or utility bill). One submitter suggested a high trust model with clear information about offences and fines for providing false information. Another submitter supported giving the Electoral Commission more flexibility over which methods it uses.
- 8.93 One submitter thought that, given the wider interests of government in having up-to-date residence information, how to collect this information should be part of wider work. One submitter noted that having to provide proof of residence would create a barrier, especially for groups that already have lower participation rates.

Our final view

- 8.94 All enrolment processes must balance accessibility, protection of privacy, and the integrity of the system. Given changing preferences, we think it is inevitable that

²⁹ Electoral Act 1993, section 89G.

enrolment processes will need to become increasingly digital, while preserving paper-based options for those who need it. The cost of postage will also continue to rise, making enrolment services less affordable, and some communities will have diminishing access to postal services.

- 8.95 Adapting to changing preferences will help ensure the electoral system is practicable and enduring. From a future-proofing perspective, there is value in embedding a technology-neutral approach in electoral law. It would also increase resilience, particularly in the face of risks like displacement caused by climate impacts.
- 8.96 That said, we have found issues with developing a more fit-for-purpose approach to verifying residence for enrolment purposes. The diminishing use of post means that this method may become more ineffective over time, particularly as there is no guarantee that the Electoral Commission will be notified if enrolment correspondence cannot be delivered to someone who has moved. However, alternative approaches, which require a person to provide proof of residence in other ways, could create significant administrative barriers that may discourage or even prevent people from enrolling.
- 8.97 While we sought feedback on this issue during our second consultation, we did not find any clear solutions. How to verify a person's address or location as postal services decline is a broad question that needs wider government consideration. That said, it does present a particular problem for the electoral system as the enrolment verification process relies heavily on the postal system to ensure that electoral rolls remain accurate and up to date. To our knowledge, a satisfactory alternative does not yet exist. Any alternatives that do exist would create undue accessibility barriers.
- 8.98 While we have not been able to identify a solution, we do set out some principles that should guide any future approach. There needs to be a balance between ensuring the electoral rolls are accurate and people are enrolled in the correct electorate, and having enrolment processes that are easy, accessible and flexible. Any changes to this process need to be consistent with the approach taken to verifying same-day enrolments, which have enabled improved participation. There may also be equity issues for some communities, such as Māori, that would need to be examined before any changes were proposed.

Other considerations

- 8.99 One submitter to our second consultation thought identification should have to be provided to enrol. As we noted above, people enrolling online must have a New Zealand driver's licence, a New Zealand passport, or a RealMe verified identity. People enrolling without providing identification must declare that the information they have provided is correct, and giving false or misleading information is a criminal offence under the Electoral Act. The Electoral

Commission also has many checks built into the processing of enrolment applications to ensure applicants are eligible, and to detect fraud.

- 8.100 Given we have not heard any evidence of widespread voter fraud, we consider these safeguards are sufficient. We are aware that more stringent identification requirements have been shown to create barriers to participation in other countries.

Interaction with our other recommendations

- 8.101 Many enrolment processes use personal data, which means robust methods need to be in place to protect privacy. The Electoral Commission must handle personal information in accordance with the Privacy Act 2020. The Office of the Privacy Commissioner regularly reviews data-matching provisions.
- 8.102 We are particularly aware of the need to have appropriate oversight and monitoring of the use of Māori data collected or accessed for enrolment purposes. Increased data use, while seen as convenient by some people, can result in harm and mistrust in some communities if not done with the appropriate safeguards. We discuss Māori data governance in **Chapter 3**.
- 8.103 In **Chapter 16**, we recommend restricting current levels of access to the electoral rolls. These changes would help ensure that enrolment data is adequately protected, consistent with privacy principles.
- 8.104 In **Appendix 1: Minor and Technical Recommendations**, we pick up on earlier recommendations about enrolment from the Electoral Commission.



9. Voting in Elections

- 9.1 Electoral law sets the rules for when, where and how people can vote in elections. Voting processes should be accessible while protecting the integrity of elections. While the fundamentals of voting are enduring, voting methods need to be flexible enough to adapt to changing voter preferences and technologies as well as emergencies and disruptions.
- 9.2 Voting in Aotearoa New Zealand usually occurs over a two-week period, finishing on election day. Most voting takes place in person at polling places around the country. More people are now choosing to vote before election day, known as advance voting.
- 9.3 A voter who is voting in the electorate in which they are enrolled and whose name is on that electorate's printed electoral roll casts an "ordinary vote". At the polling place, once a voter's name has been marked off on the electoral rolls, they are issued a ballot paper. The voter then goes behind a voting screen alone, marks their ballot in secret by ticking their party and electorate votes, folds it in half, and places it in the appropriate ballot box.
- 9.4 "Special voting" is available for people who are not on the printed electoral rolls or who cannot vote in person in their electorate. These voters must complete and sign a declaration form alongside their ballot paper. Different methods of voting are available for different kinds of people casting special votes, such as disabled voters and overseas voters.
- 9.5 The International Covenant on Civil and Political Rights¹ and the New Zealand Bill of Rights Act 1990² affirm the right to vote by secret ballot. The United Nations Human Rights Committee has stated that measures must be taken to ensure that anyone who is entitled to vote is able to exercise that right, and that any abusive interference or intimidation of voters should be prohibited and strictly enforced.³
- 9.6 Online voting was out of scope of this review.

¹ *International Covenant on Civil and Political Rights* GA Res 2200A (1966), art 25(b).

² New Zealand Bill of Rights Act 1990, section 12(a).

³ *General comment no. 25, The right to participate in public affairs, voting rights and the right of equal access to public service (article 25)* UN Doc CCPR/C/21/Rev.1/Add.7 (27 August 1996).

Earlier recommendations

2011, 2014, 2017 and 2020 Electoral Commission post-election reports

The Electoral Commission has made many recommendations to improve voting services in its recent post-election reports. These recommendations are often operational improvements to modernise services, and many of these have been implemented over time. The Commission has also made recommendations to improve the accessibility of voting.

In-person voting

- 9.7 Voters generally must vote at a polling place unless they have a valid reason why they cannot vote in person. The Electoral Commission decides on the number and location of polling places.
- 9.8 Advance voting has become an important feature of our electoral system. While there are many provisions in the Electoral Act 1993 that govern voting on election day, there is little in the law to regulate advance voting. The Electoral Commission decides when advance voting will begin on an election-by-election basis, which has varied between 12 and 17 days before election day.
- 9.9 In this section, we consider whether there should be more legislative recognition of advance voting and the legal requirements for polling places.

Advance voting

Is there a case for change?

Issues identified

- 9.10 Voters now expect to be able to vote ahead of election day at a time and location that suits them. Over 60 per cent of voters in the 2023 election used advance voting.
- 9.11 In our first consultation, we heard that flexibility over when to vote makes it easier for people to vote around their work schedules and other commitments, which in turn helps to improve participation outcomes. We also heard that access to advance voting can be uneven, for example, for rural communities and people with non-standard work hours.
- 9.12 A few submitters to our first consultation thought that voting should mainly take place on election day, reflecting its traditional importance.



Earlier recommendations

2011 and 2014 Justice Select Committee

Following the 2011 election, the Justice Select Committee recommended asking the Electoral Commission to report on the implications of the increasing trend towards advance voting.

After the 2014 election, the Justice Select Committee recommended that the government improve accessibility to advance voting places by increasing their numbers and opening hours, and provide greater consistency between advance voting places and voting places on election day. It proposed a 12-day advance voting period.

2014, 2017 and 2020 Electoral Commission post-election reports

The Electoral Commission made recommendations relating to advance voting in its reports on the 2014, 2017 and 2020 elections. It has previously proposed setting a minimum advance voting period of either 12 days or 17 days.

- 9.13 The law has only minimal provisions for this widely used form of voting, and advance voting requirements are not consistent with election day requirements. The Electoral Act provides for polling places to be open from 9am to 7pm on election day.⁴ For the advance voting period, the only requirement is to have at least one office in each electorate that can issue advance votes.⁵ The days and hours these offices are open are at the discretion of the Returning Officer. The law does not set a period during which advance voting must be available. Therefore, access to advance voting is largely reliant on the operational decisions of the Electoral Commission.
- 9.14 Providing advance voting services across the country requires more staff and polling places, resulting in higher election costs.

Our initial view

- 9.15 Given the growth of advance voting, we thought there was a strong case that this shift should be better reflected in the law and that the rules for advance voting and election day should be more consistent. We recommended requiring advance voting to be provided for a minimum period of 12 days before election day.

⁴ Electoral Act 1993, section 161.

⁵ Electoral Regulations 1996, regulation 19.

Feedback from second consultation

- 9.16 Many submitters who commented on this issue supported mandating advance voting and setting a minimum advance voting period. Submitters noted the benefits of the flexibility and accessibility provided by advance voting, which they thought would facilitate participation. Some submitters pointed out that advance voting can help to address barriers to participation for different communities, such as disabled people.
- 9.17 Comments on our online form indicated some opposition to advance voting, with these submitters arguing that most voting should be done on election day. Some said that most people should be able to get to a polling place on election day easily, while a few had concerns about people casting votes while election campaigns were still underway.
- 9.18 A few submitters suggested a range of alternative timeframes for advance voting to the 12-day minimum requirement we proposed.
- 9.19 As we noted in **Chapter 5**, the Electoral Commission supported this recommendation but questioned how it would interact with our recommendation to continue to allow the prime minister to call a general election at any time before the end of the parliamentary term. The Commission noted that advance voting takes more time to put in place, given the venues, staff and supplies required, and advance voting services may have to be limited if an election were called at short notice.
- 9.20 We also sought feedback on whether the current provisions requiring employers to allow workers to have paid time off on election day if they are not able to vote outside of their work hours should be retained if advance voting requirements are strengthened.⁶ Our initial view was that these provisions could be removed as most people would be able to vote at some point during advance voting.
- 9.21 We heard strong feedback from unions that these provisions should be retained. Their reasons included that some people may not decide how to vote in advance or may not be aware that advance voting is available. They pointed out that voting on election day may be more accessible and convenient, given there may be fewer polling places during advance voting. It is also the last opportunity to vote.

Our final view

- 9.22 Strengthening the requirements for advance voting will support our objectives of encouraging participation and promoting fairness. Contrary to what some submitters thought, we heard many reasons why some voters may find it difficult to vote on election day. Advance voting helps to ensure that everyone who is eligible has the opportunity to exercise their right to vote.

⁶ Electoral Act 1993, section 162.

- 9.23 More certainty around providing advance voting may also support better election planning, as well as polling place and funding requirements. It may help political parties to plan their campaign strategies based on when people are likely to vote.
- 9.24 A key mechanism to strengthen the legislative provisions is to create a minimum period during which advance voting must be provided. We are aware of the risks of limiting the flexibility to adapt voting services to changing circumstances and the challenges of providing an adequate and consistent service nationwide. Even so, some basic legal protection of access to advance voting is justified to ensure participation in the electoral system is as easy and available as possible.
- 9.25 In recent elections, the advance voting period has varied between 12 and 17 days. Deciding on an appropriate length for a minimum voting period needs to balance accessibility and cost-effectiveness. While a longer voting period provides the greatest opportunity for participation, it also results in higher costs, staffing requirements and venue needs.
- 9.26 On balance, we maintain our view that there should be a minimum period of 12 days required for in-person advance voting before election day. We think this timeframe is sufficiently long to meet voter expectations without creating unreasonable resource demands. We emphasise, however, that this period would be a *minimum* requirement, and it would not prevent the Electoral Commission from deciding to extend the advance voting period. Special votes that can be cast in advance, such as postal and dictation votes, could be offered over a longer timeframe, as they are currently.
- 9.27 We are aware that there are circumstances where these requirements may not be practicable – for example, if a snap election were called, or during an emergency. We suggest the legal requirements are drafted in a way that provides some flexibility or reasonable accommodation to adjust advance voting services in such circumstances.
- 9.28 While we think the provisions allowing paid time off to vote on election day will be used infrequently in practice, they provide a backstop to make sure that people who cannot or choose not to vote in advance have every opportunity to vote on election day. For this reason, these provisions should be retained.
- 9.29 Strengthening the legal requirements for advance voting may also support more equitable access to advance voting in terms of polling places and their hours of operation. This access may be particularly important for shift-workers and rural communities. We discuss these issues below in our recommendations on **Polling places**.
- 9.30 Advance voting is technically a form of special voting,⁷ though regulations permit these votes to be treated like ordinary votes.⁸ We recommend that, as far as

⁷ Electoral Act 1993, section 61(3).

⁸ Electoral Regulations 1996, regulation 24(1).

practicable, electoral law should be updated so that there is no distinction between advance ordinary votes and ordinary votes cast on election day. The law would instead reflect a “voting period”. There would need to be some exceptions to this approach, such as continuing to allow the preliminary count of advance votes to begin before the close of polls on election day.

Interaction with our other recommendations

- 9.31 We have suggested changes related to advance voting in the provisions for preventing voter interference and the vote count to support a more consistent approach across the voting period. These changes are discussed below in **Administering the vote** and in **Chapter 10**.

The Panel recommends:

- R31. Requiring advance voting to be provided for a minimum period of 12 days.**

Polling places

Is there a case for change?

Issues identified

- 9.32 The Electoral Commission seeks to put polling places in locations that are convenient, easy to access and relevant to the communities it serves. However, there are no specific requirements in legislation about where polling places must be located. The only legal requirement is that on election day at least 12 polling places in each electorate must be accessible for physically disabled people.⁹ In practice, most polling places are already either fully accessible or accessible with assistance.
- 9.33 It is challenging to find thousands of polling places around the country that meet requirements. Venues must be available for the voting period, accessible, conveniently located, big enough to accommodate voting booths, comfortable and safe. While it is desirable to use the same polling places during advance voting and on election day, this approach is not always possible in practice. Different

⁹ Electoral Act 1993, section 155. The Electoral Act 1993 also sets rules around the use of public schools and licensed premises as polling places and requires the Electoral Commission to publish information about the location of polling places.

electorates also have different requirements and venue options. Maintaining flexibility is critical to managing the needs of voters, costs and staffing requirements efficiently.

- 9.34 Being too prescriptive about polling place requirements could affect the Electoral Commission's discretion to determine appropriate locations and hours. Where it is difficult or inefficient to have polling places, the Electoral Commission can offer mobile, takeaway or postal voting instead.
- 9.35 However, many submitters to our first consultation commented on the location of polling places. We heard that polling places are less consistently and widely available in rural areas than in urban areas. People commented on the need to have polling places in locations that are culturally relevant or serve as community hubs, such as on marae, or that increase access for groups with additional barriers, such as near community mental health centres. Additional legal requirements may help to ensure equitable access.
- 9.36 We heard from submitters to our first consultation who thought that all polling places should be accessible. They said that the minimum requirement of 12 accessible polling places per electorate sends the wrong signal, even if it is regularly surpassed.

Our initial view

- 9.37 In our interim report, we recommended including standards in electoral law for polling places. We saw this approach as a way to ensure polling places are widely available and accessible, including during advance voting, while maintaining an appropriate degree of flexibility for the Electoral Commission.

Feedback from second consultation

- 9.38 Most submitters supported setting standards for polling places. They thought it would improve accessibility and help to meet the needs of a range of communities. A few submitters emphasised that access to polling booths is a greater issue for rural voters than urban voters, due to the number of polling places, how far away they are, and the transport requirements to reach them. Others highlighted the importance of flexible hours at polling places.
- 9.39 A few submitters did not agree with this recommendation. They thought that polling places were already accessible enough, and standards might introduce more costs and bureaucracy and make it harder to find suitable polling locations.
- 9.40 The Electoral Commission outlined some of the challenges around securing polling place venues and the current assessment criteria it uses. It noted that it works with disability service providers to develop accessibility standards. The Electoral Commission thought care would need to be taken to ensure the standards in law are not overly prescriptive and do not create unintended outcomes.

Our final view

- 9.41 We maintain our view that there is value in setting clearer standards and expectations for polling places in electoral law, based on what we heard from submitters about the importance of polling places. From a future-proofing perspective, this approach would protect the continued provision of in-person voting, which is fundamental to our electoral system, even if other voting methods emerge. Equitable access to polling places is also a key factor in enabling participation.
- 9.42 Setting standards would provide clear direction to the Electoral Commission on what it needs to take into account when choosing polling places, while preserving its flexibility to determine how those standards should be met. It would help voters and communities to better understand how polling place locations are determined and to have an avenue to challenge those decisions if they feel they are not consistent with the legislative criteria.
- 9.43 The standards set in law would not need to be exhaustive, but they should clearly indicate the principles the Electoral Commission must have regard to when choosing polling places. At a minimum, we think the standards should require the Electoral Commission to provide polling places that offer reasonable access to anyone who wants to cast a vote in-person during advance voting or on election day (or other voting methods where polling places are not practicable). This requirement would embed a more consistent approach across advance voting and election day without being prescriptive about how it is delivered.
- 9.44 Additional standards could give direction on accessibility outcomes – for example, placing an obligation on the Electoral Commission to have regard to:
- maximising the accessibility of polling places for disabled people (which would replace the minimum requirement for 12 accessible polling places per electorate)
 - providing adequate access for people with non-standard work schedules
 - providing equitable access that considers the needs of different communities that may have barriers to participation (for example, rural and remote voters)
 - using locations with community or cultural relevance.
- 9.45 We emphasise that we see these standards being set at the level of principles and objectives, rather than at a level of operational detail. We considered whether there should be more prescriptive requirements in the law, such as a minimum number of polling places in each electorate. We concluded that this approach would be impractical, given that what is reasonable and adequate will vary across electorates (for example, in large, rural electorates compared with small, urban ones). And, as we have seen with the requirement for at least 12 accessible polling



places per electorate, setting minimum requirements can send the wrong signal to communities about what level of service is considered acceptable.

- 9.46 Strict requirements could also constrain the Electoral Commission's ability to adapt voting services to respond to disruptions and to meet community needs – for example, through mobile voting services. As with our recommendation on advance voting, flexibility would need to be permitted, particularly if there were an emergency or a snap election.
- 9.47 We understand that the Electoral Commission has previously consulted political parties and sought input from Māori communities on polling place locations. We encourage the Electoral Commission to consult more broadly, particularly with leaders in communities that may have specific requirements or lower participation rates. This could be one way that the Electoral Commission could meet the new objectives that we have recommended for it of giving effect to te Tiriti o Waitangi / the Treaty of Waitangi and facilitating equitable participation, which are discussed in **Chapter 3** and **Chapter 15**.

Interaction with our other recommendations

- 9.48 In **Appendix 1: Minor and Technical Recommendations**, we also recommend clarifying that children under the voting age are allowed to go into voting booths with their parent or caregiver.

The Panel recommends:

- R32. Including standards in electoral law for polling places to ensure they are widely available and accessible, including during advance voting.**

Special voting

- 9.49 A “special declaration vote” (or special voting) is available to a range of voters who are not able to vote in the “ordinary” way.¹⁰ This may be because they cannot vote in person at a polling place at all, or because they cannot vote at a polling place in the electorate in which they are enrolled, or because their name is not on the printed electoral roll. By enabling people in these circumstances to vote, special voting increases the accessibility of elections and supports improved participation.
- 9.50 At the same time, special votes are more difficult to cast as the voter must also complete a declaration form and have it witnessed. Electoral officials must check the declaration accompanying every special vote to ensure the person is enrolled and eligible to vote, which can be time- and resource-intensive.
- 9.51 Special votes have grown in recent years due to a trend towards enrolling closer to election day. Special votes made up about 20 per cent of the total vote in the 2023 election, or over 600,000 votes.

Is there a case for change?

Arguments against change

- 9.52 In our first consultation, many submitters thought that current voting methods were working well. They noted special voting provides accessible voting methods for a range of voters.
- 9.53 Changes in recent years have sought to improve special voting processes. For example, people can now enrol and vote on the same day, including on election day, and special vote declarations can be treated as an application to enrol. New voting services have been introduced, such as telephone dictation voting for visually impaired voters and upload/download voting for overseas voters.
- 9.54 While special votes are more time-intensive to process and count, advances in technology may reduce this administrative impact over time. The Electoral Commission has proposed work to enable digital roll mark-off, which would enable anyone who can be marked off a “live” electronic roll to be issued an ordinary vote. This change could help to reduce the number of special votes cast and the administrative costs of processing special votes. It is discussed more in **Chapter 10**.

¹⁰ Electoral Act 1993, section 61.

Arguments for change

- 9.55 Some submitters to our first consultation said that special voting is too permissive and can be manipulated more easily than ordinary voting. They thought that the use of postal or takeaway votes should be more limited, as they considered there was a greater risk of fraud for votes not cast in the presence of electoral officials. The future of postal voting has also been questioned in the context of declining postal services.
- 9.56 Some people thought that the use of special votes should be minimised as far as possible to manage the work required to process and verify special votes and the impact on the vote count, as some types of special votes can be received up to 13 days after election day.
- 9.57 We also heard calls in our first consultation to expand the use of special voting, including allowing more people to access postal voting. Submitters commented on a range of situations where a person may want to vote but finds voting in person stressful or uncomfortable. Examples included:
- people who have anxiety or other mental health issues
 - people whose legal names may not be perceived to match their gender expression
 - people who may have issues with sensory overload, such as neurodivergent people
 - people who prefer to avoid highly populated areas due to health risks.
- 9.58 Many submitters commented on the opportunities afforded by online voting, but online voting was out of scope of this review.

Our initial view

- 9.59 In our interim report, we agreed with submitters who thought that special voting is an important way to provide for equitable participation in elections. It is also likely to continue to change over time, as new technologies allow for better services and more streamlined processing. We therefore reviewed the provisions for special voting with an eye to how they could be future-proofed.
- 9.60 We recommended a change to special voter eligibility, removing postal voting as an option for overseas voters, and considering how to scale up voting methods for people who cannot vote in person. We discuss these proposals in more detail below.

Feedback from second consultation

- 9.61 We received limited feedback on our recommendations relating to special voting. Most of the comments we received were about overseas postal voting.

- 9.62 The Department of Internal Affairs noted the issues with overseas postal voting that were raised as part of the Justice Select Committee's *Inquiry into the 2022 Local Elections*. These issues included voting packs being returned if NZ Post did not deliver to the countries where overseas voters resided, local elections coinciding with postal worker strikes in other countries, and voters opting to pay high postage fees to return voting papers via express post but still missing the deadline.
- 9.63 Some submitters, including the Electoral Commission, pointed out that postal voting may be the best option available for some overseas voters (for example, people who do not have reliable access to the internet, including in the Pacific). One submitter thought removing this voting option could practically deny some New Zealand citizens the ability to hold their government to account.
- 9.64 The Electoral Commission also queried our recommendation about special voter eligibility and whether it is already covered by the current law.

Our final view

- 9.65 We generally maintain our view that special voting methods will need to continue to evolve to provide ongoing access for voters who cannot cast an ordinary vote. We have, however, made one change to the recommendations in our interim report, which we discuss below.
- 9.66 The key issue we identified with special voting was the future of postal voting. Postal services are in decline, with increasing costs, less frequent services and more delays. The decline in postal services is likely to impact communities unequally, and for some people, postal voting may be the only option available to them. Over time, we think it likely that the use of postal voting will also decline, but it should continue to be offered so long as it remains viable to avoid disadvantaging those who rely on it.
- 9.67 In our interim report, we thought the one exception to this approach may be overseas voters. The timeframes for international postal services mean it is increasingly difficult for overseas voters to receive and return their ballots by the deadline, creating a risk that their votes will not be counted. We also noted that the number of overseas voters still using postal voting is small, and there are viable alternative voting methods available. Given the risks of accidental disenfranchisement, we recommended removing postal voting for overseas voters.
- 9.68 On reflection, we have decided that it may not be the right time to remove overseas postal voting. While the Electoral Commission proposed removing this voting option after the 2017 election, it subsequently changed its view as such a change would have meant that any valid postal votes it received in time would have to be disallowed. Instead, the timeframe for returning votes was extended in 2020, and postal voting for overseas voters is no longer proactively promoted. We think these steps mitigate some of the risks of overseas postal voting while still



retaining it as an option for those voters who need it. We have therefore revised our recommendation to monitor the situation rather than to remove overseas postal voting at this time.

- 9.69 The gradual decline in postal voting also raises the question of what will ultimately replace it. Planning to support this transition needs to begin far in advance. A limited form of electronic voting is already available for overseas and remote voters, who can download a ballot paper and upload it to a secure Electoral Commission site, and visually impaired voters can access telephone dictation voting. We understand there are significant challenges in scaling up these services due to administrative, resource and security issues.
- 9.70 In light of these constraints and the decline of post, we consider more work is needed on developing voting methods for people who cannot vote in person that can be delivered at an appropriate scale. This work is particularly important for ensuring ongoing access to voting services for disabled voters, and as such there should be a focus on continuous development and improvement of these voting methods. Equitable access needs to be considered as part of this work, including for people with limited connectivity or internet skills.
- 9.71 We also looked at the current eligibility provisions for special voters, which are set out in section 61 of the Electoral Act. For the reasons set out above, we do not propose broadening access to postal voting, as some submitters suggested. Our view is that the current ground allowing anyone to cast a special vote if they would otherwise incur “hardship or serious inconvenience” is broad enough to cover many of the situations that we heard may make voting in person challenging.¹¹ It may be helpful, however, for the Electoral Commission to provide more guidance on who may access special voting under this ground and how they can do so.
- 9.72 In-person special voting is also permitted for anyone who intends to be absent from or is absent from their electorate *on election day*.¹² In practice, the greater flexibility offered by advance voting means we think it is now commonplace for people to vote in advance outside their electorate even if they will be there on election day. For example, a voter who is registered in Wellington Central may travel to Auckland to visit friends during advance voting and decide to cast their vote while there, even if they will be back in Wellington on election day.
- 9.73 While these situations probably happen often, they are not strictly in line with the rules. We think the rules should be clarified to avoid any disputes over whether votes were validly cast, and we can see no compelling reason why this provision needs to be tied to election day. We recommend that anyone should be able to cast an in-person special vote if they are voting outside their electorate,

¹¹ Electoral Act 1993, section 61(1)(f).

¹² Electoral Act 1993, section 61(1)(b). While section 61(3) allows an eligible voter to cast a vote before election day, it also requires them to do so within the electorate where they are registered.

regardless of whether it is during advance voting or on election day, without needing to provide a reason or justification.

Interaction with our other recommendations

- 9.74 Most special voting provisions are in the Electoral Regulations 1996. In **Chapter 2**, we discuss the use of primary and secondary legislation in electoral law. We think that the allocation of provisions for advance, ordinary and special voting across primary and secondary legislation is an example of an area where the appropriate balance should be revisited for greater consistency.
- 9.75 Some of our recommendations to improve accessibility, discussed in **Chapter 11**, relate to special voting, such as voting by people on the unpublished roll and telephone dictation voting.
- 9.76 In **Appendix 1: Minor and Technical Recommendations**, we propose adopting several recommendations made by the Electoral Commission in its 2020 post-election report to clarify and modernise the special voting provisions.

The Panel recommends:

R33. Future-proofing special voting provisions by:

- a. **clarifying that anyone voting outside their electorate can cast a special vote at any time during the voting period**
- b. **monitoring whether postal voting remains a viable option for overseas voters**
- c. **considering how to scale up voting methods for people who cannot vote in person as postal services decline.**



Administering the vote

- 9.77 Electoral officials are appointed by the Electoral Commission and administer the voting process. They play an important role in safeguarding the security and integrity of the voting process.
- 9.78 There are rules and offences in place to protect the voting process from interference or manipulation.¹³ Some of these rules differ between the advance voting period and election day:
- **During the advance voting period**, election advertising is not allowed inside or within a “buffer zone” of 10 metres of the entrance to advance polling places when they are open. People (other than electoral officials) are allowed to wear, or display on a vehicle, ribbons, streamers, rosettes, or other items of a similar nature in party colours inside this buffer zone. People may also wear a party lapel badge.¹⁴ These rules were introduced in 2017.
 - **On election day**, there are restrictions on publicly displaying or publishing material that is intended to, or that may, influence who an elector votes for or persuade an elector to abstain from voting. Restricted material includes any party name, emblem, slogan, or logo, or any ribbons, streamers, rosettes, or items of a similar nature in party colours. However, people (other than electoral officials) are allowed to wear, or display on a vehicle, ribbons, streamers, rosettes, or other items of a similar nature in party colours (including near or inside a polling place). People may also wear a party lapel badge. The expression of certain personal political views online is also prohibited – for example, someone cannot post on social media about who to vote for. These restrictions apply until the close of polling at 7pm.¹⁵
- 9.79 The rules are strictest on election day, where all activities that could interfere with or influence voters are prohibited (including advertising and campaigning by parties, candidates, and third-party promoters).¹⁶ This reflects the longstanding principle that voters should be free from all forms of electioneering on election day. By contrast, the advance voting rules only focus on activities in or near polling places, which recognises that this is a critical time for election campaigns.

¹³ Electoral Act 1993, sections 197 to 204.

¹⁴ Electoral Act 1993, section 197A.

¹⁵ Electoral Act 1993, section 197.

¹⁶ In **Chapter 14**, we discuss advertising and campaigning in detail. This section discusses them only to the extent that they relate to voter interference.

Earlier recommendations

2011 and 2020 Justice Select Committee

In its report on the 2011 election, the Justice Select Committee recommended that government consider commissioning a review of existing regulations applying to social media on election day to determine whether they were workable.

Following the 2020 election, the Justice Select Committee recommended that government consider amending section 197 of the Electoral Act so that election day has the same rules as advance voting.

2011, 2014, 2017 and 2020 Electoral Commission post-election reports

In its 2011 report, the Electoral Commission recommended that all voting places and their environs should be campaign-free and that the exemptions to the general prohibition on the wearing of party lapel badges or rosettes in all voting places should be removed.

In its 2014, 2017 and 2020 reports, the Electoral Commission noted that the election day campaign rules are inconsistent with the rules during advance voting, and likely to be an ongoing issue given the growth in advance voting. One option proposed was for election day to have the same rules as advance voting.

In its 2020 report, the Electoral Commission considered it timely to review the scrutineer provisions and look at whether parties should be able to choose to either have scrutineers appointed by the electorate candidate or by the party secretary. It considered it would also be beneficial for the scrutineer provisions to be consolidated to make it easier for parties and candidates to understand them. They are currently scattered throughout the legislation.

- 9.80 Electorate candidates can appoint scrutineers to observe voting and the vote count to check that the rules are being followed correctly. Party secretaries can also appoint scrutineers if the party is not standing a candidate in that electorate, but only for certain parts of the voting and counting process. Scrutineers are not allowed to communicate directly with voters and must declare that they will not infringe the secrecy of the vote.¹⁷

¹⁷ Electoral Act 1993, sections 160 and 203.

Preventing voter interference

Is there a case for change?

Issues identified

- 9.81 Voter behaviour has changed, which means the different restrictions across the voting period to prevent voter interference and influence may not be justified. In recent elections, advance voting has become the predominant form of voting (for example, over 60 per cent of votes in the 2023 election were advance votes), meaning most votes have been cast when fewer restrictions were in place. This shift in voter behaviour indicates that the idea of a single election day has become less important.
- 9.82 In our first consultation, many submitters thought the restrictions on campaigning on election day were no longer relevant due to the rise of advance voting. Most of these submitters called for the election day voter interference rules to be aligned with those for advance voting.
- 9.83 Other submitters thought the current election day rules should be extended over a longer period, such as for the entire advance voting period, or for the regulated period. We know from complaints to the Electoral Commission each general election that the rules do not always meet public expectations about what should be allowed – for example, when lapel pins can and cannot be worn, and whether rosettes can include party names.
- 9.84 A few submitters talked about how the restrictions on campaigning on election day treat internet content and other media differently, such as the rules for news outlets advertising their post-election coverage. For example, television and radio broadcasters can advertise their election night coverage on election day, but news media websites cannot do the same. These submitters called for the rules on interfering with or influencing voters to be reviewed given the rise of advance voting, with the aim of creating equivalent rules over different media platforms.
- 9.85 A few submitters questioned whether it should remain an offence to post on social media about who you voted for on election day, but not during advance voting.

Our initial view

- 9.86 In our interim report, we recommended shifting away from a separate advance voting period and election day to a single voting period that applies one set of rules for voter interference. As part of these rules, we suggested it should be illegal for people to take photos of their ballots in polling places.

Feedback from second consultation

- 9.87 Most submitters to our second consultation were generally supportive of applying one set of rules for the entire voting period and thought this approach made sense given the trends in advance voting. Some submitters also noted that



election day restrictions unnecessarily constrain political expression, including in online media.

- 9.88 The Electoral Commission questioned the details of our recommendation, given the voter interference rules for advance voting and election day are broadly the same. We clarify this point below, in our final view.
- 9.89 A few submitters thought that voters should be permitted to take photos of their ballot papers, arguing that individuals should be able to decide whether to share them or not as an expression of free speech.

Our final view

- 9.90 We confirm our initial position that the distinction between the advance voting period and election day is no longer fit for purpose now that most people opt to vote in advance of election day. In the interest of a simple, clear and consistent approach, we recommend one set of rules applies from the beginning to the end of voting.
- 9.91 We considered whether the election day or advance voting rules would be appropriate if applied for the whole voting period or if any changes would be necessary. The current election day rules impose significant restrictions at a time when most voters have already cast their vote. Given these rules are intended to protect voters from interference, we do not consider the limitation they impose on the right to freedom of expression is justified. We are not aware of any significant issues regarding the current rules during advance voting, except confusion about which rules apply on which days. We therefore recommend that election day restrictions should change to match those of the advance voting period.
- 9.92 Practically, our recommendation would mean the restrictions during the voting period would apply inside polling places and within 10 metres of their entrances, rather than in or in view of any public place (like the current election day rules). Party paraphernalia would still be allowed to be worn when voting.
- 9.93 By applying the rules near polling places only, the issue of individuals posting on social media on election day is resolved by allowing people to post freely, including about who they think others should vote for.
- 9.94 However, we think it is important that people do not share photos of their completed ballot papers and that a rule should be introduced that makes it illegal for people to take photos of their ballots in polling places. While we acknowledge the feedback we received on this issue, this rule is necessary to protect the secrecy of the ballot. The secrecy of the ballot protects voters' privacy, but it also

functions as a safeguard against bribery and intimidation by ensuring a voter can never prove how they voted.

The Panel recommends:

- R34. Removing the election day restrictions on trying to influence voters so that the rules that currently apply during the advance voting period apply throughout the entire election period.**
- R35. Aligning restrictions on election day with those of the current advance voting period for the wearing of lapel badges, rosettes and party colours in polling places and within 10 metres of their entrances.**
- R36. Prohibiting voters from taking photos of their ballot papers in polling places.**

Issuing ballots

Is there a case for change?

Issues identified

- 9.95 Since 2014, the Electoral Act requires a person to verbally state or confirm their name before being issued a ballot.¹⁸ If someone cannot give their name verbally, either because they cannot understand English or they have a disability, they are allowed to indicate by gesture or be assisted by a person accompanying them.¹⁹ When this requirement was introduced, the reason given was to prevent fraud by requiring a person to confirm their identity verbally.
- 9.96 In our first consultation, we heard from disabled persons' organisations that it can be a barrier to participation for disabled people, who may be unable or find it difficult or stressful to state their name. This requirement may also be challenging for people who speak English as a second language, have heavy accents or speech impediments, have names that are difficult to pronounce, or are gender diverse. While the law provides for non-verbal alternatives, the effectiveness of this requirement in preventing fraud may be limited, compared to other safeguards in the voting process.

¹⁸ Electoral Act 1993, section 167(2).

¹⁹ Electoral Act 1993, section 167(2A).

- 9.97 Similarly, a scrutineer can require an issuing officer to ask voters certain questions about their identity and whether they have already voted before allowing them to vote.²⁰ These questions must be answered in writing. This provision is not used in practice, and it may not be an effective safeguard against fraud. There are risks that it could be abused to target or intimidate certain kinds of voters. The requirement to respond in writing is also problematic for accessibility reasons.
- 9.98 Of the submitters who talked about potential changes to administering the vote in our first consultation, most suggested that some stronger form of identity verification, such as photo ID, should be introduced at the point of voting to manage the risks of fraud.

Our initial view

- 9.99 In our interim report, we proposed that both of these requirements should be repealed because they present a barrier to some voters and other checks are in place to prevent and detect fraud.
- 9.100 We also did not see a need for stronger voter identification rules. In other countries, voter identification rules have created additional barriers to participation that may disproportionately affect some communities.

Feedback from second consultation

- 9.101 A few submitters supported these recommendations, including disabled persons' organisations, for the reasons discussed above. They saw these requirements as an unnecessary impediment on the right to vote. A few submitters noted that this process could be stressful and create misunderstandings (particularly if an interpreter were not present).
- 9.102 Conversely, a few submitters opposed repealing these requirements. They saw these requirements as an important means of confirming the identity of voters and preventing impersonation and fraud. A few thought these requirements should only be removed if other forms of voter identification were introduced. One submitter claimed that scrutineers need to be able to hear the person's name so they can know who is voting.

Our final view

- 9.103 We maintain our recommendation that these two requirements should be repealed. In our view, the concerns raised about fraud do not outweigh the feedback we heard from different communities that these requirements can be a barrier to participation. There is also a risk that these requirements could be used to profile or target some groups of voters.

²⁰ Electoral Act 1993, section 166.

- 9.104 The requirement to state your name to be issued a ballot was introduced in 2014. Before that, the law only required that a voter give “any particulars that are necessary” for finding their name on the rolls. We think this earlier provision is sufficient to allow an issuing officer to locate a person on the rolls. As for the ability of scrutineers to require issuing officers to ask voters certain questions, we consider this to be an outdated provision that might be open to abuse.
- 9.105 The electoral system has other, and more effective, checks in place to detect fraud that we think make the need to ask these questions unnecessary. In particular, the rolls used to issue voting papers must be scrutinised after election day and before the official vote count.²¹ This process is undertaken in the presence of scrutineers and is used to detect apparent double votes. The votes of apparent dual voters are disallowed and not included in the official count. After the 2020 election, the Electoral Commission referred 48 individuals who appear to have voted more than once to the Police.
- 9.106 We also note that personation, which includes voting as another person or voting twice, is already a corrupt practice. Personation attracts higher maximum penalties than the Electoral Act offence about scrutineers requiring questions to be put to voters about their identity and whether they have already voted.

Interaction with our other recommendations

- 9.107 In **Appendix 1: Minor and Technical Recommendations**, we adopt recommendations made to us by the Electoral Commission relating to scrutineers. We have also made recommendations relating to scrutineers in other parts of this report, including access to the electoral rolls in **Chapter 16**.
- 9.108 In **Chapter 18**, we propose making it an offence to intentionally obstruct, undermine, or interfere with the work of electoral officials in conducting elections.

The Panel recommends:

- R37. Repealing the requirement to verbally state your name to be issued a ballot.**
- R38. Repealing the ability of scrutineers to require voters to be questioned about their identity and whether they have already voted before they are issued a ballot.**

²¹ Electoral Act 1993, sections 175 and 176.

Emergencies and disruptions

- 9.109 Natural disasters, a contagious disease outbreak, or other unforeseen events can disrupt an election. These kinds of disruptions can make it hard for people to vote in an election, for political parties and candidates to share information with voters, and for the Electoral Commission to run an election properly and count the vote.
- 9.110 The Electoral Act contains tools to help manage the impact of a disruption on an election – known as the “emergency powers”. These emergency powers can be used for any disruption so long as it is unforeseen or unavoidable and prevents people from voting, or poses a risk to the “proper conduct” of an election.²² The chief electoral officer can delay voting on election day,²³ or implement alternative voting processes either during the advance voting period or on election day.²⁴
- 9.111 The chief electoral officer acts alone when exercising these powers – the other members of the board of the Electoral Commission have no role. Before exercising these powers, the chief electoral officer must have regard to the need to ensure:²⁵
- the safety of voters and electoral officials
 - that the election process is free from corrupt or illegal practices, and
 - that the election process is concluded in a timely and expeditious manner.

Earlier recommendations

2011, 2014 and 2020 Justice Select Committee

In its 2011, 2014 and 2020 post-election reports, the Justice Select Committee recommended a review of the law to determine whether it adequately provides for emergencies and disruptions.

2011, 2014, 2017 and 2020 Electoral Commission post-election reports

The Electoral Commission has regularly recommended the review of the emergency provisions in the Electoral Act, including in its 2020 post-election report, to ensure they provide adequate resilience.

²² Electoral Act 1993, section 195.

²³ Electoral Act 1993, section 195A

²⁴ Electoral Act 1993, section 195B.

²⁵ Electoral Act 1993, section 195C.

Is there a case for change?

Issues identified

- 9.112 The chief electoral officer's powers are significant, although subject to the criteria above. The chief electoral officer does not need to consult anyone when first exercising the powers.²⁶ For any second and subsequent use of the adjournment power, the Electoral Act requires consultation with the prime minister, leader of the Opposition, and people or organisations who can give information about the scale and duration of the disruption.²⁷
- 9.113 The electoral system needs to be resilient to emergencies and disruptions, including those of a catastrophic nature and at times when parliament has been dissolved. The issues that arise when considering the emergency powers are whether they provide sufficient:
- **Flexibility:** to enable the Electoral Commission to depart from standard practice when a disruption occurs that might otherwise undermine the integrity of an election. For example, there is no current power to extend the time available for electoral processes other than voting or deadlines specified in the Electoral Act.
 - **Safeguards:** to ensure any departure from standard practice is proportionate to the negative impacts on electoral participation and that any measures to manage a disruption ensure the integrity of the electoral system is maintained.
 - **Accountability:** to ensure decision-makers exercise their powers transparently and are accountable for those decisions.
 - **Certainty:** to ensure the election process is concluded in a timely and expeditious manner.

Our initial view

- 9.114 In our interim report, we recommended some relatively minor improvements to the existing emergency powers, including:
- vesting emergency powers in the board of the Electoral Commission, not just in the chief electoral officer, to ensure more robust decision-making
 - adding a new general power for the Electoral Commission to extend the time available for any electoral processes or deadlines where they are disrupted by an unforeseen or unavoidable disruption that could impact the

²⁶ Electoral Act 1993, sections 195A(2)(a). Section 195A(4) requires the chief electoral officer to notify the prime minister and the leader of the opposition of the adjournment.

²⁷ Electoral Act 1993, sections 195A(2)(b) and 195A(3).

proper conduct of an election. The current emergency powers do not provide this flexibility.

- 9.115 We also recommended making amendments to the Constitution Act 1986 to ensure the continuity of executive government in an adjourned election.
- 9.116 We proposed more substantive changes to manage catastrophic disasters that could render it infeasible or unfair to hold a general election for some time. We recommended a new power that would allow the former parliament to be reconvened to consider how to manage the upcoming election (or perhaps to extend the term of parliament if 75 per cent of MPs agreed to do so).
- 9.117 We sought feedback on three potential ways this could happen:
- Option 1: the governor-general is empowered to reconvene parliament upon the advice of the prime minister (subject to a number of safeguards, such as consultation requirements with other party leaders, a high threshold for exercising the power, and publication requirements).
 - Option 2: parliament automatically reconvenes if polling is adjourned more than once under the Electoral Commission's existing emergency powers.
 - Option 3: a hybrid approach with both options above available to reconvene parliament.

Feedback from second consultation

General considerations for holding an election during a disruption

- 9.118 Most submitters were in favour of setting clearer rules for what happens if emergencies and disruptions occur during elections.
- 9.119 A few submitters noted there were risks in vesting the emergency powers in the Electoral Commission's board, rather than the chief electoral officer:
- Having a single decision-maker supports rapid decisions. Speed is particularly important if an electoral deadline is close (because the public might put themselves in harm's way to try and cast their vote). Delays might be caused if the emergency powers are vested in the board, and the emergency is localised.
 - The New Zealand Law Society noted that this change would bring the Electoral Commission's board into an operational and management role rather than a governance role.
- 9.120 We received questions and comments on what kinds of emergencies would allow the emergency powers to be used. For example, one submitter was concerned that the emergency powers would not cover scenarios such as a large biosecurity response that requires the restriction of movement. Such an event would already

be captured by the current definition and criteria for a “disruption” contained in section 195 of the Electoral Act.

- 9.121 Others wanted to make sure the definition of emergencies created an appropriately high threshold so that powers could not be abused. Most submitters who commented on this topic emphasised the importance of having other strong safeguards over any of the emergency powers. Suggestions included:
- having time limitations on the powers so they expire after a set period
 - requiring consensus between political parties or a 75 per cent majority in parliament to invoke the powers.
- 9.122 A few submitters were opposed to the emergency powers in general unless there was judicial oversight.

The complexities of reconvening parliament

- 9.123 We received a range of feedback on the Option 2 proposal to reconvene parliament. The Electoral Commission and the Clerk of the House of Representatives noted the significant constitutional implications of reconvening parliament. These submitters noted several detailed and technical issues would need to be worked through.
- 9.124 The New Zealand Law Society identified several legal, procedural and practical issues that could arise when parliament is reconvened. Given these potential issues, it suggested alternative options should be explored.
- 9.125 Other submitters were strongly opposed to reconvening parliament on the grounds that having the general election is so fundamental to democracy that the overriding objective should be to conduct it as a priority despite the potential impacts on participation and fairness.

Our final view

- 9.126 A general election is a major logistical undertaking. The Electoral Commission carries out significant mitigation planning to cater for a range of potentially disruptive scenarios. The emergency powers in the Electoral Act are measures of last resort and were modernised and reformed in 2020 (before the COVID-19 pandemic). Although they were not required during the 2020 election, when Aotearoa New Zealand was dealing with COVID-19, the pandemic did lead to recommendations for review of the emergency powers.

Emergency powers

- 9.127 To strengthen accountability and ensure robust decision-making, we remain of the view that the Electoral Commission’s board should have the power to activate the emergency provisions, rather than the chief electoral officer alone. This approach

would ensure that the decision is informed by the range of expertise on the board, which is ultimately accountable to parliament for how it administers the electoral system. We note, in response to the New Zealand Law Society's comment on whether it is appropriate that the board has this role, that this change would make the emergency powers consistent with how almost all other powers and functions of the Electoral Commission are structured.

- 9.128 Some submitters queried whether vesting the emergency powers in the board could cause issues if a board member is uncontactable or could otherwise delay rapid decision-making that is likely to be required in an emergency scenario. We do not believe this will be an issue. We note that in advance of each election the Electoral Commission (in consultation with other key government agencies) undertakes contingency planning for a range of scenarios.²⁸ We expect this contingency planning will include mitigations for the risks identified by submitters.

Continuity of government

- 9.129 As set out in our interim report, we remain of the view that consequential amendments are required to ensure continuity of executive government in an adjourned or delayed election. This is because ministerial warrants could eventually expire given the limitations of the transitional provisions in section 6 of the Constitution Act 1986.

Flexibility

- 9.130 Currently, the emergency powers only relate to the advance voting period and election day. However, other electoral processes could be impacted by an emergency, such as parties' ability to file nominations on time or the ability of the Electoral Commission to finalise the vote count by the deadline in the writ.
- 9.131 We believe additional flexibility is needed to manage the impacts of unforeseeable or unavoidable disruptions to these other processes. We confirm our recommendation that the board of the Electoral Commission should have a new general power to extend the time available for electoral processes or deadlines specified in the Electoral Act.
- 9.132 We recognise this would be an expansion of the Electoral Commission's powers. It is appropriate to provide the Electoral Commission with a full suite of tools so it can manage the wide range of unpredictable impacts an emergency might have on electoral processes (such as meeting the deadline for nominating candidates). To

²⁸ See for example, Electoral Commission, Department of the Prime Minister and Cabinet & Ministry of Justice, 2023. *Protocol on the management of election disruptions*, Wellington: New Zealand Government & Electoral Commission.

ensure this power is not used unnecessarily, we recommend the same safeguards apply to this new power as they do currently for the ability to adjourn polling.

9.133 Together, these emergency powers should be sufficient to manage all but the most catastrophic of disruptions to an election.

Catastrophic disasters when parliament has been dissolved

9.134 As we noted in our interim report, we can imagine rare, but possible, scenarios where a catastrophic disaster causes widespread and long-lasting disruptions to daily life in Aotearoa New Zealand. If such an event occurred close to an election, it could severely impact parties' ability to campaign, voters' ability to access information and vote, and the Electoral Commission's ability to administer the election and count the vote.

9.135 There may be no safe or practical way the election can be conducted fairly in such circumstances. If this occurs before parliament comes to an end for the election, parliament can meet to debate and vote on the appropriate response to managing the upcoming election. This situation ensures transparency and accountability for a decision that goes to the heart of our democracy.

9.136 However, this approach will not be possible if parliament has been dissolved or expired and the writ has been issued. Under current arrangements there is no ability for parliament to sit in these scenarios. Decisions on how to manage the election after a catastrophic disruption will fall to the Electoral Commission and its emergency powers. These powers include adjourning polling for up to seven days at a time indefinitely.

9.137 We do not consider it appropriate to rely on the Electoral Commission's emergency powers in such catastrophic scenarios because the existing powers:

- **are ineffective:** there are no tools to manage the impacts of an emergency that render an election impossible to hold fairly or safely – particularly if this occurs before or during advance voting
- **are uncertain:** the rules about when and how an election should be managed following an emergency should be clear to all (parties, voters, and the Electoral Commission). Under the current powers, the Electoral Commission would:
 - not be able to exercise the adjournment power until election day, creating uncertainty as to whether the election would go ahead
 - be able to use the adjournment power indefinitely
- **lack political accountability:** relying on the Electoral Commission's adjournment power repeatedly (and potentially indefinitely) in a catastrophic disaster is a constitutionally extraordinary power to vest in an unelected body.



9.138 Given these issues, we think there should be additional arrangements to manage the impacts of a catastrophic emergency on a general election. However, we have considered an alternative option to those in our interim report.

New power to withdraw the writ and nominate a new election date

9.139 In addition to the views of submitters, we have reviewed a range of international²⁹ and local literature³⁰ on managing elections (and other matters of the state) during an emergency. We could find no comparable power to reconvene an expired parliament but identified several different approaches.³¹

9.140 We consider there is an alternative option that permits the governor-general acting on the advice of the prime minister to withdraw the writ issued for a general election where:

- a national state of emergency has been declared under the Civil Defence and Emergency Management Act 2002 (or its successor legislation)
- the Electoral Commission certifies:
 - that the national state of emergency is likely to significantly interfere with the proper conduct of the general election (that is, the legitimacy of the election would be unduly compromised due to the impacts on voter participation or electoral administration), and
 - that this interference cannot be mitigated by the reasonable efforts of the Electoral Commission and/or its standard emergency powers
- the prime minister has consulted with the director of emergency management and all parliamentary party leaders represented in parliament (unless such communication is rendered infeasible due to the impacts of the emergency), and
- the prime minister is satisfied delaying the general election is in the public interest.

²⁹ See for example, Joint Standing Committee on Electoral Matters, 2021. *Report of the inquiry on the future conduct of elections operating during times of emergency situations*, Canberra: Parliament of the Commonwealth of Australia.

³⁰ Including McLean, J., 2022. *The Legal Framework for Emergencies in Aotearoa New Zealand*, Wellington: Te Aka Matua o te Ture | Law Commission.

³¹ See for example section 59 of the Canada Elections Act 2000, which provides for the withdrawal of the writ.

- 9.141 If these criteria were met, the governor-general could withdraw the writ. The Electoral Act would then:
- oblige the prime minister, as soon as it is reasonably practicable after the withdrawal of the writ, to advise the governor-general of the earliest available date where the general election could be properly conducted (which is no later than the day three months after the withdrawal of the writ)
 - in determining the earliest available date, require the prime minister to consult the director of emergency management, the Electoral Commission, and all parliamentary party leaders
 - upon receipt of the advice from the prime minister, require the governor-general to issue a new writ setting out the details for the general election.
- 9.142 This option would allow a general election to be postponed for a maximum of three months in limited circumstances, largely filling the key gaps in the existing emergency powers. It would provide certainty by requiring a new election date to be set as soon as possible, and no later than three months after the writ is withdrawn.
- 9.143 It would maintain – to the extent possible – constitutional conventions in relation to the role of the prime minister in setting the election date. This approach has advantages over reconvening parliament because it would:
- mitigate uncertainty as to when the election will be held and concerns some submitters had that the reconvened parliament could also progress business as usual (given parliament’s supremacy cannot be fettered once it is reconvened)
 - avoid the constitutional and procedural awkwardness that arises from reconvening parliament (such as those matters identified by the New Zealand Law Society)
 - minimise the risk that some people lose confidence in the integrity of the electoral system if MPs in the reconvened parliament are seen to have lost their electoral mandate.
- 9.144 The main downside of this option is that withdrawing the writ lacks the flexibility of allowing parliament to decide and vote on bespoke arrangements for managing the election.

A power to reconvene parliament may still be desirable

- 9.145 Even under our recommendation above, there remains a residual risk of a disaster so catastrophic that it is readily apparent that a three-month extension may be insufficient time to put in place procedures to hold a safe and fair general election.

- 9.146 In such scenarios, we recognise that it may be beneficial to reconvene parliament. At the same time, we recognise that this would be a constitutionally extraordinary power given our democracy's integrity rests on regular free and fair elections.
- 9.147 There are reasons beyond electoral law and our Terms of Reference for why it might be appropriate for parliament to be able to reconvene in such scenarios. These reasons include:
- to enact urgent legislation to respond to the emergency at hand to keep people safe or aid immediate recovery
 - to ensure the government is subject to the highest form of political accountability during a disaster: scrutiny in the House of Representatives. This would be particularly important if a government was seen to have lost its mandate from voters (such as if the election was called after the government loses a confidence vote in the House). We discuss the electoral implications in relation to the caretaker convention below.
- 9.148 We therefore strongly encourage the government to work with all parliamentary parties to consider the merits of a new statutory power to reconvene parliament, which would have benefits beyond electoral law. We note the Emergency Management Bill is currently before parliament, which could provide an opportunity to consider these matters if it is in scope of the Bill.

Caretaker convention if election delayed

- 9.149 In a delayed election, the executive would remain fully constituted and largely unconstrained. This authority is only tempered by the caretaker convention but, as currently understood, that convention only starts to apply after a general election.³²
- 9.150 In a delayed election, it may be inappropriate for the executive to operate in an unconstrained manner until the election is complete (or, as under our recommendations, delayed for up to three months). This is because the Westminster "chain of accountability"³³ is broken in two ways:
- ministers can no longer be held accountable by the House for their policies, performance, spending, and the performance of entities within their portfolios
 - the public is deprived of its opportunity to hold members of the House accountable (albeit temporarily).

³² Cabinet Office, 2023. *Cabinet Manual 2023*, Wellington: Department of the Prime Minister and Cabinet, from paragraph 6.21 onwards.

³³ See the discussion in Controller and Auditor-General, 2019. *Public accountability: A matter of trust and confidence*, Wellington: Office of the Auditor-General.

- 9.151 While governments exercise some level of restraint in the pre-election period that will mitigate the risks identified above,³⁴ we believe stronger restraint would be needed in a delayed election.
- 9.152 We suggest that where an election is delayed, an early application of the caretaker convention (as if the election process were completed but its outcome is uncertain)³⁵ would provide stronger and more appropriate safeguards and constraints over the executive.
- 9.153 This would mean any substantive decisions would be deferred if possible. If deferral is impossible, arrangements that do not commit the government in the longer term should be considered. Finally, if none of these options are appropriate, the caretaker government should consult with other political parties to ascertain whether the action has the support of a majority in the House.
- 9.154 As such, we recommend Cabinet amends the Cabinet Manual to recognise that the caretaker convention should apply (as if the election result was unclear) in circumstances where an election is delayed under the emergency powers in the Electoral Act.

The Panel recommends:

- R39. Vesting emergency powers in the board of the Electoral Commission, not just in the chief electoral officer.**
- R40. Adding a new general power for the Electoral Commission to extend the time available for any electoral processes or deadlines where they are impacted by an unforeseen or unavoidable disruption that could impact the proper conduct of an election.**
- R41. Adding a new power that, subject to appropriate consultation:**
- a. permits the governor-general, acting on the advice of the prime minister, to withdraw the writ issue for a general election where a national state of emergency will significantly interfere with the proper conduct of the election**

³⁴ Cabinet Office, above n 32, from paragraph 6.9 onwards.

³⁵ The approach taken to the caretaker convention differs if it is not clear who will form the next government (where there are stronger constraints) and where it is clear who will form the next government, but they have not yet taken office (where the caretaker government should act on the advice of the incoming government). For more detail refer to Cabinet Office, above n 32, from paragraph 6.21 onwards.

b. requires the prime minister, as soon as it is reasonably practicable after the withdrawal of the writ, to advise the governor-general of the earliest available date where the general election could be properly conducted (but no later than the day three months after the withdrawal of the writ).

R42. The government works with all parliamentary parties to consider the merits of a new statutory power to reconvene parliament.

R43. Amending the Constitution Act 1986 to ensure the continuity of executive government in the event of an adjourned election.

R44. Amending the Cabinet Manual so that the caretaker convention applies (as if the election result was unclear) in circumstances where an election is delayed under the emergency powers in the Electoral Act.



10. Counting the Vote and Releasing Results

- 10.1 In Aotearoa New Zealand, all votes in parliamentary elections are counted by hand. The Electoral Act establishes strict rules around vote counting, particularly in relation to the security of the ballots.¹
- 10.2 Electoral officials at each polling place complete a preliminary count of the votes received by each party and candidate on election night after voting has closed. Advance votes can be counted from 9am on election day under strict security conditions to ensure no results are released before the close of polling. By custom, the preliminary results are progressively announced by the Electoral Commission after polling closes, with most results released by 11.30pm.
- 10.3 Special voting, which we discuss in **Chapter 9**, enables participation for a range of voters who are not able to cast an “ordinary” vote. Special votes are not counted on election night. They require extra scrutiny and administration before they can be counted – to check each person has completed their declaration form correctly and is eligible to vote. The deadlines for different kinds of special votes vary, but in some cases they can be received up to 13 days after election day.
- 10.4 Before the official count can be completed, electoral officials must inspect the marked copies of the electoral rolls (which show who has voted in each electorate) and special votes and compile a master roll. This process is called “the scrutiny of the rolls” and identifies people who may have voted more than once. Where it appears that a voter has voted more than once, their ballot papers are disallowed and removed from the final vote count.

¹ Electoral Act 1993, sections 174 to 179. The UN Human Rights Committee (HRC) states that article 25 of *International Covenant on Civil and Political Rights* GA Res 2200A (1966) covers the importance of secure ballots and vote counting: *General comment no. 25, The right to participate in public affairs, voting rights and the right of equal access to public service (article 25)* UN Doc CCPR/C/21/Rev.1/Add.7 (27 August 1996), p. 6.

Earlier recommendations

2017 Electoral Commission post-election report

The Commission recommended change to allow a person's vote to be counted if they voted in advance but died before election day.

2017 Justice Select Committee

The Justice Select Committee recommended that the government introduce an amendment to section 178(4) of the Electoral Act 1993 to allow a vote to be counted if the voter dies before or on election day.

2020 Electoral Commission post-election report

The Commission recommended a legislative amendment to allow the preliminary count to be undertaken either manually or by electronic means, to facilitate a long-term programme to work towards digital roll mark-off, issuing and counting.

- 10.5 The scrutiny of the rolls and the official count are done in the presence of justices of the peace.² In some circumstances, ballots are disallowed from the official count – for example, if a person voted but was not eligible to be enrolled, or if a special vote was received after the deadline.³ In the 2017 and 2020 elections, the number of disallowed votes decreased, due in part to improvements in enrolment services, such as the use of special declaration forms as an enrolment application on election day.⁴
- 10.6 When the official count is complete, the Electoral Commission declares the official results – meaning the number of votes received by each candidate and each party in each electorate. Since the introduction of enrolment on election day in 2020, the official results have been declared 20 days after election day. In elections before 2020, the official results were declared 14 days after election day. The official count varies from the preliminary results released on election night as it includes special votes.

² The UN HRC states that article 25 also requires independent scrutiny, as well as providing for the presence of candidates or their agents: UN HRC, *General comment no. 25*, above n 1, pp. 6 – 7.

³ The grounds for disallowance are outlined in the Electoral Regulations 1996, regulations 34 and 37, and sections 176 and 178 of the Electoral Act 1993.

⁴ Disallowed special votes fell from 6 per cent in 2017 to 2 per cent in 2020. Electoral Commission, 2021. *Report of the Electoral Commission on the 2020 General Election and referendums*, Wellington: Electoral Commission, p. 42.

- 10.7 After an election, ballot papers are stored for six months in case they are subject to a legal challenge, after which time they are destroyed securely in the presence of the Clerk of the House of Representatives and an electoral commissioner or their delegate.⁵

Is there a case for change?

Issues identified

- 10.8 In our first consultation, most submitters thought the current processes and methods for counting the vote were working well. The Electoral Commission raised a few issues in its submission, which we discuss below.

Electronic vote counting

- 10.9 As noted above, special votes are more complex to administer and process. Verifying special votes has become more time- and resource-intensive as the number of special votes has grown with more people enrolling closer to and on election day. For example, in the 2023 election over 600,000 people cast a special vote.
- 10.10 Currently, polling places have printed rolls only for the electorates that they are issuing ordinary votes for (the Māori electorate and general electorate they are in and, typically, other nearby electorates). No polling places issue ordinary votes for all electorates. Therefore, voters who vote outside their electorate at a polling place which does not carry ordinary votes for their electorate must cast a special vote.
- 10.11 The Electoral Commission is considering digital roll mark-off as a way of speeding up and simplifying the process of issuing votes and to reduce the impacts of processing special votes.⁶ Digital roll mark-off would allow anyone who can be marked off the roll electronically to be issued an ordinary vote, regardless of which electorate they are enrolled in. This would lessen the administrative complexity and may lower the number of special votes.
- 10.12 If digital roll mark-off was used in this way, however, it is likely the only feasible way to conduct the preliminary count on election night would be to use digital scanning technology in polling places or at centralised count centres. This is because each polling place could be issuing ballots for all electorates in Aotearoa New Zealand. Conducting a manual sort and count of voting papers for every electorate in each polling place on election night would be impractical.

⁵ Electoral Act 1993, sections 187 to 190.

⁶ Electoral Commission, above n 4, pp. 39 – 41.

- 10.13 The law already allows for an electronic early count of advance votes on election day. Some submitters to the first consultation supported electronic vote counting to remove the possibility of human error. Electronic vote counting may also speed up the release of preliminary results, if it allows vote counting to be carried out and reported more quickly.
- 10.14 There were concerns, however, that electronic counting could be expensive and would require additional time and skill to implement for each election. It also raises the potential for less transparency in the count process and concerns about the integrity of the results. The Electoral Commission suggested risks could be mitigated by requiring the official count to still be done manually.

Release of preliminary results

- 10.15 While the Electoral Act has several provisions concerning the preliminary count of votes, it does not explicitly require the release of the preliminary results. The preliminary results are of high interest to voters, parties, candidates and the media. The Electoral Commission submitted to the review that this customary practice could be better reflected in legislation while still retaining flexibility in case of delays or disruptions.

Advance vote by person who dies before election day

- 10.16 Currently, if a person votes in advance and dies before election day, their vote is not counted, but if a person who has voted on election day dies on election day, their vote is counted.
- 10.17 In 2017, the Electoral Commission and the Justice Select Committee recommended that the law should be amended to resolve this inconsistency so that these votes are all counted.

Our initial view

- 10.18 In our interim report, we recommended allowing electronic vote counting for the preliminary vote count to enable digital roll mark-off and requiring the preliminary election results to be released as soon as reasonably practicable. We also recommended removing the rule that a person's advance vote is not counted if they die before election day, which aligns with our recommendation to shift to a single voting period.

Feedback from second consultation

- 10.19 Only a few submitters commented on our draft recommendations for vote counting.
- 10.20 Most of these submitters supported our recommendation to enable the preliminary count to be conducted electronically, especially if it sped up the vote count process. Those opposed thought electronic counting could create security



risks, particularly if it was introduced as a first step toward online voting. For clarity, we note that electronic counting can be used with paper ballots and does not require electronic or online voting.⁷ Online voting is outside the scope of this review.

- 10.21 The Electoral Commission emphasised that any statutory requirement for the release of the preliminary results must have sufficient flexibility to allow for emergencies, disruptions, or other delays. The Department of Internal Affairs noted that the Local Electoral Act 2001 and its regulations provide for similar processes for the release of preliminary results as our draft recommendations do.
- 10.22 A few submitters opposed our recommendation to introduce a statutory requirement for the release of the preliminary results. These submitters thought that preliminary results could create false expectations and so they should not be published at all.
- 10.23 Most submitters were supportive of our recommendation for votes cast by a person who dies before election day to be allowed. People who opposed this recommendation thought it was self-evident that votes by people who have died should not be considered and that to do so would be inappropriate.
- 10.24 A few submitters proposed ideas to enhance the security and integrity of the vote count, such as video surveillance of the count, retaining the ballots for longer than six months, or providing people with confirmation or the means to verify if their vote has been counted.

Our view

- 10.25 It is important that election results are accurate, trusted, and can be made available quickly. We think the existing law governing the vote counting process generally is satisfactory but maintain our view that some processes can be modernised and improved.

Electronic vote counting

- 10.26 If digital roll mark-off is used in polling places to issue ordinary votes to those voting outside their electorate, it would make vote issuing and voting easier, reduce the number of special voters, and reduce the administrative costs of processing special votes. However, it is likely that digital roll mark-off would require the preliminary count to be conducted electronically, because each polling place would need to manage vote counts for up to 72 electorates.

⁷ Online voting is where voters can cast their vote remotely through their own devices using an internet connection. Electronic voting is used to describe voting on an electronic machine at a polling place.

- 10.27 Therefore, we recommend that the law should enable the preliminary vote to be counted electronically. The Electoral Commission will need to undertake a great deal of careful work, including comprehensive testing and risk management, before this could be introduced. However, we think the law should be changed now so that it is in place for when this work is complete.
- 10.28 Electronic vote counting is not a new process in Aotearoa New Zealand. Electronic scanning technology has been used to count citizens- and government-initiated referendums since 1997 and has proven to be effective and reliable. We are not proposing its introduction as part of a move to online voting, which is outside the scope of this review.

Release of preliminary results

- 10.29 We recommend creating a legal obligation on the Electoral Commission to release preliminary election results as soon as reasonably practicable.
- 10.30 The release of preliminary results is an important part of election night. While the practice of releasing them on election night is widely expected – and integral to initial coalition negotiations between parties – it is currently reliant on the Electoral Commission’s discretion. Requiring the release of the results as soon as practicable in the law would formalise and future-proof the process to be followed. The provision must be high level enough to allow for emergencies, disruptions or other delays.

Advance vote by person who dies before election day

- 10.31 We agree with the Electoral Commission that a person’s vote should be counted if they have voted in advance and die before election day. We consider that the same approach should apply across the whole voting period. This change would resolve an inconsistency in the law between advance voting and election day voting, which aligns with the other changes we have recommended to standardise the rules across both.

Interaction with our other recommendations

- 10.32 The vote count could also be impacted by emergencies and disruptions. Our recommendations in this area are discussed in **Chapter 9**.
- 10.33 Electorate candidates and party secretaries can request a recount from a District Court Judge within three working days from the declaration of the official results.⁸

⁸ Electoral Act 1993, sections 180 to 184.

A recount is also automatically required if there is a tie for an electorate seat. The recount process is discussed in detail in **Chapter 18**.

10.34 In **Appendix 1: Minor and Technical Recommendations**, we recommend the processing of special votes should be able to start earlier.

The Panel recommends:

- R45. Enabling the preliminary count to be conducted electronically.
- R46. Requiring the release of the preliminary results as soon as reasonably practicable in legislation, while retaining a level of flexibility for emergency situations.
- R47. Allowing a person's vote to be counted if they have voted in advance and die before election day.





11. Improving Voter Participation

- 11.1 Voter participation is central to a healthy democracy. Higher voter participation gives a greater authority and legitimacy to elected governments as election results represent a broader cross-section of society.
- 11.2 Like other established democracies, voting participation rates in Aotearoa New Zealand have declined over recent decades (although there have been small increases in some recent elections). Turnout in the 2023 election was 78.2 per cent of those enrolled, a slight decrease compared to turnout of 82.2 per cent in the 2020 election. There are also differences in voter-participation rates between different groups in society.
- 11.3 Barriers to participation vary, from not knowing how or where to vote or finding the process too difficult or hard to access, to having low trust in governments or thinking that voting will not make a difference.
- 11.4 To understand why voting is important, people need to know enough about our system of government, our democratic processes, and the rights and responsibilities of citizens. Civics education focuses on the formal institutions and processes of civic life (such as voting in elections and government processes). Citizenship education includes the wider range of ways in which citizens interact with and shape their communities and societies.¹
- 11.5 Civics and citizenship education can encourage participation and support people to be better informed in their choices about how they exercise their political rights. It can help to build a healthy democratic culture and community participation generally.

Our view

- 11.6 This chapter draws primarily on the wide-ranging discussions we had during our first consultation, when we asked different communities about their experiences of the electoral system. These conversations revealed the barriers to participation that persist for some communities and ideas about how to address them. We also

¹ NZ Political Studies Association, 2018. *Our Civic Future: Civics, Citizenship and Political Literacy in Aotearoa New Zealand*, Wellington: NZ Political Studies Association.

drew on academic research and relevant international comparisons as well as submissions. Our view on many of these issues is largely the same as in our interim report. We have noted where we received additional feedback in our second consultation and any changes we have made as a result.

- 11.7 We recommend more civics and citizenship education is undertaken across all parts of our society and set out our views below on how this should happen. The Electoral Commission plays an important role in these areas, but we also heard the value that community-led initiatives can have in supporting outreach and education.
- 11.8 We considered ways to encourage voter participation, particularly for those who may have specific needs when voting or groups that traditionally have lower turnout. There are many factors that influence voter participation, such as trust in government, political interest, socio-economic factors, and accessibility. We have focused our recommendations on addressing barriers to participation and areas where the electoral system can help to foster a democratic culture of participation.

The role of the Electoral Commission in voter participation

- 11.9 Much of the Electoral Commission's work seeks to improve participation. The Electoral Act 1993 tasks the Electoral Commission with facilitating participation in parliamentary democracy and promoting understanding of the electoral system.²
- 11.10 The Electoral Commission delivers these objectives in several ways. It runs a large-scale education and information campaign before each general election to increase awareness, enrolment and participation. It has teams across the country engaging directly with communities, particularly those that are less likely to vote, to inform them about the electoral process and encourage them to take part. It develops civics education resources for schools and adults, and runs the Kids Voting / Te Pōti a Ngā Tamariki programme. It also makes recommendations to the government on making voting services more accessible for people with different needs.
- 11.11 In **Chapter 3** and **Chapter 15**, we discuss our proposed changes to the role and functions of the Electoral Commission. These include amending the law so that the Electoral Commission is required to give effect to te Tiriti o Waitangi / the Treaty of Waitangi (**te Tiriti / the Treaty**) and to facilitate equitable participation. We also recommend diversifying the skill set and expertise on the Electoral Commission's board to reflect these functions.
- 11.12 In our view, these changes would help the Electoral Commission to continue improving participation outcomes – for example, through its workforce, staff

² Electoral Act 1993, section 4C.

training, service delivery, and engagement and outreach. Delivering these functions effectively would require the Electoral Commission to have strong relationships with diverse communities to understand their needs, particularly those with lower engagement or barriers to participation. We encourage the Electoral Commission to consider how best to regularly engage with and seek input from these communities – for example, by setting up advisory groups or conducting targeted research.

- 11.13 We support the Electoral Commission continuing its current educative work, such as developing resources about elections and voting for schools, adults and communities. In our second consultation, the Electoral Commission questioned whether its current statutory objectives provide a clear enough mandate for this work. We think the Electoral Commission's existing objectives and functions do empower it to lead education initiatives.³

Civics and citizenship education

- 11.14 Done well, civics and citizenship education can improve civic participation and voter turnout,⁴ helping to meet our objective of encouraging electoral participation.
- 11.15 The United Nations Human Rights Committee has stated that voter education and registration campaigns are necessary to ensure the effective exercise of electoral rights by an informed community, as affirmed by Article 25 of the International Covenant on Civil and Political Rights.⁵
- 11.16 Many submitters to our first consultation who discussed the voting age also talked about civics and citizenship education. Some submitters who supported lowering the voting age to 16 years thought that it should be done alongside the adoption of civics and citizenship education for high school students. We discuss this point in our recommendation on the voting age in **Chapter 7**.
- 11.17 Other submitters to our first consultation thought civics and citizenship education was important for people of all ages. We heard from a range of organisations about how effective community-led outreach can be at engaging with communities with lower participation rates.

³ Electoral Act 1993, section 5(c).

⁴ Wood, B.E., Taylor, R., Atkins, R. & Johnston, M., 2018. Pedagogies for active citizenship: Learning through affective and cognitive domains for deeper democratic engagement. *Teaching and Teacher Education*, Volume 75, pp. 265 - 266.

⁵ *General comment no. 25, The right to participate in public affairs, voting rights and the right of equal access to public service (article 25)* UN Doc CCPR/C/21/Rev.1/Add.7 (27 August 1996).

Earlier recommendations

2011 and 2014 Justice Select Committee

In its 2011 post-election report, the Justice Select Committee recommended:

- the Electoral Commission liaise with the Ministry of Education on the feasibility, including resourcing implications, of incorporating ongoing comprehensive civics education into the New Zealand school curriculum
- supporting the Commission to expand public civics education programmes.

In its 2014 post-election report, the Justice Select Committee recommended that the government explore the further development and coordination of ongoing, independent, civics education.

2013 Constitutional Advisory Panel

The Constitutional Advisory Panel:

- recommended developing a national strategy for civics and citizenship education in schools and in the community, including the unique role of te Tiriti / the Treaty
- recommended assigning responsibility for the implementation of the strategy
- noted the implementation of the strategy could include the co-ordination of education activities; resource development, including resources for Māori medium schools; and professional development for teachers and the media.

Civics and citizenship education in schools

- 11.18 While Aotearoa New Zealand does not have a standard civics education curriculum, it is a topic within the social sciences curriculum. The social sciences curriculum focuses on educating students about how to contribute to and participate in society as critically informed, ethical and empathetic citizens. It covers important aspects of participation and representation.⁶
- 11.19 Currently, schools have the flexibility to design their own curriculum in line with the national framework. The Electoral Commission has developed teacher resources aligned to the different levels of the social sciences curriculum. The Ministry of Education includes a Civics and Citizenship Teaching and Learning Guide in its School Leavers' Toolkit, which is an optional resource.

⁶ The social sciences curriculum was recently refreshed. The new curriculum will take effect from 2027, though Aotearoa New Zealand's histories is being taught from 2023.

- 11.20 Civics and citizenship education is critical to empowering our young people to get engaged and participate in our political and electoral system. In our view, that means it needs to have a prominent place in schools and the curriculum, and educators need to be well supported to teach it.
- 11.21 In our second consultation, some submitters called for civics and citizenship education to be compulsory in schools. We note that the current curriculum framework already provides for these topics to be taught and that the national curriculum generally sets a direction for learning rather than compulsory requirements. The Ministry of Education has the lead role in this space, though the Electoral Commission and other experts are well equipped to provide input. We encourage these agencies to continue with their efforts to deliver civics and citizenship education in schools and ensure there are appropriate resources and adequate support.

Community-led education and outreach

- 11.22 Civics and citizenship education is not just for students. Everyone in our society should have access to the information and education they need to participate in elections and exercise their right to vote meaningfully.
- 11.23 Reaching a wide range of communities is key to effective civics and citizenship education. This reach is best achieved by drawing on local knowledge and relationships to educate communities in ways that are relevant to them. Formal education is an important part of the equation, but participation is also driven by encouraging friends and whānau to vote and taking part in conversations about how democracy works and how people can get involved.
- 11.24 Community and civil society groups are often best placed to make these connections but are not always adequately resourced to do so.

Our initial view

- 11.25 In our interim report, we recommended a community-led funding model focused on civics and citizenship education and voter participation. This model would embed a bottom-up approach that empowers community groups to take the lead with appropriate support and resources. We said that the funding model's design would need to be politically neutral so that the funding could not be used to try to persuade voters to vote for a particular party or candidate.
- 11.26 We also recommended that this model specifically fund by Māori for Māori voter participation and engagement activities. These initiatives would be delivered by iwi, hapū, and/or other Māori organisations. This approach helps to uphold the guarantee of tino rangatiratanga provided to Māori in te Tiriti / the Treaty. Given the legacy of historic breaches of Māori electoral rights, funding levels for these programmes should recognise the finding of the Privy Council that “especially



vigorous” remedial action from the Crown may be required if the issue arises from the Crown’s breach of te Tiriti / the Treaty (which we set out in **Chapter 3**).

Feedback from second consultation

- 11.27 Several submitters to our second consultation, including the Electoral Commission, academics, civil society organisations and local government, were supportive of funding community-led education and participation initiatives. They saw it as a way to increase civic knowledge and understanding and promote engagement in elections. A few noted that outreach programmes are much more effective when communities take the lead on their delivery, while others agreed that this approach could benefit communities of all ages. A few submitters specifically endorsed by Māori for Māori initiatives.
- 11.28 Other submitters, including many who completed our online form, thought this funding would be a poor use of taxpayers’ money. They thought it would be wasteful to target people who they viewed as not caring enough or not knowing enough to vote. They were also concerned that the funding would be used for political purposes. Some submitters misinterpreted our recommendation and thought the funding would be used to pay or otherwise incentivise people to vote. Other submitters objected to the idea of targeting specific communities, which they saw as unequal treatment, even if it was used to reach communities with traditionally lower voter turnout.
- 11.29 In our second consultation, we sought feedback on how this funding could be delivered effectively and impartially and which government agencies may be best placed to administer it. Some submitters discussed what communities or organisations might be eligible for or benefit from the funding, although only a few commented on who should administer it. One submitter thought there were some benefits in the Electoral Commission administering the fund, given its political neutrality and independence.
- 11.30 Some submitters commented on the importance of funded initiatives being politically neutral. One education provider proposed some form of accreditation for applicants to ensure political neutrality is maintained. One party thought having the Electoral Commission administer the fund would extend its remit without adequate checks and balances.

Our final view

- 11.31 We confirm our position that funding for community-led initiatives would make a valuable contribution to improving voter education and participation outcomes. Relationships and relevance matter, and communities know best about what will work for their members. The community-led funding could focus specifically on communities with lower turnout or that face particular barriers to participation. We do not see this model as targeting voters who deliberately choose not to vote – rather, it is intended to reach people who need information or support to do so.

- 11.32 We envision the funding could be used for initiatives broadly relating to the electoral system, enrolment, the Māori electoral option, and voting in elections. While we do not want to be prescriptive about its design, we provide some examples to illustrate the kinds of activities that could be funded:
- design and delivery of educational programmes and workshops
 - production of advertising campaigns and supporting material, resources and collateral in formats tailored to the intended audience
 - outreach through face-to-face canvassing, social media, direct mail, phone calls, apps, websites, and games or other methods appropriate for the intended audience
 - integrating voter engagement initiatives into existing community support programmes
 - a one-off event or series of events (including participating in existing events and festivals).
- 11.33 We see a strong case for by Māori for Māori initiatives, as discussed above. Examples of other communities that may benefit from tailored programmes include Pacific communities, ethnic communities (including new migrants), youth, disabled communities, rural communities, and people with low incomes. Some people within these communities may experience multiple and intersecting barriers to participation. These examples are not exhaustive – voter turnout and community needs will change over time, and the fund should be responsive to these trends.
- 11.34 We have revised our initial view that the Electoral Commission should not be responsible for allocating this funding. Originally, we were concerned that this responsibility may conflict with the Electoral Commission’s obligation to maintain political neutrality.
- 11.35 On reflection, we think there are benefits to the Electoral Commission administering the fund. The Electoral Commission’s political neutrality and independence may in fact increase trust and public confidence that the participation programmes are also politically neutral, compared with other government agencies that are subject to ministerial direction.
- 11.36 We heard from submitters that the Electoral Commission is already the natural first port of call for voter education and participation programmes, and our proposal to fund community-led initiatives aligns well with its purpose and objectives. It has a wealth of relevant experience, expertise and relationships to draw on. We consider administering the fund to be within the Electoral Commission’s remit to facilitate participation.⁷

⁷ Electoral Act 1993, section 4C(a).

- 11.37 We recognise, however, that the Electoral Commission may not have sufficient connections into all relevant communities. We see a role for cross-agency support, including by agencies such as Te Puni Kōkiri, the Ministry for Ethnic Communities and Whaikaha – Ministry of Disabled People, to facilitate outreach and engagement to make sure that communities that might benefit from the funding can be reached.
- 11.38 We note the concerns of some submitters that this funding could be used for partisan purposes or to influence who people vote for. There is also a risk that some community groups could have strong ties to foreign states. Appropriate measures would need to be taken to ensure these initiatives do not inadvertently become a vector for foreign interference. We are satisfied the risks of funding being used for partisan purposes or enabling foreign interference could be managed by the Electoral Commission through a well-designed application process, contractual provisions, and monitoring. Importantly, the funding should not be available to provide direct incentives or payment for voting.

The Panel recommends:

- R48. Developing a funding model to support community-led education and participation initiatives, with this model also providing for by Māori for Māori activities.**

Addressing barriers to participation

- 11.39 The United Nations Human Rights Committee has said that positive measures should be taken to overcome specific difficulties, including illiteracy, language barriers, poverty or impediments to freedom of movement, which prevent eligible voters from exercising their rights.⁸
- 11.40 For most voters, although not all, voting in Aotearoa New Zealand is considered to be relatively easy and accessible. The Electoral Commission and the Justice Select Committee undertake reviews after each election to identify any issues or opportunities for improvement. This process has resulted in better and more accessible voting services over time.
- 11.41 In this section, we comment on some of the remaining barriers to participation we have heard about through engagement and the efforts to address them. Achieving

⁸ UN Human Rights Committee, above n 5, p. 5.



Earlier recommendations

Both the Justice Select Committee and the Electoral Commission have recommended a range of changes over the years to improve participation and accessibility. Many of these have been implemented by successive governments.

2014 and 2017 Electoral Commission post-election reports

Following the 2014 election, the Electoral Commission recommended that promoting voter participation should become a national strategic priority with multi-party support. In its reports on the 2014 and 2017 elections, it also commented on the diversity of its workforce, including the number of staff who speak te reo Māori.

In its report on the 2017 election, the Electoral Commission recommended allowing people on the unpublished roll to cast an ordinary vote, rather than a special vote.

equity of participation is likely to require different measures for different groups and communities. We note that the barriers people face can be complex and overlapping – for example, members of the rainbow community who may be more likely to experience homelessness, or Māori with disabilities.

Participation by Māori voters

- 11.42 The right to participate in elections is guaranteed by Article 3 of te Tiriti / the Treaty, as full citizenship rights include those of political participation and representation. This guarantee means the Crown must actively protect Māori rights of equal participation during democratic election processes.
- 11.43 Māori voter participation at elections is lower than non-Māori participation. In the 2020 election, 73 per cent of voters of Māori descent voted, compared with 83 per cent for non-Māori voters. Turnout in the Māori electorates was 69 per cent.⁹
- 11.44 As for all groups of voters, there are a range of reasons why Māori may choose not to enrol or vote. These reasons may include low levels of trust in government, economic inequality, and past inequity or experiences in the electoral system. For example, Stats NZ has previously found that nearly half of the Māori population felt the public had low influence on government decision-making, compared with 37 per cent of the total population.¹⁰
- 11.45 As we outline in **Chapter 3**, there is a long and troubling history of electoral laws that made it difficult, and sometimes impossible, for Māori to participate in the

⁹ Complete turnout data for the 2023 election was not available at the time of publication.

¹⁰ Stats NZ, 2018. *Voting and political participation*, Wellington: Stats NZ, p. 7.

electoral system. Over time, some of the inequities that Māori face in the electoral system have been addressed, and changes have been made to support participation. We are aware, however, that barriers remain. Some of our recommendations relating to voter eligibility and the Māori electoral option, discussed in **Chapter 7** and **Chapter 8**, seek to help address these. Funding for community engagement led by and for Māori, discussed above in **Civics and citizenship education**, may also support the exercise of Māori rights.

- 11.46 Complaints to the Electoral Commission during the 2017, 2020 and 2023 elections, as well as what we heard through community hui during our consultations, indicates that casting a vote is not always a positive experience for Māori. We have heard about the frustrations that Māori voters can sometimes experience in polling places, from electoral officials who cannot pronounce their names correctly or who are unfamiliar with the Māori electorates, to assumptions about which roll they are on or being given the wrong voting forms. While having separate ballot boxes for different electorates and rolls is currently necessary to enable the preliminary count to be completed on election night, voters on the Māori roll can find having to cast their ballot in a separate box to voters on the general roll an exclusionary experience.
- 11.47 These experiences can discourage participation. These issues are also largely operational matters for the Electoral Commission, involving staff training and service delivery. Since 2017, the Electoral Commission has worked to build relationships within local Māori communities around the country and to develop initiatives to improve the voting experience for voters of Māori descent (for example, providing kaupapa Māori voting places that offer bilingual voting services). We encourage the Electoral Commission to continue with this important work and emphasise the critical role of appropriate staff education and training.
- 11.48 We consider that these kinds of issues are best addressed by this review at the governance level, specifically by our recommendations to better reflect te Tiriti / the Treaty in the Electoral Commission's objectives and board composition (covered in **Chapter 3** and **Chapter 15**). Our intent is that these changes would have flow-on effects within the Electoral Commission that will ensure that these kinds of issues are addressed and avoided in the future, and that voting services are delivered with input from Māori. In **Chapter 3**, we also recommend requiring the Electoral Commission to publish a Tiriti / Treaty policy and strategy, and report on progress regularly.
- 11.49 In **Chapter 13**, we propose establishing Te Pūtea Whakangāwari Kōrero ā-Tiriti / Treaty Facilitation Fund to provide funding for party and candidate engagement with Māori communities in ways appropriate for Māori.

Participation by disabled voters

- 11.50 Article 29 of the United Nations Convention on the Rights of Persons with Disabilities guarantees disabled people the right and opportunity to vote and be

elected on an equal basis with others. Submitters to this review noted that a diverse range of barriers to participation exist for disabled people. For example, information about candidates and party policies is rarely available in alternative formats such as New Zealand Sign Language or EasyRead, polling places may be inaccessible or difficult to get to without a vehicle, and people with visual impairments may be prevented from exercising the right to a secret vote because they cannot mark their own ballot paper.

- 11.51 The Electoral Commission has taken steps to improve accessibility for disabled voters. A range of voting methods is available for disabled voters, including assisted voting, takeaway and postal voting, and telephone dictation voting. The Electoral Commission also provides election information in accessible formats.
- 11.52 These efforts to improve accessibility should continue. In particular, we endorse further work on:
- expanding on the pilot trialled in the 2020 election to have New Zealand Sign Language interpreters available at select polling places in person or by video
 - continuing to improve the delivery of telephone dictation voting. While this service has been a positive development for visually impaired voters, submitters noted that it still entails some limits on the secrecy of the vote and does not allow the person to cast a vote independently. The process of requesting the service and voting can also be complex.
- 11.53 In **Chapter 9**, we discuss other recommendations to improve accessibility for disabled voters. These recommendations include repealing the requirement to state or confirm your name to be issued a ballot and changing the requirements for accessible polling places. Many disabled persons' organisations told us that online voting would reduce barriers to participation, including for blind and low vision voters, and expressed disappointment that online voting was out of scope of this review. We note these concerns, and in **Chapter 9** we have recommended work on the continuous development of voting methods for people who cannot vote in person.
- 11.54 In our second consultation, we heard from disabled persons' organisations about the importance of disabled communities being involved in electoral processes, including resource development. We expect that our proposed change to make facilitating *equitable* participation one of the Electoral Commission's objectives, discussed in **Chapter 15**, will mean that the perspectives and experiences of disabled communities will be consistently incorporated into the Electoral Commission's work. We are also aware that there is limited data available about voter turnout in disabled communities. More research should be done by the Electoral Commission and other agencies to better understand voting trends and barriers.
- 11.55 A key issue we heard about from disabled communities during our first consultation was the lack of accessible campaign materials, especially for the deaf

community. Our recommendation to address this issue by expanding the purpose of the Election Access Fund is discussed in **Chapter 13**. We note that leaders' debates have been captioned and interpreted in New Zealand Sign Language in recent elections, with government funding provided via NZ On Air for the interpretation service in the 2023 election. We encourage continuing efforts to make election coverage more accessible. We see these efforts as an important way to give effect to our obligations under Article 21 of the United Nations Convention of the Rights of Persons with Disabilities, which affirms the right to receive information on an equal basis with others, including in accessible formats.

Participation by speakers of languages other than English

- 11.56 The Electoral Commission makes information about elections available in multiple languages. It also seeks to employ electoral officials who speak the languages commonly used in the communities they work in. Interpreters can be made available at polling places, though resource constraints are a practical limitation. A few submitters to our first consultation suggested that election materials should be available in more languages to support participation by people who do not speak English as a first language.
- 11.57 We considered whether ballot papers should be made available in other languages. We think, however, that this approach would create logistical issues within the context of a manual system for the production, distribution and processing of ballot papers.
- 11.58 We endorse the Electoral Commission's efforts to ensure its workforce has diverse language skills to better serve different communities. We encourage the Electoral Commission to consider how technology could be used to make voting information available in more languages at polling places – for example, through QR codes.
- 11.59 Voters from diverse ethnic communities may benefit from more community-led engagement and outreach, as discussed above in **Civics and citizenship education**.

Participation by rainbow communities

- 11.60 During our first consultation, we heard that members of rainbow and takatāpui communities can be uncomfortable using their legal name for enrolment and voting purposes, especially if that name does not match their gender expression.
- 11.61 One rainbow advocacy group recommended including a person's preferred name as an option on enrolment forms and on the electoral rolls, in addition to their legal name. This change would allow rainbow and takatāpui voters to be identified by the preferred name that they use in day-to-day life, which may reduce barriers to voting for community members.
- 11.62 We endorsed this recommendation in our interim report. A few submitters to our second consultation supported this recommendation and talked about the

importance of being able to vote with dignity and without embarrassment, and the need for safe ways and places to vote.

- 11.63 In our second consultation, the Electoral Commission advised that the use of a preferred name for enrolment is already allowed as the Electoral Act does not specifically require a person's legal name on an enrolment application – it only requires a full name.¹¹ On that basis, we no longer see a need for this recommendation. However, while it is positive that this option is already available, we think there is limited knowledge that preferred names can be used, given what we heard in our first consultation. More could be done to promote the ability to enrol with a preferred name to rainbow and takatāpui communities as well as other communities that may commonly use preferred names.
- 11.64 In response to our initial recommendation, a few submitters opposed the use of preferred names due to concerns that they could make enrolment verification more difficult and may increase the risk of fraud. As above, the use of preferred names has already been in place in practice. We have not heard any evidence that allowing the use of preferred names results in more fraudulent enrolments. The Electoral Commission has a range of processes in place to verify enrolments and to detect any suspicious enrolment activity. And as discussed in **Chapter 9**, there are additional safeguards in place to detect double voting.
- 11.65 In our second consultation, we also heard from rainbow organisations about the importance of electoral staff training to prevent discrimination and to ensure that staff help to make rainbow voters feel comfortable when casting their vote.

The Panel recommends:

R49. Providing targeted information about the use of preferred names for enrolment and voting purposes to relevant communities.

Participation by people receiving care in residential facilities

- 11.66 The Electoral Commission provides enrolment and voting services to people receiving care in residential facilities, such as aged-care facilities, hospitals and mental health in-patient units.
- 11.67 While most care homes and hospitals work with the Electoral Commission to accommodate these services, we heard some anecdotal examples of difficulties

¹¹ Electoral Act 1993, section 83(2)(a).

accessing these facilities in our first consultation – for example, by parties and candidates.

- 11.68 We also heard from mental health and disabled persons' organisations about the importance of staff, volunteers or peer support workers being able to support people to vote and being appropriately informed about voting rights. While anyone who wants to vote and is eligible should be able to do so, electoral officials do need to consider the advice of staff in these facilities about what is appropriate (for example, in-person voting may not be possible in secure wards or ICU wards, but takeaway voting may be offered instead).
- 11.69 We were interested in better understanding if there are any issues with voting services in residential facilities and sought feedback on this question in our second consultation. We received very limited feedback in response. We did meet with organisations representing people living in retirement villages or aged-care facilities, who generally thought voting services were working well. They reiterated what we heard in our first consultation on the critical role of staff in enabling residents to vote.
- 11.70 We did, however, hear about potential risks to the ability of people in residential facilities to exercise their political rights, even if these issues do not appear to occur often. For example, some people mistakenly believe that if they have been granted a power of attorney then they can vote on behalf of the person who has granted the power, or stop them from voting. Staff in residential facilities may only allow some candidates or parties access but not others, or may try to influence residents with particular political views, or may determine whether they believe residents are capable of voting or not (particularly those with dementia). Given these risks, we would echo the importance of the Electoral Commission continuing to work with staff in these facilities to ensure that all eligible residents are given the opportunity to exercise their right to vote. We also see this as an area that would benefit from more research.

Participation by rural and remote communities

- 11.71 Currently, there are legislative provisions for voting by people living in remote locations who have no access to polling places. People voting from Tokelau, Campbell Island, Raoul Island, Ross Dependency, vessels, offshore installations, remote islands administered by the Department of Conservation, and remote locations overseas can vote by upload/download, post or dictation.
- 11.72 Remote voters within Aotearoa New Zealand can apply to cast a special vote on the basis that it would not be practicable to vote at a polling place without incurring hardship or serious inconvenience.
- 11.73 We heard through engagement that rural communities do not always have adequate or consistent access to polling places during the voting period. Our recommendation to set standards for polling places in the law, discussed in **Chapter 9**, could help to address this issue.



People on the unpublished roll

- 11.74 People with concerns relating to their personal safety can apply to enrol on the unpublished roll. People on the unpublished roll must cast a special vote because their name and address do not appear on the printed electoral rolls. People with serious concerns about personal safety may find completing the special declaration form distressing, given the sensitivity of their personal details. Casting a special vote is also more difficult and time-consuming.
- 11.75 In our interim report, we agreed with the Electoral Commission's previous recommendation that the law should be changed to allow people on the unpublished roll to cast an ordinary vote. This change would require some personal details to be included on the printed electoral rolls. The Electoral Commission has suggested that unpublished electors could be marked off the roll using their name and another unique identifier other than their address – for example, their date of birth.
- 11.76 The Privacy Commissioner raised concerns with this recommendation in our second consultation. He was concerned that using date of birth to authenticate a person's identity would not be adequately secure, given many people share their date of birth on social media.
- 11.77 We note this concern but consider that it does not discount the underlying intent of our recommendation, which is to remove a barrier to participation for people on the unpublished roll. We suggest that the Electoral Commission could work with the Office of the Privacy Commissioner to identify an alternative means of authentication that meets the requirements of the Electoral Act, maintains privacy protections and is administratively workable. Our recommendation is subject to these conditions being met.
- 11.78 Other issues relating to access to the electoral rolls and privacy concerns are discussed in **Chapter 16**.

The Panel recommends:

- R50. Allowing people on the unpublished roll to cast an ordinary vote, subject to the development of a unique identifier for inclusion in the electoral rolls that meets privacy requirements without disclosing a voter's address.**

Affordable and accessible transport

- 11.79 We heard from disabled persons' organisations in our first consultation that affordable and accessible transport, whether public or private, can be a barrier to reaching a polling booth. We can see how this barrier could affect other communities as well.
- 11.80 We considered the option of providing access to free or discounted transport options on election day, as the final day that people have the opportunity to vote. We note, however, that with a majority of people voting in advance at the 2023 election, this approach may have a high cost while benefitting a diminishing proportion of voters.
- 11.81 We also explored existing services to subsidise transport costs, such as the Total Mobility Scheme, SuperGold cards, and Community Services Cards. The availability of these services as well as postal and takeaway voting provide options for voters for whom transport may be an issue. Any gaps in these services may be best addressed as a transport issue rather than through electoral law.

Interaction with our other recommendations

- 11.82 These recommendations focus on barriers we heard about that affect particular groups or communities. Many of our recommendations discussed elsewhere in **Part 3**, covering voter eligibility, enrolment and voting methods, also support broader participation outcomes.
- 11.83 We touch on other forms of political participation, such as standing as a candidate and making political donations, in **Chapter 12** and **Chapter 13**.
- 11.84 In **Chapter 19**, we talk about the role of education in reducing the risks of misinformation and disinformation in the electoral system.



4

PART 4

Parties and Candidates

This part covers:

- standing for election as a candidate or political party (Chapter 12)
- political finance (Chapter 13)
- election advertising and campaigning (Chapter 14)



12. Standing for Election

Party regulation

- 12.1 Political parties play a vital role in Aotearoa New Zealand's democracy. Although they are mainly private organisations, they play a central part in the contest of parliamentary elections and so exercise significant public power, as well as receive state funding. Parties have been a central part of our system for more than a century, but their importance is enhanced under our “closed list” form of Mixed Member Proportional (**MMP**) where parties rank candidates without voters’ input into the rankings.¹ There is a need, therefore, to regulate some aspects of political parties.²
- 12.2 Any regulation of parties needs to be carefully justified. It must not unduly impinge on international law rights,³ or on the rights affirmed in the New Zealand Bill of Rights Act 1990 to freedom of association, expression, or peaceful

¹ In 1986, the Royal Commission into the Electoral System noted the “critical public function” of parties in the electoral system. Royal Commission on the Electoral System, 1986. *Report of the Royal Commission on the Electoral System*, Wellington: House of Representatives, p. 267. See also Geddis, A., 2023. *Electoral Law in Aotearoa New Zealand*. 3rd ed. Wellington: LexisNexis New Zealand Ltd, p. 83.

² Under the First-Past-the-Post electoral system, the role of parties was not formalised in law. The Electoral Act 1993, passed to give effect to MMP, created a number of legislative requirements that parties have to meet.

³ The *Universal Declaration of Human Rights* GA Res 217A (1948) protects freedom of expression (Article 19), freedom of association (Article 20) and the right to take part in government (Article 21). The *International Covenant on Civil and Political Rights* GA Res 2200A (1966) affirms these rights: freedom of expression (Article 19), assembly (Article 21), association (Article 22), right to be elected (Article 25). Guidance on the rights in Article 25 of the *International Covenant on Civil and Political Rights* is found in the UN Human Rights Committee (HRC) *General comment no. 25, The right to participate in public affairs, voting rights and the right of equal access to public service (article 25)* UN Doc CCPR/C/21/Rev.1/Add.7 (27 August 1996) which includes that the right to stand as a candidate must be established in law, and subject only to reasonable restriction, and that political parties themselves should respect the rights in Article 25.

assembly.⁴ Nor must it unduly restrict the ability of parties to organise themselves, determine policy, select candidates, and contest policy in ways that reflect their widely differing sizes, ethos, and organisational approaches.⁵

12.3 Political parties that want to contest the party vote must first register with the Electoral Commission.⁶ To register, a party must pay a fee of \$500, and have 500 current financial members who are eligible to enrol as electors.⁷ Each registered party must have a party secretary.⁸ Party secretaries are responsible for the party's compliance with the Electoral Act 1993. Registered parties have the following obligations:

- **reporting requirements:** party secretaries have obligations to report certain donations, loans and expenses⁹
- **candidate selection:** each party selects candidates based on their own rules, but the Electoral Act requires that party rules provide for “democratic procedures” in selecting candidates¹⁰
- **internal rules:** party secretaries must provide the Electoral Commission with copies of membership rules and rules for candidate selection¹¹
- **membership:** to remain registered, parties must be able to show they have 500 eligible members. Party secretaries are required to give statutory declarations each year confirming this requirement has been met.¹²

12.4 Unregistered parties are not subject to the obligations that apply to registered parties. Unregistered parties can stand candidates in electorate seats, but they are not able to contest the party vote directly. However, if they become a component

⁴ New Zealand Bill of Rights Act 1990, section 17 (association), section 14 (expression), section 16 (freedom of assembly).

⁵ In *Huata v Prebble* [2005] 1 NZLR 289 (SC) at [37], Elias CJ stated that although a court will enforce the agreements between political parties and their members, “associations will typically have wide freedom in their internal arrangements, including in the determination of their own membership and the achievement of their objects”.

⁶ Electoral Act 1993, section 62.

⁷ Electoral Act 1993, section 63A (application fee); section 63(2)(c)(vi) (500 financial members who are eligible to enrol as electors).

⁸ Under the Electoral Act 1993, section 63(2)(iv) an application for party registration must contain the name and address of the secretary of the party and be accompanied by a number of statutory declarations by the secretary. The party must advise the Electoral Commission when any new secretary of a party is appointed: Electoral Act 1993, section 67AA(2).

⁹ Electoral Act 1993, Part 6A.

¹⁰ Electoral Act 1993, section 71.

¹¹ Electoral Act 1993, section 71B.

¹² Electoral Act 1993, section 71A(b).

party of a registered party then they gain access to the allocation of list seats, without being subject to normal finance and expenses disclosure requirements.¹³

Is there a case for change?

What we heard

Party registration

- 12.5 Most submitters who responded to our question about the rules for party registration in our first consultation were satisfied with the current rules. Submitters who discussed the registration requirements had differing views on issues such as the minimum numbers of financial members needed to become registered, and the registration fee. A few submitters supported the status quo. They argued that the members requirement is necessary to demonstrate the support, financial commitment, and structure necessary to create a party. Some argued for an increased number of members due to the increase in Aotearoa New Zealand's population. Others supported a lower threshold, to encourage people, including numerical minority groups, to engage in democracy by allowing smaller and new parties to enter the system.
- 12.6 A few submitters favoured abolishing the requirement to encourage participation. A few suggested changing the requirement from 500 financial members to 500 registered voters.
- 12.7 Some submitters to our first consultation thought that all political parties should be registered to protect the integrity of elections, and to ensure that all parties are treated equally. Other submitters discussed the obligations of registered parties, including whether there should be more disclosure to assist the public.

Candidate selection

- 12.8 We also heard in our first consultation that some people do not feel represented by the candidates that are selected for parties. Although the diversity of parliament has increased, there are some communities that remain underrepresented.

¹³ Electoral Act 1993, section 3(1) defines component party as a party that is a member of a registered party or one that has combined some or all of its membership with that of another party. On application for registration a party must declare any component parties; Electoral Act 1993, section 63(2)(d).

Earlier recommendations

2012 Electoral Commission Review of MMP

The Commission recommended that:

- parties should continue to be responsible for the selection and ranking of candidates on their party lists
- parties should be required to give public assurance, by statutory declaration, that they have complied with their rules in selecting and ranking their list candidates
- in any dispute relating to the selection of candidates, the version of the party's rules that was supplied to the Commission at the time the dispute arose is the version that should be applied.

2014 Electoral Commission post-election report

The Commission recommended:

- that if a party secretary resigns, a new party secretary must be appointed, and the Commission advised within 20 working days, or the party's registration may be cancelled by the Commission
- introducing a discretion to refund the bulk nomination deposits in certain circumstances if one candidate in the bulk nomination refuses to file a return of expenses and donations.

2017 Electoral Commission post-election report

The Commission recommended a deadline (eight weeks before writ day or the default day for the start of the regulated period) for party registration applications to ensure certainty for applicants.

2020 Electoral Commission post-election report

The Commission recommended:

- adding a statutory deadline at the start of the regulated period for party registration applications, to ensure certainty for applicants
- that parliament review the existing umbrella and component party provisions to consider whether any changes were needed.

- 12.9 Another issue that submitters raised was parties' responsibilities when selecting candidates, particularly the requirement to follow democratic procedures.¹⁴

Our initial view

12.10 In our interim report, we concluded that the Electoral Act struck the right balance in regulating political parties. The rules reflected the public interest in having information about parties' public-facing functions, without unduly restricting the rights and freedoms of those people who chose to participate politically through parties.

12.11 However, we considered improvements could be made to clarify how the current rules worked in practice and how they could be administered. We considered these changes would help to future-proof the law, and increase transparency and public confidence. We recommended strengthening certain requirements relating to party registration, and compliance with their candidate selection rules. We recommended:

- that the Electoral Commission should have the power to either refuse to register, or to deregister, a party if its rules do not meet the statutory requirement to follow democratic procedures when selecting candidates. We proposed that before the Electoral Commission refuses to register, or moves to deregister, a party, the party would be notified and given an opportunity to amend its rules to comply with its statutory obligations
- that a registered party must submit a party list of candidates at each general election in order to remain registered
- to be eligible to register with the Electoral Commission, a party must have 500 "current financial members" that are actually enrolled as electors (and not just eligible to enrol)
- that the Electoral Commission has the power to audit whether registered parties continue to have 500 eligible members
- clarifying that the existing requirement on parties to follow democratic procedures when selecting candidates also applies to the party's ranking of list candidates
- that party secretaries confirm (by statutory declaration) that the candidate selection process for list candidates complied with the party's candidate selection rules

¹⁴ Under section 71 of the Electoral Act 1993, registered parties must ensure that their candidate selection process is carried out by its current financial members, or their delegates (or both).

- to contest the party vote, political parties must apply to be registered before the start of the regulated period (that is, three months before election day).

Component parties

12.12 We also recommended closing the loophole that enables an unregistered party to become a component party of a registered party.

Representation of diverse groups

12.13 We considered, but decided against, recommending diversity requirements as a way of increasing representation from different communities.

Feedback from second consultation

Party registration

- 12.14 A few submitters supported our recommendation to require the Electoral Commission to refuse to register or to deregister a party whose rules did not meet the requirement in the Act for membership participation in candidate selection, while a few others opposed this recommendation. One submitter questioned how the Electoral Commission would carry out this proposed role. Some of those opposing this recommendation misunderstood the nature of the recommendation and were concerned about the Electoral Commission playing a role in enforcing party rules. These submitters considered that enforcement of party rules and procedures should remain with the courts. The Electoral Commission expressed concern about the work associated with administering this proposed power, and also with the need to spell out what “democratic procedures” means. The Commission noted that currently a party’s rules do not have to be filed until one month after registration.
- 12.15 One submitter opposed requiring a party to submit a list of party candidates at each election to remain registered on the basis it would impose an undue compliance burden on small parties. A few parties expressed concern about imposing any additional compliance burden on them.
- 12.16 One party was concerned about having to pay the cost of an audit of its eligible financial members by the Electoral Commission. The Electoral Commission sought guidance on the frequency with which the audit power could be exercised.
- 12.17 One submitter thought parties should be required to report their membership data annually, and publicly release it if audited. Another supported the recommendation to require a party secretary to statutorily declare that the ranking of the party list complied with the party’s candidate selection rules, because it increased transparency and accountability.



- 12.18 The Clerk of the House of Representatives thought registered parties should be afforded the opportunity to rectify any failure to meet the requirements for remaining registered before the Electoral Commission moved to deregister them.
- 12.19 Our recommendation to restrict the time when a party can become registered to the start of the election period was not supported by one submitter who considered it an unnecessary restriction and a limit on the choice of voters.

Component parties

- 12.20 One submitter supported the recommendation to prohibit unregistered parties from becoming component parties. Another opposed the recommendation because they considered any component party was responsible to the Electoral Commission through the umbrella party.
- 12.21 The Electoral Commission invited us to consider whether any additional clarity was required on how the umbrella component party provisions work under the Act. The Commission also asked if the provisions were needed if our other recommendations, such as the removal of the one-electorate seat rule and reduction of the party threshold to 3.5 per cent, were implemented.

Our final view

Party registration

Candidate selection rules

- 12.22 We maintain our view that the Electoral Commission should be required to refuse to register, or deregister, a party whose rules do not meet the statutory requirement to involve members when selecting candidates. This requirement, set out in section 71 of the Electoral Act, states that party rules must provide for participation in candidate selection by the current financial members of the party, delegates who have been elected or otherwise selected by the members of the party, or a combination of the two.¹⁵
- 12.23 Section 71B requires the party secretary to supply the Electoral Commission with a copy of its membership and candidate selection rules within a month of the party registration being advised in the Gazette. The secretary must also advise the Electoral Commission about any changes to these rules.¹⁶ Members of the public

¹⁵ Electoral Act 1993, section 71. We also note that the UN HRC, in its *General comment no. 25*, above n 3, at p. 8 said that given their importance, political parties should abide by Article 25 rights themselves.

¹⁶ Electoral Act 1993, section 71B(1)(c).

are entitled to inspect the rules at offices of the Commission – the rules are also available through the Commission’s website.¹⁷

- 12.24 The High Court has held that section 71B does not affect the power of parties to empower their hierarchies to veto or filter candidate nominations.¹⁸ The court found that a party could empower its board to reject nominations, provided the board was democratically elected. The court noted that potential candidates needed to be compatible with the party in order to represent it.
- 12.25 We have considered the concerns expressed about the appropriateness of our recommended power for the Electoral Commission to refuse to register or to deregister a party that does not meet the democratic selection process. Our recommendation would not require the Commission to enforce party rules, which would remain the responsibility of parties and the courts. Rather, it aims to ensure the minimum registration requirements are met by requiring the Commission to check a party’s rules against the requirements set out in section 71.
- 12.26 At present, parties must supply their rules within one month of their registration being gazetted and whenever they alter them. In order to allow the Commission to check whether rules are compliant before registration, this provision would need to be amended so that parties are required to supply a copy of their rules when applying to register. Parties would also have an opportunity to amend their rules in order to comply.
- 12.27 We also consider the copy of the rules held by the Electoral Commission should be the rules that apply. This feature would stop parties changing their rules and not filing the changes with the Electoral Commission.
- 12.28 We recommend the Electoral Commission provides model templates for party candidate selection processes (see **Appendix 1: Minor and Technical Recommendations**). This would assist new or smaller parties to comply with this requirement.
- 12.29 When the Electoral Act is redrafted, parliament could consider whether any further detail beyond that already provided by the High Court is required. This detail could assist the Electoral Commission with its assessment of whether a party’s rules comply with the “democratic procedures” requirement.¹⁹
- 12.30 As before, we recommend clarifying that the existing requirement on parties to involve their members when selecting candidates also applies to the party’s

¹⁷ Electoral Act 1993, section 71B(4).

¹⁸ *Payne v New Zealand National Party* [2008] 3 NZLR 233 (HC), where Pankhurst J referred to the decision of Fisher J in *Peters v Collinge* [1993] 2 NZLR 554 (HC).

¹⁹ We note that the term “democratic procedures” appears in the heading of section 71, but not in the section itself (which provides for members to be involved in selection – that is, it sets out what the “democratic procedures” are).

ranking of list candidates. We also recommend that when providing a party list to the Electoral Commission before an election, party secretaries be required to confirm (by statutory declaration) that the candidate selection process for list candidates complied with the party's candidate selection rules.

Requiring a party list to be submitted at each election

- 12.31 We remain of the view that requiring a party to submit a list of party candidates at each election in order to remain registered is an appropriate way of maintaining minimum standards.
- 12.32 The key purpose of registration is to enable parties to contest the party vote, and in order to be registered, a party secretary must make a statutory declaration that the party intends to do so. There is no reason for parties that fail to do so to remain on the register.

Party membership requirements

- 12.33 We retain our recommendation from our interim report that, to be eligible to register with the Electoral Commission, a party must have 500 "current financial members" that are actually enrolled as electors (and not just eligible to enrol). This recommendation reflects the compulsory nature of enrolment in Aotearoa New Zealand.
- 12.34 We continue to recommend that the Electoral Commission should have the power to audit whether registered parties continue to have 500 eligible members, to ensure compliance with the rules. After consideration, we now also recommend that it be an offence to obstruct the audit or fail to provide the Electoral Commission with the information it needs to conduct this audit in a timely manner.
- 12.35 In response to a submission from the Electoral Commission about when an audit power could be used, we propose to amend our recommendation so that the Commission must have reasonable grounds to believe the party does not have 500 members who are enrolled to vote before it may conduct an audit.

Party registration and the regulated period

- 12.36 We also recommend that to contest the party vote, political parties must apply to be registered before the start of the regulated period (that is, three months before election day). This change would assist the Electoral Commission to effectively and efficiently administer the election. It balances the freedom to contest the election with the need for time to ensure the election is properly administered.

Component parties

- 12.37 We continue to recommend that the loophole enabling an unregistered party to become a component party of a registered party be closed. The current rules allow

component parties to gain access to the allocation of list seats, without being subject to the normal finance and expense disclosure requirements that apply to registered parties. This situation is neither fair nor transparent. We recommend addressing it by preventing unregistered parties from becoming a component party of a registered party.

- 12.38 Any further clarification of how umbrella and component party provisions work in practice could be considered in the redrafting of the Electoral Act we recommend in **Chapter 2**.

Representation of diverse groups

- 12.39 One of the objectives of this review is to ensure that Aotearoa New Zealand has an electoral system that produces a representative parliament. In 1986, the Royal Commission expressed the view that parties have a responsibility to ensure that parliament reflects the diversity in society.²⁰
- 12.40 While the representativeness of parliament has increased since MMP was introduced,²¹ some populations continue to be significantly underrepresented, such as disabled communities. Some submitters to our first consultation were concerned about a lack of representation from communities they were part of. We heard these concerns.
- 12.41 To address this, we considered whether parties should be required to meet certain quotas or diversity targets. While effective to increase diversity, on balance, we considered that requiring quotas is too significant a restriction on parties' rights to operate in a way that reflects their own values. We also noted that many parties already have internal rules that aim to address diversity concerns. Ultimately, we believed this matter is best left to the voters.
- 12.42 Increasing diversity and representation across leadership and public-facing roles is an issue that is wider than the scope of this review. However, we hope that some of the other changes we have recommended, and the recently established Election Access Fund / Te Tomokanga – Pūtea Whakatapoko Pōtitanga (the Election Access Fund), discussed further in **Barriers to participation** below, will have the effect of encouraging increasing diversity in candidate selection.
- 12.43 In **Appendix 1: Minor and Technical Recommendations**, we recommend further changes to party regulation.

²⁰ Royal Commission on the Electoral System, above n 1, p. 239.

²¹ Electoral Commission, 2021. *A more diverse Parliament*. [Online] Available at: <https://elections.nz/democracy-in-nz/25-years-of-mmp/a-more-diverse-parliament/> [Accessed October 2023].

Interaction with our other recommendations

- 12.44 In **Chapter 13** we make several recommendations that will affect parties, including:
- introducing a maximum political party annual membership and affiliation fee of \$50 per member, or member equivalent, which will affect all registered parties
 - that any party applying for registration must disclose its assets and liabilities, which will affect new parties
 - recommendations affecting private and public sources of party funding, including that all registered parties should receive base funding, the establishment of a new fund and the expansion of an existing one.
- 12.45 In **Chapter 18** we suggest that a closer look at whether parties should be liable for breaches of electoral law is advisable, during the consolidation and overhaul of electoral offences and penalties.

The Panel recommends:

- R51. Providing the Electoral Commission with the power to either refuse to register, or to de-register, a party:**
- a. whose rules do not meet the existing statutory requirement to provide for member participation, including through delegates, in the selection of candidates, but only after
 - b. the party has been notified and given an opportunity to amend its rules to comply with its statutory obligations.
- R52. Requiring parties to supply their party membership and candidate selection rules to the Electoral Commission when applying to register.**
- R53. Requiring a registered party to submit a list of party candidates at each general election to remain registered.**
- R54. Strengthening the current requirement that a party has 500 current financial members before it is eligible to register by:**
- a. requiring those 500 members to be enrolled to vote
 - b. enabling the Electoral Commission to audit any registered party for compliance with this ongoing requirement if it has reasonable grounds to believe that the party is not complying, and



c. providing for offences for obstructing or failing to provide information to the Electoral Commission in a timely manner when it is conducting an audit under recommendation 54(b).

- R55. Requiring a party secretary to confirm by statutory declaration that the process for ranking list candidates complied with the party's candidate selection rules.
- R56. Extending the period before an election in which parties cannot be registered to the start of the regulated period (usually three months before election day).
- R57. Prohibiting unregistered parties from becoming component parties of registered parties.

Candidate eligibility

- 12.46 Under MMP, there are two types of candidates: electorate candidates and list candidates. The Electoral Act provides that a person may be both.²² This is known as dual candidacy.
- 12.47 Any New Zealand citizen who is lawfully enrolled to vote is eligible to become a candidate for election.²³ Residents for electoral purposes, while eligible to vote, may not stand as candidates.²⁴ The right of every citizen to stand as a candidate is protected under the New Zealand Bill of Rights Act 1990 and may only be limited to the extent that is reasonably justified in a free and democratic society.²⁵ The Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights also embed the right to stand as a candidate.²⁶
- 12.48 The Electoral Act places some limits on the right of citizens to stand as candidates, based on their right to vote, as outlined in **Chapter 7**. A citizen currently is **not** able

²² Electoral Act 1993, section 59(3).

²³ Electoral Act 1993, section 47.

²⁴ Electoral Act 1993, section 47(3).

²⁵ New Zealand Bill of Rights Act 1990, section 12 (right to stand) and section 5 (justified limitation).

²⁶ UN General Assembly, *Universal Declaration of Human Rights*, above n 3, art 21(1); UN General Assembly, *International Covenant on Civil and Political Rights*, above n 3, art 25 as expanded on in UN HRC, *General comment no. 25*, above n 3, at p. 5 which states that any restrictions on who can stand must be justifiable on reasonable or objective criteria.

to enrol to vote, and so may not stand as a candidate in Aotearoa New Zealand, if they:

- are on the Corrupt Practices List
- are a prisoner serving a life sentence, preventive detention, or a sentence of imprisonment of three years or more
- are detained, in limited circumstances relating to criminal offences, under mental health or intellectual disability legislation for three years or more
- are under 18 years old
- have not visited New Zealand within the last three years.²⁷

12.49 Because only citizens who are enrolled voters may stand as candidates, arguments for and against changing who may vote are relevant to who may be a candidate for election. We considered such arguments in **Chapter 7**, and we briefly discuss them here.

Is there a case for change?

Issues identified

- 12.50 The attendance requirements for the House used to create a practical constraint on the ability of someone serving a long-term prison sentence, for example, to act as a Member of Parliament (**MP**) if elected. However, recent changes to parliament's Standing Orders allow for remote participation.²⁸
- 12.51 Voters retain the decision about whether, on their merits, a candidate is worthy of being elected. The rules for candidate eligibility, however, directly impact the possible choices for voters – and shape the representativeness of the parliament that can be created.

²⁷ Electoral Act 1993, sections 74 and 80. For the 2023 election, this was temporarily extended to six years for citizens, due to the impact of COVID-19 (see Electoral Amendment Act 2022, section 2. The period reverts to three years one month after the return of the writ). The requirement to have been in New Zealand within the last three years does not apply to the diplomatic corps or members of the Defence Force who are on duty outside New Zealand, or members of their families. A person who has been removed from the electoral roll through no fault of their own is not ineligible (Electoral Act 1993, section 49). A person who has enrolled in the wrong electoral district is also not ineligible (Electoral Act 1993, section 50).

²⁸ Standing Orders Committee, 2023. *Review of Standing Orders 2023: Report of the Standing Orders Committee*, Wellington: New Zealand Parliament, p. 15. Amendment 8 provides for the House Business Committee to have authority to determine that remote participation may be used for a sitting of the House, and to make rules and conditions for its use.

Earlier recommendations

1986 Royal Commission on the Electoral System

The Royal Commission considered that:

- anyone who qualified as a voter should also be able to stand as a candidate. It considered that the factors that led to New Zealand accepting the right of permanent residents (that is, residents for electoral purposes) to vote also supported the right of permanent residents to stand for parliament
- prohibiting dual candidacy was undesirable in principle and unworkable in practice.

2012 Electoral Commission Review of MMP

The Electoral Commission agreed with the Royal Commission that dual candidacy should be continued.

12.52 In our first consultation, submitters in the review commented on:

- **Voting age:** some said that if the voting age is lowered, then the candidate eligibility age should also be lowered. Other submitters noted that 16- and 17-year-olds may be prevented from becoming candidates and MPs because of other commitments, such as attending school.
- **Previous convictions:** most submitters who discussed prisoner eligibility thought that any prisoners serving a sentence of imprisonment for any offence should be disqualified from becoming a candidate. Other submitters believed that only serious convictions should disqualify a person. A few submitters said that past criminal convictions should not be a barrier to standing as a candidate.
- **Residents for electoral purposes:** most of the submitters who discussed these residents supported extending the right to stand as a candidate to them.

Electorate candidate's place of residence

12.53 Electorate candidates currently do not have to be enrolled in the electorate they are standing in, nor do they have to live there. Some submitters to our first consultation thought that candidates should be required to live in the electorate that they want to represent.

Dual candidacy

12.54 Some submitters to the first consultation considered dual candidacy should be banned, so that a candidate may either be included on a party list or stand as an electorate candidate, but not both. This suggestion reflects a concern that unsuccessful electorate candidates are entering parliament “through the back door” via party lists.

Our initial view

12.55 In our interim report, we were of the view that there were no strong reasons not to carry over our changes to voter eligibility to candidates. We thought that as a matter of principle, New Zealand citizens who are eligible to vote should be able to stand as candidates. We considered that the two kinds of eligibility should remain linked, despite the potential practical difficulties.

12.56 We recommended that, in line with our recommendations to extend voter eligibility in **Chapter 7**, candidate eligibility was extended to include:

- 16- and 17-year-olds
- citizens living overseas for two electoral cycles
- all prisoners.

12.57 We also considered whether an electoral candidate should be required to live in the electorate in which they were standing and concluded they should not.

12.58 We supported continuing dual candidacy.

Feedback from second consultation

12.59 A few submitters supported all our recommendations for candidate eligibility.

Age

12.60 A few submitters were opposed to 16- and 17-year-old candidates, because they thought these individuals would not be capable of fulfilling the task, or because of the possible effects of the role on the individual concerned. Some provided examples of other age-related differences, such as the youth court jurisdiction, as evidence for treating 16- and 17-year-olds differently.

12.61 Local Government New Zealand noted that a change to candidate eligibility would affect eligibility to stand for a licensing trust, where there may be a need to maintain consistency with the legal age of purchasing alcohol.

Prisoners

12.62 A few submitters were opposed to prisoners standing as candidates. These submitters thought losing the right to stand for parliament was an appropriate

part of punishment. They also thought there were practical limitations, and that the safety of victims could be compromised.

Citizens living abroad

- 12.63 Candidacy for New Zealand citizens living abroad was opposed by a few submitters who were concerned about whether these people could represent their constituents while living elsewhere. Responsibility for travel costs was raised.

Public servants

- 12.64 Under the Electoral Act, public servants selected as candidates must take leave from their jobs from nomination day. This rule is to ensure the neutrality of the public service. The Public Service Commission noted the inconsistency between the definition of public servant in the Electoral Act and that of public service in the Public Service Act 2020. For example, the Electoral Act definition does not include statutory crown entity employees.

Linking candidate eligibility to voter eligibility

- 12.65 Discussing lowering the age of candidates to include 16- and 17-year-olds, the New Zealand Law Society submitted that the reason for extending voter eligibility was to encourage voter participation. They considered that this argument did not necessarily apply to candidates and noted that in Samoa and Bhutan, candidate and voter eligibility are not linked. The New Zealand Law Society was concerned that the linking of voter and candidate eligibility may have the unintended effect of discouraging changes to voter eligibility.

Other matters raised

- 12.66 We received a several other submissions on candidate eligibility, such as suggestions for standardising the nomination process, having a code of conduct for candidates, setting a maximum age of 85 and a 40-year limit on standing for parliament, changing the selection process for list candidates, and restricting list MPs from holding cabinet positions.

Our final view

Candidate eligibility

- 12.67 In our interim report, we considered whether there were any reasons why our recommendations for expanding voter eligibility should not be carried over into candidate eligibility. We remain of the view that as a matter of principle, people who are eligible to vote should also be eligible to stand as candidates. For each area of candidate eligibility we considered, we examined whether there was a strong argument to depart from this principle. The only area where we recommend departing from it is for residents for electoral purposes.

- 12.68 We do not consider that residents for electoral purposes should be able to stand as candidates. For these residents, it is justifiable to have tighter criteria for candidates than for voters. We think it is reasonable that an individual acting as a lawmaker for society should be a full citizen of the country. Citizenship demonstrates an additional commitment to Aotearoa New Zealand.
- 12.69 For 16- and 17-year-olds, we discussed the available research, practical difficulties including whether a candidate was attending school, and the nature of the role of an MP. While we appreciate it is possible to set different ages for enrolling to vote and standing for parliament, on balance we recommend that 16- and 17-year-olds should be able to do both.²⁹ As for any candidate, it is then up to voters to decide.
- 12.70 In regard to Local Government New Zealand's submission about the implication of lowering the age of candidate eligibility below the legal age for purchasing alcohol, we note the Electoral (Lowering Voting Age for Local Elections and Polls) Legislation Bill proposes an age of 18 years or more for eligibility to stand for a licensing trust.³⁰
- 12.71 We reached the same conclusion for prisoners whose rights to political participation should extend to being able to stand for parliament as well as being able to vote. Similarly, we concluded that citizens who have been away for up to two electoral cycles should be eligible to vote, and to stand for parliament.
- 12.72 The submission that having equivalent voter and candidate eligibility may have the unintended effect of discouraging changes to voter eligibility does not change our view. The electoral system should have strong participation levels and candidates that represent our communities.
- 12.73 Our recommendations for extending candidate eligibility could increase diverse representation in parliament. They also support our objectives of representation, fairness and encouraging participation.
- 12.74 We take the approach that voters can decide who they wish to represent them in parliament. Internal party processes and the voting process itself provide adequate checks, and the broader settings we propose support electoral participation and representation.
- 12.75 We make a new recommendation in response to feedback from the Public Service Commission about the differing definitions of public servant in the Electoral Act

²⁹ UN HRC, *General comment no. 25*, above n 3, at p. 3 provides that any conditions that apply to the protection of electoral rights under Article 25 must be based on objective and reasonable criteria, and that such criteria permit setting a higher age for candidacy than for voting.

³⁰ Electoral (Lowering Voting Age for Local Elections and Polls) Legislation Bill clause 10 (amending section 25 of the Local Electoral Act 2011). The way a lowered voting age is addressed in this bill provides a method for considering a lowered voting age for jury service. We discuss this matter in **Chapter 7**.

and the Public Service Act. The rule that public servants take a leave of absence from their jobs during their candidacy is an important one because of the need to ensure the political neutrality of the public service. The definition needs to be updated and as part of this process, consideration could be given to who should be captured by this rule.

Electorate candidates' place of residence

- 12.76 A significant part of the political contest as an electorate candidate is proving your connection to the electorate and your ability to represent the people who live there. There is no legal requirement for candidates to say anything about where they are living. There may be good reason for nominating a candidate who does not currently reside in the electorate if, for example, they otherwise have a strong connection to the electorate.
- 12.77 Voters can decide for themselves whether a candidate is fit to represent them. If a candidate's place of residence is an issue, we can expect that their opponents will raise it during the campaign.

Dual candidacy

- 12.78 The ability of candidates to stand both in an electorate and on the party list if they wish is a beneficial feature of MMP. Parties can protect good candidates by placing them high enough on the party list to be elected. Dual candidacy can enrich the political contest and supports representation. It allows parties to stand strong candidates in marginal electorates, or electorates where they are unlikely to win the seat.
- 12.79 We did not hear any strong arguments for change and agreed with the recommendations of the 1986 Royal Commission report and the 2012 Electoral Commission MMP review to continue dual candidacy.

Other matters

- 12.80 With regard to the other matters raised by a few submitters (such as standardising the nomination process and setting rules for conduct) we consider these matters are best left to parties and voters. There is no need for the law to further regulate how candidates are selected.

Interaction with our other recommendations

- 12.81 In **Chapter 2**, we recommend entrenching some new provisions in the Electoral Act, including the voter eligibility requirements in sections 74 and 80, and in section 47 which provides for candidate eligibility.
- 12.82 The recommendations on candidate eligibility in this chapter relate to our recommendations on voter eligibility in **Chapter 7**.
- 12.83 Our recommendation to change the non-attendance ground in **Chapter 6** from an entire session of parliament to a period of three months would provide a restriction on prisoners and overseas citizens serving as MPs.
- 12.84 The Corrupt Practices List, discussed in **Chapter 18**, places a limit on candidate eligibility. The changes we recommend there will retain those limits on candidacy.
- 12.85 In **Appendix 1: Minor and Technical Recommendations**, we recommend further changes to make candidate nominations processes fairer and more efficient and effective.

The Panel recommends:

R58. Broadening candidate eligibility, in line with our voter eligibility recommendations, to include:

- a. 16- to 17-year-olds
- b. citizens living overseas for two electoral cycles
- c. all prisoners.

R59. Updating the candidate definition of public servant in the Electoral Act to align with the Public Service Act 2020.

Barriers to participation

Is there a case for change?

Issues identified

- 12.86 Barriers to participation can arise for a diverse range of candidates, such as disabled candidates and those from lower socio-economic backgrounds.
- 12.87 Barriers for candidates are similar to those arising for voters and include financial and time costs, not fully understanding the electoral system, and non-inclusive political cultures, among other things. These barriers can be unfairly amplified because of factors such as ethnicity, gender, socio-economic background, sexual orientation, and disability.
- 12.88 Reducing barriers would support people from underrepresented groups to stand as candidates. It may therefore increase the diversity of candidates and the representativeness of parliament.

Our initial view

- 12.89 We considered, but decided against, extending the Election Access Fund / Te Tomokanga – Pūtea Whakatapoko Pōtitanga (the Election Access Fund) to other groups who may face barriers to becoming candidates. We saw benefit in the Election Access Fund, which is relatively new, remaining a bespoke fund for disabled candidates given the significant barriers they face. We also considered, but decided against, recommending a similar but separate fund for candidates from other specified groups.
- 12.90 We suggested that the Electoral Commission consider whether additional resources, information, and education could be made available to assist candidates from communities who may not typically run for candidacy.

Feedback from second consultation

- 12.91 We asked for further feedback on this issue. We heard from a few individuals and also from rainbow organisations about the difficulties of standing as candidates. Some concerns related to practical matters and others to safety.
- 12.92 The Department of Internal Affairs noted that one of the barriers to standing as a candidate can be the public's perception of how feasible it would be for the candidate to carry out the role. The Department considered Parliamentary Services could provide public information about the ways that MPs, including MPs with disabilities, are supported in parliament.



Our final view

- 12.93 We have not changed our view from that expressed in our interim report. We consider the Election Access Fund (discussed in **Chapter 13**, and currently limited to disabled people) should not be extended to other groups who may face barriers to becoming candidates. Having a bespoke fund for disabled communities is important because they face unique barriers, low representation and high entry costs. However, in **Chapter 13**, we recommend expanding the purpose of the Election Access Fund to include applications by parties to meet accessibility needs in their campaigns.
- 12.94 We do not recommend that a similar, separate fund (or funds) should be set up for specified groups beyond disabled communities at this time.
- 12.95 We suggest that one of the future statutory reviews of the Election Access Fund could consider establishing additional access programmes or funds for those who face other barriers to participation, such as those who have caregiving responsibilities.
- 12.96 We are also recommending a new fund to facilitate party and candidate engagement with Māori communities, in ways appropriate for Māori, discussed in **Chapter 13**. This fund could also indirectly address barriers for candidates. Improved Māori participation in general should, in time, flow through to decreased barriers for Māori candidates.
- 12.97 We considered whether additional resources, information, and education could be made available to assist candidates from communities who may not typically run for candidacy. The Electoral Commission provides a Candidate Handbook and other information for candidates. This Candidate Handbook, however, is not currently provided in alternate formats or translated versions. As mentioned in our interim report, this may be an opportunity for the Electoral Commission to further assist individuals who may face barriers to standing as a candidate.

Interaction with our other recommendations

- 12.98 In **Chapter 11**, we recommend the development of a funding model to support community-led civics and citizenship education and participation initiatives. These education initiatives could reduce some barriers for candidates from underrepresented groups.

13. Political Finance

- 13.1 Raising money and other resources is fundamentally important to the participation of political parties and candidates in the electoral system.¹ Political parties and candidates use money and resources for a wide range of activities, including developing policy, communicating with the public, and campaigning. Other individuals and groups not directly contesting the election – so-called "third-party" participants – also use money in ways that seek to influence voters' decisions at the ballot box.
- 13.2 Making donations and providing loans is a form of political expression and electoral participation, allowing people to support political parties and candidates of their choosing. The right to do so is protected by the New Zealand Bill of Rights Act 1990, which states “everyone has the right to freedom of expression, including the freedom to seek, receive and impart information and opinions of any kind in any form”.² Freedom of association is also protected.³ These rights are not absolute, but any limitations need to be able to be “demonstrably justified in a free and democratic society”.⁴
- 13.3 The Electoral Act 1993 currently places several restrictions on the use of money to fund political expression, including:
- restricting the ability of “overseas persons” to express financial support for political parties and candidates, as they may only donate up to \$50⁵

¹ We use the term “political finance” to refer to political donations and loans (private funding), as well as the state funding that is made available to political parties for election purposes.

² New Zealand Bill of Rights Act 1990, section 14.

³ New Zealand Bill of Rights Act 1990, section 17.

⁴ New Zealand Bill of Rights Act 1990, section 5.

⁵ Electoral Act 1993, section 207K. Section 207(2) defines “overseas person” as an individual who resides outside New Zealand and is not a New Zealand citizen or registered elector, a body corporate incorporated outside New Zealand or an unincorporated body that has its head office or principal place of business outside New Zealand.

- requiring the names and addresses of donors who give a political party more than \$5,000 in a year, or a candidate more than \$1,500, to be publicly disclosed⁶
 - restricting how much political parties, candidates and third-party promoters can spend on election advertising (we discuss this further in **Chapter 14**).
- 13.4 There are risks to electoral integrity and public confidence in the electoral system if some people are able to have more access to, or unduly influence, political parties and candidates through making donations or loans. Even the perception that such undue influence exists can undermine the perceived trustworthiness of our democratic processes.
- 13.5 We have been asked to consider how political financing currently takes place in Aotearoa New Zealand, including the appropriate balance between private and public funding sources. The present regulatory framework is complex and can be difficult to understand. It attempts to balance several competing objectives including transparency, privacy, freedom of expression, and preventing wealth from exercising an undue influence on election outcomes and politicians.
- 13.6 Taken together, our recommendations seek to achieve a fair balance between private and state funding in an attempt to reduce the risk of undue influence, and to make the political finance system more transparent and equitable.
- 13.7 We discuss private funding through donations and loans first, followed by state funding.

Summary of our recommendations

- 13.8 We recommend:
- that only individuals who are enrolled to vote be allowed to donate or lend to political parties or individual candidates
 - limiting the amount that a registered elector can donate or lend
 - reducing the amount that can be donated anonymously, and other changes to increase transparency.
- 13.9 To close loopholes and limit avoidance, we also recommend:
- changes to third-party promoter finance rules
 - setting a maximum limit on political party membership and affiliation fees
 - a general anti-avoidance offence provision for political finance rules

⁶ Electoral Act 1993, section 210 (political party donations), section 209 (candidate donations).

- disclosure of political parties' financial positions on application for registration.
- 13.10 Where possible, our recommendations attempt to simplify the regulatory framework, so that political parties and candidates can focus on their core responsibilities of developing policy, engaging with the public, and contesting elections.
- 13.11 We are conscious that with regulation comes compliance costs, and we make recommendations below in **State funding** to reduce the burden of these changes.
- 13.12 We also recommend replacing the state funding currently provided through the broadcasting regime (discussed in **Chapter 14**) with fairer and more effective forms of state funding for registered political parties. These forms include per-vote and base funding, tax credits, establishing a new fund – Te Pūtea Whakangāwari Kōrero ā-Tiriti / Treaty Facilitation Fund, expanding the purpose of the Election Access Fund, and an independent fiscal institution.

General feedback from second consultation on our overall package of changes

- 13.13 While we received mixed views on the package of changes we recommended in our interim report, most submitters who made detailed submissions were in favour of reform to political finance. Some submitters were strongly in favour of our package of recommendations, with the proposed reform being described as urgently needed and a significant safeguard for democracy.
- 13.14 Submitters who both supported and opposed our package of recommendations expressed concerns our recommended state funding would not be sufficient to address funding shortfalls arising from our proposed donation restrictions. Some expressed support for changes to private funding, but only if sufficient state funding were made available to political parties.
- 13.15 We discuss this feedback and our responses in each of the relevant sections below.

Private funding

- 13.16 Registered political parties and candidates mostly rely on private funding sources to pay for their day-to-day activities and election campaigns – for example through membership subscriptions, donations, loans, and investments. We discuss the limited state funding currently available to political parties below.
- 13.17 The Electoral Act regulates donations and loans to registered political parties and individual candidates. Primarily, they are regulated through transparency, requiring the public disclosure of significant donations and loans. This means that for some donations and loans, the name of the donor or lender, their address, and the amount they donated or lent is publicly available. Other regulation includes limiting the amount that can be donated anonymously, and restricting donations from overseas donors.
- 13.18 Currently, unregistered political parties do not have to comply with these requirements, and they are generally unable to contest the party vote (unless they are a component party, discussed in **Chapter 12**).
- 13.19 We think transparency is important for maintaining public confidence in our electoral system by ensuring that voters can see where the money that pays for political parties' and candidates' activities comes from. For that reason, we think disclosure continues to be an important regulatory requirement, and recommend increased disclosure of donations and loans.
- 13.20 It is important that not only those political parties with access to wealthy donors are able to participate fully in the electoral system. We also think there is a need to protect against large donations being a means of obtaining undue access and influence. Our recommendations also change who is able to donate or lend to registered electors, and place limits on how much those registered electors can give to each political party and its candidates.
- 13.21 We believe our proposed package of political finance changes limits rights to political expression and privacy no more than necessary to perform the important purpose of safeguarding free and fair democratic competition during elections. While our recommendations restrict some people's ability to donate, or may reduce their willingness to do so, they are intended to increase the ability for all New Zealanders to seek and receive information by increasing transparency, while reducing the risk of undue influence or the perception of such. With increased access to information about donors and potential sources of influence, voters will be in a better position to exercise their right to vote.⁷
- 13.22 Below, we discuss issues such as who is eligible to make donations and loans, how much can be donated or lent, anonymous donations, identifying donors and donations, reporting and disclosure requirements, and potential loopholes.

⁷ New Zealand Bill of Rights Act 1990, section 12.

General feedback from second consultation on private funding

- 13.23 Most submitters to our second consultation were generally in favour of some form of change to private funding rules. Submitters, including some political parties, discussed concerns such as undue and disproportionate influence of donors, and low public trust in how political parties are financed. Some discussed the importance of “levelling the playing field” and increasing transparency.
- 13.24 However, other submitters, including some political parties, were strongly opposed to change. Some thought that we had not made the case for our recommendations, and that the status quo should remain. Other reasons for opposition included the importance of maintaining the ability for people to make political donations as a form of political expression. Some also thought there was benefit in having private funding, as it means political parties are incentivised to engage with voters.
- 13.25 Some submitters thought that transparency of donations would be sufficient to address concerns about undue influence, and so our recommendations to limit who can donate, and how much, were unnecessary.
- 13.26 Many submitters who provided detailed submissions raised concerns about loopholes and avoidance issues that exist in the current regulatory system, and new issues that may arise as a result of our interim recommendations. In particular, concerns were raised that restricting the flow of private funding to political parties and candidates would create incentives for donations to be made to third-party promoters.
- 13.27 We discuss this feedback and our responses in the sections below.

Who can donate

- 13.28 Political parties and candidates can receive donations in the form of money, the equivalent of money, or goods and services.⁸ Donations can be made by individuals or organisations and groups such as companies, trade unions, iwi, and trusts. There is no limit on how much any individual, organisation or group (other than an “overseas person” who can only donate up to \$50)⁹ may give by way of a donation to a political party or individual candidate.

⁸ Electoral Act 1993, section 207(1), (2).

⁹ Electoral Act 1993, section 207K.

Earlier recommendations

1986 Royal Commission on the Electoral System

Political finance regulation has changed significantly since the Royal Commission's report in 1986, but some of its comments are still relevant. The Royal Commission:

- recommended that a donor's identity should be disclosed if they donated above certain limits
- was not in favour of allowing anonymous donations, as these could be used to avoid disclosure
- recommended that the Electoral Commission should be empowered to require a full audit of political parties and independent candidates as it saw fit
- did not recommend placing limits on the total amounts that political parties or candidates could raise in donations, or on the size of individual donations.

2011, 2014, and 2020 Electoral Commission post-election reports

In its 2011 post-election report the Commission recommended shortening the deadline for candidate returns of donations from 70 to 50 working days after election day.

In its 2014 post-election report, the Commission stated that a review of the audit requirements in the Electoral Act was needed. It recommended consultation with Chartered Accountants Australia and New Zealand, the New Zealand Auditing and Assurance Standards Board, and political party auditors.

In its 2020 post-election report, the Electoral Commission recommended adding an overarching anti-collusion provision to the Electoral Act to aid enforceability.

2011 and 2017 Justice Select Committee

In its 2011 report, the Committee recommended keeping the deadline for candidate returns of donations the same (in contrast to the Commission's recommendation above).

In its 2017 report, the Committee made a number of political financing recommendations when it considered foreign interference issues. Most of those recommendations are discussed in **Chapter 19**. Among its suggestions was an overarching anti-collusion mechanism, including penalties, in the Electoral Act.

It also recommended that the government examine how to prevent transmission of funds through loopholes (for example, through shell companies or trusts) and that the government consulted with political parties about how best to approach the problem.

- 13.29 Political parties and candidates may receive anonymous donations of up to \$1,500 provided the donor's identity is not known to anyone involved in their campaign.¹⁰ Donors that are known to a candidate or political party may make donations of up to \$1,500 to a candidate or \$5,000 to a political party without having their names publicly disclosed.¹¹
- 13.30 Loans to political parties or candidates are regulated, except those from a registered lender (such as a bank) at a commercial interest rate.¹² Only the party secretary of a registered political party can enter into a loan on behalf of a political party,¹³ and they must keep records of all loans.¹⁴ Loans are less common than donations, and we do not discuss them separately here. The following discussion of donations should be taken to include loans (except those from a registered lender, such as a bank, at a commercial interest rate) and our recommendations in this area apply to both forms of private funding.

Is there a case for change?

Arguments against change

- 13.31 In our first consultation, some submitters expressed concern that limiting the ability to seek and receive donations may result in political parties becoming less connected to their supporters and the public.
- 13.32 We are aware that other arguments include:
- Having fewer restrictions on who can donate enables broad political participation and allows greater freedom of expression. Political parties and candidates are free to seek donations from individuals but also businesses, advocacy groups, and other civil society organisations. These groups have a legitimate interest in the outcome of elections and are impacted by government policy and decision-making.
 - Changes to donor and lender eligibility for groups and organisations might impact some political parties and candidates more than others. For example, if a political party historically received most of its donations from groups that became ineligible, that change could negatively restrict their ability to campaign.

¹⁰ Electoral Act 1993, section 207I.

¹¹ Electoral Act 1993, section 210 (annual return of political party donations) and section 209 (return of candidate donations).

¹² Electoral Act 1993, section 212.

¹³ Electoral Act 1993, section 213.

¹⁴ Electoral Act 1993, section 214B.

- Restrictions on donations might mean that political parties require more state funding to cover any shortfall.

Arguments for change

13.33 Some submitters to our first consultation suggested that certain entities, such as companies or trade unions, should be banned from donating and lending. A few submitters commented that only New Zealand citizens, or people eligible to vote, should be entitled to donate.

13.34 We are aware that other arguments include:

- Public opinion research suggests that the public has a low degree of trust in the way political parties are funded.¹⁵
- Academics report that there is some evidence that donors who make large donations are able to gain access to, and build relationships with, Members of Parliament (**MPs**) and ministers. Some donors may also have an expectation of influence.¹⁶
- Restricting the ability of certain categories of people (for example, those who are not registered to vote) or entities (for example, companies or trusts) to donate, or entities to donate, may improve public trust in our political system. It could remove the perception that those who are unable to vote are able to unduly access and disproportionately influence political parties and candidates.
- The ability to donate is spread differently between groups in society. Those who cannot afford to donate due to having less access to resources (in particular, groups with lower intergenerational wealth and income, including some Māori or Pacific peoples), cannot express their political views in this way and this inequality is unfair.
- That the “overseas person” definition in the Electoral Act has several potential loopholes. We discuss the overseas person definition further in **Chapter 19** and recommend it is refined to close those loopholes.

Our initial view

13.35 In our interim report, we concluded that there should be changes to who can make political donations and loans. We recommended that only individuals who are registered to vote should be able to donate and lend to political parties and candidates.

¹⁵ Chapple, S., Prieto Duran, C. & Prickett, K., 2021. *Political donations, party funding and trust in New Zealand: 2016 to 2021 (working paper)*, Wellington: Victoria University of Wellington, pp. 5 – 6.

¹⁶ Rashbrooke, M. & Marriott, L., 2022. *Money for Something – A report on political party funding in Aotearoa New Zealand*, Wellington: Victoria University of Wellington, p. 46.

- 13.36 As a result of this decision, we thought it was necessary to make a change to the third-party promoter advertising rules. We recommended that any spending on advertisements authorised by a political party or candidate should be deemed to be a donation to that political party or candidate.¹⁷ This would mean that only registered electors could pay for advertisements of this kind.
- 13.37 We thought these recommendations would increase public trust and confidence in political finance, and reduce the perception that donors who do not directly participate in elections could gain access and undue influence.

Te Tiriti o Waitangi / the Treaty of Waitangi implications

- 13.38 We were conscious that this recommendation would have an impact on Māori as the Crown's Tiriti o Waitangi / Treaty of Waitangi (**te Tiriti / the Treaty**) partner, and sought feedback on:
- how the changes might impact Māori individually and collectively as the Crown's Tiriti / Treaty partner, and as political parties and candidates
 - whether submitters considered the restrictions on the autonomy of Māori collectives would be reasonable, having regard to the benefits of restricting donor and lender eligibility
 - a funding recommendation which aims to facilitate political party and candidate engagement with Māori communities, in ways appropriate to Māori – Te Pūtea Whakangāwari Kōrero ā-Tiriti / the Treaty Facilitation Fund (discussed in **State funding** below).

Feedback from second consultation

Restricting donor eligibility to registered electors

- 13.39 More submitters supported this recommendation than opposed it. Those in support, including some political parties, discussed concerns about fairness, the level of influence that companies and other organisations had on the electoral system. These submitters expressed the view that organisations do not have the same rights of participation as registered electors.
- 13.40 Some of the submitters who were opposed thought that transparency and disclosure requirements could sufficiently reduce concerns about undue influence. Others argued that organisations have an interest in politics and are affected by political decisions, so should be able to donate. One of the political parties suggested that the status quo was working well except for the prohibition on charities making political donations.

¹⁷ Electoral Act 1993, section 204G (publication of a candidate advertisement promoting candidate), section 204H (publication of a political party advertisement promoting political party).

- 13.41 Some submitters raised concerns about the restriction on the freedom of expression of those who are not registered to vote, including individuals. The New Zealand Law Society noted this recommendation departs from the position in the New Zealand Bill of Rights Act 1990 that the rights affirmed in that legislation apply to all legal persons, not just natural individuals. A few other submitters were concerned that the recommendation would discriminate against those individuals who are not registered to vote.
- 13.42 We received a few submissions on the impact of our recommendation on Māori. Some submitters suggested there may be merit in exempting all, or some, Māori collectives from the restriction on organisations making political donations or loans, and that doing so would help to make a te Tiriti compliant political finance system.
- 13.43 Some submitters suggested alternative approaches to address the issues we have identified. A few submitters suggested allowing those who are eligible to vote to donate, not just those who are registered. Another considered that democratic organisations, such as trade unions, have a legitimate mandate to donate. One submitter stated that unions donate to attempt to “level the playing field”. Some submitters supported the recommendation only if adequate state funding was introduced.

Authorised advertising

- 13.44 Very few submitters commented on our recommendation that expenditure on authorised advertising should be deemed to be a donation. A few submitters were in favour of closing this potential loophole, but others were opposed.
- 13.45 In response to our request for feedback on how this change could impact Māori, an academic raised a concern about the impact on Māori entities wanting to advertise in support of candidates for election. They considered the restriction may be considered an infringement on tino rangatiratanga, as Māori candidates belong to their whānau, hapū and iwi.
- 13.46 The Parliamentary Service submitted that parliamentary funding cannot be used for “electioneering”, but the definitions of “electioneering” (in the Parliamentary Service Act 2000) and “election advertisement” (in the Electoral Act) are not aligned.¹⁸ This means that, outside of the regulated period, parliamentary funding can sometimes be used to fund election advertising. It submitted that because parliamentary funding cannot be used for donations to political parties or

¹⁸ Parliamentary Service Act 2000, section 3 (electioneering), Electoral Act 1993, section 3A (election advertisement). MPs cannot use parliamentary funding for “electioneering”. However, electioneering is narrowly defined to be material which explicitly asks for a vote or donation. The definition of “election advertisement” in the Electoral Act 1993 is much wider and can include promotional material issued by MPs using parliamentary funding that does not explicitly ask for a vote or donation. We discuss parliamentary funding later in this chapter.

candidates, careful consideration would need to be given to implementing this recommendation.

Loopholes

13.47 Many submitters who made detailed submissions, including political parties and the New Zealand Law Society, thought that the recommendation could result in less transparency if ineligible donors alter their behaviour to avoid the restrictions. Particular concerns were raised about funding flowing to third-party promoters instead of political parties, or being diverted to lobbying activities. We recommend some changes to mitigate these issues in the **Loopholes and avoidance issues** section below.

Our final view

Restricting donor eligibility to registered electors

13.48 We are concerned about the reported low levels of public trust in the private funding of political parties. In our view, the perception of undue influence, let alone its actual existence, has the potential to damage public confidence in Aotearoa New Zealand's electoral system.

13.49 We do not agree with those submitters who said that these problems can be solved solely through increased transparency about who donates. Our current regulatory system is largely based on transparency, with requirements having increased over time. In our view, simply knowing that an individual, or organisation, has made a donation does not reduce the potential for that donor to have access to, or influence over, a political party or candidate. This argument also does not address concerns about lack of equality of opportunity for political participation.

13.50 We maintain our view that only individuals who are registered to vote should be able to donate and lend to political parties and candidates. We prefer this approach over restricting donor eligibility to those who are eligible to vote but are not enrolled, as some submitters suggested, because it is compulsory to enrol to vote if eligible.

13.51 This means that all organisations and groups, including trusts, companies, trade unions, iwi, hapū, and unincorporated associations, would be prohibited from making donations. Individuals who are not eligible to enrol, as well as those eligible to enrol but who have not done so, would also be prohibited from donating. Money lent by a registered lender at a commercial interest rate would continue to be permitted.

13.52 As we have noted above, the rights of freedom of expression and association are relevant to restrictions on who can donate to political parties and candidates. We acknowledge our recommendation would impact the rights of those individuals who are eligible to vote but are not registered, individuals who are not eligible to

vote, and organisations. These people would no longer be able to express their political support in this way.

- 13.53 However, they would continue to be able to participate in the electoral system in other ways. We consider that the impact on these rights is mitigated by the fact that ineligible donors, including organisations, could continue to participate in the political process as third-party promoters by donating to third-party promoters and by lobbying elected representatives directly. Individual members of such organisations and groups who are enrolled to vote would also remain able to donate.
- 13.54 Those individuals eligible to vote but who are not yet registered could become eligible to donate by registering. We believe this is appropriate given the compulsory nature of enrolment.
- 13.55 We think our recommendations would increase public trust in political funding, and reduce the perception that individuals or organisations who do not directly participate in electing representatives can gain access and undue influence through donations. Increased trust may enable more meaningful participation in the electoral system for registered electors. We believe these changes would contribute to addressing the concerns we heard in submissions, and raised in academic research.
- 13.56 In making this recommendation, we note that other democracies, such as Canada¹⁹ and several European Union countries, have similar restrictions.²⁰
- 13.57 We did consider less restrictive recommendations, such as whether to prohibit certain entities from donating and lending – for example, companies registered in Aotearoa New Zealand with majority overseas ownership or those with large government contracts. However, in our view, this would be unlikely to sufficiently reduce public concern over undue influence.

Consequences of our recommendations

- 13.58 Our recommendations would have transparency and compliance benefits, as there would be less room for legally avoiding reporting requirements if individual registered electors are required to be identified as donors. It would not be possible for a donor to use multiple companies or trusts over which they have control to make donations, for example.
- 13.59 As discussed further below, we recommend that any anonymous donation to a political party or candidate be limited to \$500. Political parties and candidates

¹⁹ Canada Elections Act 2000 (Canada), section 363(1).

²⁰ European Parliament Policy Department for Budgetary Affairs, 2021. *Financing of political structures in EU Member States*. Brussels: Policy Department for Budgetary Affairs, at pp. 17 – 18 reported that of the 27 European Union member states, 13 prohibited donations from all legal entities, including France, Spain, Portugal and Belgium.

must, therefore, know the identity of any registered elector who gives more than this amount.

13.60 We acknowledge the risk that restricting donor and lender eligibility could increase attempts at evading the rules. However, the changes we have recommended to the Electoral Commission's investigatory powers in **Chapter 18** should reduce the risk that any such behaviour goes undetected. Later in this chapter, we also recommend introducing some regulation of third-party promoter donations and a general anti-avoidance offence relating to political finance rules, to respond to concerns of submitters about loopholes that might arise if donor behaviour changes.

Te Tiriti o Waitangi / the Treaty of Waitangi implications

13.61 As we have noted above, we are conscious that this decision would have an impact on Māori as the Crown's Tiriti / Treaty partner. This includes:

- imposing restrictions on the ability of Māori collectives (for example iwi, hapū, trusts, and community organisations) to make donations could be seen to restrict tino rangatiratanga because it limits the autonomy of Māori organisations to participate politically in whatever manner they choose
- directly impacting on the finances of any political parties and candidates that may have received donations or loans from Māori collectives.

13.62 This decision may also inequitably impact the political participation of Māori individuals and collectives, relative to other groups. For Māori, the significant losses of land and resources as a result of colonisation has resulted in economic disadvantage (among other issues), including less intergenerational wealth in Māori communities.²¹ As a result of the wealth gap between Māori and non-Māori individuals, some Māori may have lower available disposable income and resources to donate.²²

13.63 However, we believe the impact on Māori political participation is likely to be minimal. Currently, Māori collectives only donate a small amount relative to other non-individuals (for example, company and union donations). Māori groups and organisations could continue to participate in the electoral system as third-party promoters (such as by advertising on issues important to Māori during the regulated period), or by donating to third parties.

²¹ Haemata Limited, 2022. *Colonisation, Racism and Wellbeing Final Report*, Wellington: New Zealand Productivity Commission, pp. 4–5.

²² Stats NZ, 2023. *Household income and housing-cost statistics: Year ended June 2022*. [Online] Available at: <https://www.stats.govt.nz/information-releases/household-income-and-housing-cost-statistics-year-ended-june-2022/> [Accessed October 2023].

- 13.64 We considered submitters' views that there should be an exemption for Māori collectives to allow them to donate. While we understand that an exemption might reduce the impact on Māori as the Crown's Tiriti / Treaty partner, we think issues would arise in attempting to define a Māori organisation in legislation with sufficient clarity and breadth. For that reason, we have not recommended this option (we have raised similar issues in our discussion on the party vote threshold in **Chapter 4**).
- 13.65 Reflecting on the submissions we received, our view is that the benefits of restricting donor and lender eligibility outweigh the potential impacts on Māori political participation. The objective of our recommendation to restrict donor eligibility is to increase public trust and confidence in political funding by removing the perception that those that are not registered electors are, or could be, unduly influencing the electoral system. We think that the potential impacts on Māori are partially mitigated by our recommendations to increase state funding, including by establishing the Te Pūtea Whakangāwari Kōrero ā-Tiriti / Treaty Facilitation Fund.

Restricting authorised advertising

- 13.66 As a result of our recommendation to restrict who can donate to political parties and candidates to registered electors, we continue to think it is necessary to make a change to third-party advertising rules. Currently, if a person wants to publish an election advertisement that could reasonably be regarded as encouraging or persuading voters to vote for a political party or candidate, that person must first obtain written authorisation from the political party's secretary or candidate. The amount spent on such advertising then counts towards the political party or candidate's campaign spending limits (discussed in **Chapter 14**).
- 13.67 We recommend that any spending on authorised advertisements is deemed to be a donation to the political party or candidate. This means that only registered electors could pay for advertisements of this kind and their spending would be capped at our recommended limit on donations. Such spending would continue to count against a political party or candidate's campaign spending limits.

- 13.68 Anyone who is not a registered elector would still be able to spend on other forms of election advertising as third-party promoters (third-party promoter rules are discussed later in this chapter in **Third-party promoters**, and in **Chapter 14**).

The Panel recommends:

- R60. Permitting only registered electors to make donations and loans to political parties and candidates.**
- R61. Treating spending on election advertisements that requires authorisation from a political party or candidate as a donation.**

How much can be donated or lent

- 13.69 There is no limit on the total amount in donations or loans a donor can make, and no limit on how much a political party or candidate can receive in donations. The only exception is for “overseas persons”. Political parties can only keep up to \$50 in donations from any given overseas person per year, and candidates can keep the same amount per election campaign.²³ Below, we consider whether additional limits should be applied to other donors.

Is there a case for change?

Issues identified

- 13.70 During our first consultation, we heard widespread concern from submitters about donors being able to make unlimited large donations, and the potential for influence that could arise as a result. Public opinion research by academics suggests there may be a significant amount of public support for a cap on donations,²⁴ with significant support for donations being limited in the range of \$10,000 to \$15,000 per year.²⁵

²³ Electoral Act 1993, s 207.

²⁴ Chapple et al., above n 15, at p. 8 state that over 82 per cent of New Zealanders in their survey supported a donation cap.

²⁵ Ibid, state that over 69 per cent of survey respondents supported a cap in the range of \$10,000 per year; Rashbrooke & Marriott, above n 16, at p. 53 found that 43 per cent supported a cap of under \$15,000.

- 13.71 The act of donating engages the rights of freedom of expression and association. Donation and loan limits could restrict the extent to which an individual donor or lender can fully express their political support for political parties and candidates.
- 13.72 Most submitters on the question of capping donations supported imposing a relatively low limit of \$500 to \$1,500. Many thought that not limiting donations and loans means those able to afford giving can have, or may be perceived to have, greater access to and influence over political parties and candidates. This inequity of access and influence gives rise to electoral integrity and equal participation concerns.
- 13.73 However, limiting how much an individual may give by way of donations and loans could negatively impact the finances of some political parties and candidates more than others; that is, those that typically receive large donations. On the other hand, some submitters suggested that capping donations at a relatively low level may incentivise political parties and candidates to seek support from a wider range of donors.
- 13.74 If the limit is too high, it might not reduce public concern over undue influence by wealthy donors or funding imbalances between political parties. However, if the limit is too low, it may have a negative impact on political party and candidate finances. A low limit could result in political parties and candidates being unable to campaign effectively and have negative effects on participation. A low limit could also result in avoidance or evasion of the rules.
- 13.75 Some comparable jurisdictions have quite low individual donation limits. For example, Canada has a limit of approximately NZ\$2,000 per year, and Ireland has a limit of approximately NZ\$4,400 per year.

Our initial view

- 13.76 In our interim report, we recommended a limit of \$30,000 on how much a registered elector can donate or lend to a political party (and to any candidate for that political party) within an electoral cycle.

Feedback from second consultation

- 13.77 Most submitters, including some political parties, were in favour of limiting the amount that each registered elector can donate or lend to each political party and its candidates to \$30,000 per electoral cycle. Submitters supported the recommendation for several reasons, largely due to concerns that large donations could buy influence, which is inequitable and undermines democracy. Some thought the limit would create a more equitable political finance environment, increase transparency, and mitigate the influence of money in politics.
- 13.78 However, some submitters, including some political parties, were strongly opposed. Those opposed to the recommendation were primarily concerned about the impact on individual freedoms. A few raised concerns about the financial

implications for political parties, and thought this would be compounded by our recommendations on donor eligibility.

- 13.79 Some political parties told us that the recommendation would have an impact on their ability to fundraise, and they would likely receive less funding than they thought necessary as a result.
- 13.80 Other submitters were supportive of capping donations, but thought our recommended cap was too high or too low. A few submitters queried the rationale for the \$30,000 limit. Some of those who thought it was too high noted it was much higher than what most New Zealanders could afford, and a few suggested alternative limits, such as \$10,000. One submitter thought that the limit failed to level the playing field.
- 13.81 The Electoral Commission queried whether it would be an offence for a donor to give in excess of a cap and if we had considered requiring donor disclosure to ensure effective enforcement.
- 13.82 Finally, submitters also raised concerns that the limit would incentivise increased funding to third-party promoters as a way of avoiding donation rules. We discuss that issue later in this chapter.

Our final view

- 13.83 We maintain our view that there should be a limit on how much a registered elector can donate or lend to any political party and its candidates per electoral cycle.
- 13.84 Placing a limit on donations and loans restricts the extent to which donors and lenders can express their political support. In our view, capping donations and loans would counter the perception that only those who make very large donations are able to access and influence the electoral system. The objective of imposing a limit on donations is to incentivise political parties and candidates to seek donations from a wider supporter base, reinforcing our goal of increased participation. We think this is a reasonable and justifiable limit on registered electors' rights.
- 13.85 Various limits have been placed on the use of money for political purposes since the 1890s.²⁶ The current political financing regulation already places some constraints on donating (anonymous donations and overseas donations) and spending (election expenses for political parties, candidates and promoters). In this way, a donation limit, while a change to the funding system, is not inconsistent with existing regulation.

²⁶ Geddis, A., 2023, *Electoral Law in Aotearoa New Zealand*. 3rd ed. Wellington: Lexis Nexis New Zealand, p. 143.

- 13.86 Some political parties currently receive more large donations than others, and we appreciate this change is likely to have greater impact on donation revenue for those political parties. However, we do not think this is a reason not to impose a limit. Our proposals on state funding (discussed in **State funding** below) would go some way to mitigating any private funding shortfall.
- 13.87 Many other countries, including most European Union countries, have limits on political donations and some also have limits on loans. Having considered where limits have been set in several OECD jurisdictions, we note that there is a large variation.²⁷ There is no clear explanation for the particular donation limits within those jurisdictions that will assist us with considering what is appropriate for Aotearoa New Zealand.
- 13.88 As our recommendation would constitute a significant change from how elections have been funded in the past and how donor rights have been understood, we suggest a relatively conservative approach to setting a donation limit is advisable, at least initially.
- 13.89 We recommend that each registered elector should be limited to making donations and loans of no more than \$30,000 in total to each political party and its candidates during an election cycle. This limit could be reached through making one donation or loan, or across multiple transactions over the electoral cycle (such as \$10,000 per year for three years). The \$30,000 limit would apply separately to each political party and all its candidates, meaning that an individual could donate up to that amount to several political parties and their candidates.
- 13.90 Our recommended \$30,000 limit is, we think, a reasonable starting point for an overall limit on donations. A \$30,000 limit over three years is also consistent with the findings in academic research, which suggest support for a donations cap in the range of \$10,000 to \$15,000 per year. The maximum amount a candidate can spend on their own general election campaign is currently \$32,600, so our limit would enable a candidate to fund almost all of their campaign with one large donation.²⁸
- 13.91 We acknowledge that \$30,000 is significantly higher than most New Zealanders could afford to donate or lend within an electoral cycle (for instance, the median annual income for households was \$96,000 in 2022),²⁹ However, given the

²⁷ European Parliament Policy Department for Budgetary Affairs, above n 20, p. 20; Organisation for Economic Co-operation and Development, 2016. *Financing Democracy: Funding of Political Parties and Election Campaigns and the Risk of Policy Capture*, Paris: OECD Public Governance Reviews, OECD Publishing, p. 47.

²⁸ Electoral Act 1993, s 205C(1)(a).

²⁹ Stats NZ, above n 22.

important role that private funding plays in the political system, we think that this amount is an appropriate limit.

Alternative options we considered

- 13.92 We considered several alternative options, including whether there should be a limit on the total amount a person could give in political donations each year – to all political parties and candidates. We thought it would be too challenging to track a donor’s donations across all political parties and candidates, so did not prefer this option.
- 13.93 We also considered alternative options for attempting to limit donations, such as whether to place a limit on donations made by some categories of donors or lenders where there may be influence or perceptions of influence – for example, businesses with government contracts. Instead, we decided to restrict who is able to make donations and loans to registered electors for the reasons discussed above in **Who can donate**.
- 13.94 We also considered a total ban on private donations, which would necessitate the full state funding of political parties. While this option would remove the risk of actual or perceived undue influence, we do not think a ban is desirable, necessary, or justifiable in the circumstances. This would be a disproportionate response to the issues we have identified. As we have mentioned in this chapter, we want to encourage political parties and candidates to seek private donations from their supporters.
- 13.95 Thinking about enforcement, we considered whether donors should have an obligation to disclose donations (to assist with enforcement of the cap). On balance, we do not think this is necessary because political parties and candidates already have obligations to record all donations received.

The Panel recommends:

- R62. Limiting the total amount a registered elector may give by way of donations and loans to each political party and its candidates to \$30,000 per electoral cycle.**

Anonymous donations

- 13.96 An anonymous donation is a donation where the recipient does not know, and could not reasonably be expected to know, the identity of the donor.³⁰
- 13.97 If the recipient knows, or could reasonably be expected to know, the identity of the donor, the donor (and the donation) is not anonymous and donor details must be recorded. If the donation is above a certain amount, or when aggregated with other donations from the same donor exceeds that amount, those donor details are then made public. Donations below that amount are not disclosed to the public, even if the recipient knows who made the donation. We discuss public disclosure below in **Reporting and disclosure**.
- 13.98 Currently, a political party or candidate can keep up to \$1,500 of any anonymous donation they receive.³¹ Anything above that must be paid to the Electoral Commission, who then distribute it to the Crown.³² This approach recognises that there is limited risk in smaller donations being made on an anonymous basis when balanced against donor privacy. There are no limits on giving multiple \$1,500 donations anonymously.
- 13.99 Larger anonymous donations to registered political parties can be made through the protected disclosure regime. This regime allows a “New Zealand person” (someone who is not an “overseas person” under the Electoral Act) to donate more than \$1,500 anonymously.³³ These donations are made to the Electoral Commission, which then passes them on to the political party.³⁴ The donations are paid in a way that ensures the political party does not know who the donor is. It is an offence for someone to disclose details about a donor or contributor to a donation under the protected disclosure regime.³⁵

³⁰ Electoral Act 1993, section 207. If any person (including in the case of a political party – a candidate, list candidate, or any person involved in the administration of the affairs of a political party) knows the identity of the donor of an anonymous donation to a political party or candidate, that person must disclose the donor’s identity (Electoral Act 1993, section 207G).

³¹ Electoral Act 1993, section 207I, unless the political party or candidate believes, or has reasonable grounds to believe, that the donation is from an overseas person. In that case, they can keep up to \$50.

³² Electoral Act 1993, section 207I(3).

³³ Electoral Act 1993, section 208A.

³⁴ Electoral Act 1993, section 208D.

³⁵ Electoral Act 1993, section 208F.

Is there a case for change?

Issues identified

- 13.100 In our first consultation, submitters had differing views on whether anonymous donations should be allowed at all, or whether the limits should change. Some submitters suggested that all anonymous donations should be banned, while others suggested they should only be allowed at a lower limit. A few submitters and academics argued that allowing anonymous donations is inconsistent with transparency in political funding. A few submitters suggested that all anonymous donations should be paid to the Electoral Commission, which would then distribute money to political parties.
- 13.101 An argument in favour of allowing anonymous donations is that like the secret ballot, financial support of political parties and candidates should be able to be kept private. Some people argue that donors' identities should always be kept private from the public. Others go further, arguing that donations should be kept private from political parties and candidates as well.
- 13.102 Some other countries have lower anonymous donation thresholds than Aotearoa New Zealand. In Canada, for example, only donations of CAD\$20 or less can be made anonymously.³⁶ In Ireland, the limit is €100.³⁷ Over half of all OECD countries ban all anonymous donations to political parties, and 13 ban anonymous donations above certain thresholds.³⁸

Our initial view

- 13.103 In our interim report, we considered that the rules on anonymous donations should be changed. We recommended reducing the amount that can be donated anonymously from \$1,500 to \$500, and removing the protected disclosure regime.

Feedback from second consultation

- 13.104 Most submitters to our second consultation were in favour of reducing the anonymous donation limit to \$500. Reasons included that reducing the limit promoted transparency and accountability.
- 13.105 However, some submitters raised privacy concerns, and concerns that the recommended reduction would limit freedom of expression and association. One submitter discussed the legitimate reasons that some individuals might have for wanting to keep their identity anonymous – for example, because they are a

³⁶ Elections Canada, 2021. *Political Financing Handbook for Registered Parties and Chief Agents*, Quebec: Elections Canada, p. 39.

³⁷ Electoral Act 1997 (Ireland), section 23.

³⁸ Organisation for Economic Co-operation and Development, above n 27, p. 48.

teacher, police officer or other public servant, or because they have views outside of the mainstream.

- 13.106 The Privacy Commissioner submitted that lowering the anonymous donation threshold and removing protected disclosure raised privacy concerns, as those who do not want to share their information publicly will have less opportunity to support their chosen political party. However, the Commissioner was satisfied that the public interest in donations outweighed the privacy risk.
- 13.107 A few submitters thought all donations should be anonymous, and others had suggestions about alternative limits, such as \$20 (as in Canada), \$200 or \$1,000. A few other submitters thought there should be no anonymous donations allowed at all. Concerns were also raised about the ways that anonymous donations could reduce transparency and be used to avoid other limits, as donors could make unlimited anonymous donations under the \$500 limit.
- 13.108 Only a few submitters commented on our recommendation to remove the protected disclosure regime, but those who did supported the recommendation.

Our final view

- 13.109 We maintain our view that the amount that can be donated anonymously should be reduced from \$1,500 to \$500.
- 13.110 We think there is a valid role for small anonymous donations, at an amount where there is little public interest in knowing the identity of a donor and little risk of undue influence. Allowing small anonymous donations also adds flexibility for fundraising, without increased administrative compliance burdens. For these reasons, we do not recommend banning anonymous donations entirely.
- 13.111 We think that the current anonymous donation threshold of \$1,500 is too high. We consider that \$500 balances transparency and minimises disclosure avoidance, while allowing for “grass-roots” fundraising methods (such as a raffle or collection at an event) and protecting donor privacy for small donations.
- 13.112 We also retain our recommendation to remove the protected disclosure scheme. The scheme is used very rarely, usually only in an election year. The amounts received by the Electoral Commission are also relatively small compared with the amounts political parties receive in non-protected donations.
- 13.113 During the 2020 general election period (July to September 2020), the Electoral Commission received \$116,822.50 in protected disclosure donations. In the two years from October 2020 to the end of November 2022, it received no protected disclosure donations. In August and September 2023, the Electoral Commission

received eight donations totalling \$326,390.³⁹ We consider that this recommendation is consistent with our objectives of openness and accountability.

- 13.114 As alternative options, we considered raising or removing the limit on anonymous donations. While these options would potentially lower compliance costs, and protect donor privacy, we do not think they are sound. They would result in less transparency over who is donating to political parties and candidates, and we are not confident that larger anonymous donations would be truly anonymous from the political party or candidate.

The Panel recommends:

- R63. Reducing the amount that can be donated anonymously to \$500.**
- R64. Abolishing the protected disclosure regime.**

Identifying donors and donations

- 13.115 “Donation” is defined broadly under the Electoral Act, and can be money, the equivalent of money, goods or services, or a combination of those things. A “donor” is defined as “a person who makes a donation”.⁴⁰
- 13.116 Where money is donated to a political party or candidate, the value of the donation is the entire sum provided. Calculating the value of goods and services can be more complicated, and requires political parties and candidates to assess the reasonable market value of that good or service.
- 13.117 If goods and services are provided by a New Zealand person for less than their reasonable market value (including for free), and that value exceeds \$300 for candidates or \$1,500 for political parties,⁴¹ the difference between the amount paid and the reasonable market value is a donation. For example, a person who gives a painting to a political party for a fundraising auction with a reasonable market value of \$10,000 has made a donation of that amount.

³⁹ Electoral Commission, 2023. *Donations protected from disclosure*. [Online] Available at: <https://elections.nz/democracy-in-nz/political-parties-in-new-zealand/donations-protected-from-disclosure/> [Accessed October 2023].

⁴⁰ Electoral Act 1993, section 207.

⁴¹ Electoral Act 1993, section 207(2). If goods and services are provided by an overseas person, the threshold is \$50 for both political parties and candidates.

- 13.118 If a political party or candidate sells or provides goods or services for more than their reasonable market value, the difference between the reasonable market value and the price the buyer pays is a donation. For example, a person that won the painting with a value of \$10,000 at auction for \$15,000 has made a donation of \$5,000 (price paid less reasonable market value).
- 13.119 Some goods and services are not a donation:⁴²
- Goods or services provided free of charge by a New Zealand person with a reasonable market value of \$300 or less for candidates, or \$1,500 or less for political parties, or by an overseas person of \$50 or less, are not a donation.
 - Labour provided free of charge by any person to a political party or candidate is not a donation.
- 13.120 Fees to join a political party, such as membership and affiliation fees, are also not donations.

Is there a case for change?

Issues identified

- 13.121 In some situations, it is not always clear who the true donor of a good or service is. For example at a fundraising auction, if a person donates something to a political party, such as a piece of art, then the reasonable market value of that art constitutes a donation (unless the value is under \$1,500). If a purchaser then pays more than this reasonable market value for the artwork, the additional sum paid in excess of the reasonable market value constitutes a donation. Determining the reasonable market value can be a difficult process.
- 13.122 There has been a lot of media reporting about the treatment of items sold at fundraising auctions, including that the purchaser of an item does not have to be disclosed as a donor if the purchase price is the same as or less than the reasonable market value. How the rules around disclosing donations apply to political party fundraising generally is complicated and appears to be poorly understood by at least some electoral participants.
- 13.123 Similar uncertainty arises in relation to membership fees to join political party groups (such as members' clubs), and tickets to events such as fundraising dinners where the ticketholder gains access to senior politicians, such as MPs and ministers.

Our initial view

- 13.124 In our interim report, we were concerned about the confusion around identifying the true donor of a good or service, and identifying what constitutes a donation.

⁴² Electoral Act 1993, section 207(2) defines "candidate donation", "party donation" and exclusions.

We recommended expanding the definition of donation to include a range of fundraising activities:

- **Buying a ticket to an event:** the entire ticket price is a donation, and the registered elector who buys the ticket is a donor. For example, this would include the registered elector who buys a ticket to a fundraising dinner where senior politicians are present.
- **Giving a good or service for fundraising:** the entire value of the good or service is a donation, and the registered elector who gives the good or service is a donor. For example, this would include a registered elector who provides a free or discounted venue or catering for an event, or a person gifting an artwork for a fundraising auction.
- **Buying or winning a good or service at a fundraising event:** the entire amount paid for the good or service is a donation, and the registered elector who buys or wins the good or service is a donor. For example, this would include a registered elector who is the successful bidder on a good or service at a fundraising auction.
- **Purchasing access to a political party organisation:** any amount paid above and beyond the standard political party membership fee is a donation, and the registered elector who pays the money is the donor.

Feedback from second consultation

13.125 Most submitters that responded to this interim recommendation were in support of expanding the definition of donation. However, some submitters, including political parties, academics and unions, raised concerns about the application of the recommendation.

13.126 Some submitters were concerned about the application of the expanded donation definition in practice. Political parties and other submitters raised several issues:

- A political party submitted that it was not fair to require political parties to treat the entire value of a ticketed event as a donation, no matter what the purchaser (donor) received in return. It thought only profits from events should be recorded as a donation, not the entire revenue. It also queried if we were suggesting that even goods sold at fair market price should be recorded as donations.
- The political party also queried whether the changes could result in double-counting when applied to art auctions, as we suggested both the donor of a piece of art (for example) and the purchaser of a piece of art would be recorded as donors, and this could result in double-counting. The political party suggested that the current practice of independently valuing artworks and assessing donations against those values is more sensible.

- Another political party queried whether traditional hospitality offered by ethnic groups would be excluded and, if not, how they would be valued for donation purposes.
- Some political parties, unions, civil society groups and an academic raised concerns about how our recommendation would interact with political party membership fees and affiliation relationships. We discuss this under **Loopholes and avoidance issues** later in this chapter.

13.127 A few submitters were concerned about the impact of our recommendation restricting only registered electors to be able to provide a free or discounted venue or catering for an event. They thought this would have a significant impact on political parties, and on civil society participation.

13.128 We also heard from the Electoral Commission that the wording of our recommendation may result in uncertainty. It considered that all of the fundraising activities listed in our recommendation are already donations and our recommendation related to calculating donations.

Our final view

13.129 Having heard submitters' feedback and further considered the practicalities of our recommendation, we concluded that the current definition of donation should primarily remain as drafted in the Electoral Act.

13.130 While our previous recommendations were intended to address issues with lack of clarity about donations arising from fundraising activities such as auctions, they could also have captured transactions such as the sale of merchandise at reasonable market value that do not run the same risk of undue influence or require the same level of transparency.

13.131 We therefore consider a donation of a good or service should remain defined as:

- **If sold or provided by a political party or candidate above reasonable market value:** the donation is the difference between a good or service's reasonable market value and the price at which it was sold.
- **If provided to a political party or candidate free of charge:** the donation is the entire reasonable market value of the good or service.
- **If sold or provided to a political party or candidate below reasonable market value:** the donation is the difference between the good or service's reasonable market value and the price that the political party or candidate paid.



Aligning the anonymous donation limit with the minimum reasonable market value threshold

- 13.132 Currently, some goods and services are only considered donations under the Electoral Act if they meet a certain minimum reasonable market value threshold:
- Where a New Zealand person provides goods or services **free of charge**: If the reasonable market value exceeds \$1,500 for political parties, or \$300 for candidates, the person's donation is the entire reasonable market value.⁴³
 - Where a New Zealand person provides goods or services for **below reasonable market value**: If the reasonable market value exceeds \$1,500 for political parties, or \$300 for candidates, the value of that person's donation is the difference between the amount paid and the reasonable market value.⁴⁴
- 13.133 Where the reasonable market value of goods or services provided by a New Zealand person free of charge or below reasonable market value does not exceed \$1,500 for political parties, or \$300 for candidates, this is not treated as a donation.
- 13.134 We propose a change to the thresholds for when goods or services should be considered donations. In our view, the minimum reasonable market value threshold should be changed to \$500 to align with the anonymous donation limit.
- 13.135 Earlier in this chapter, we indicated that a \$500 anonymous donation limit is justified as we think there is a public interest in allowing individuals to make small anonymous donations. Aligning the reasonable market value threshold with the anonymous donation limit would ensure that relatively small donations of goods and services are treated consistently with anonymous donations of money. Persons giving money, or goods and services, could only remain anonymous if the value of their contribution is \$500 or less. We think there is little public interest in knowing the identity of a donor at this level, and little to no risk of undue influence

Consequences of our recommendation

- 13.136 We acknowledge that the change to our recommendation may mean the issues we identified with the status quo will not be completely resolved – such as issues with identifying the true donor or purchaser of a good or service or accurately calculating the reasonable market value.

⁴³ For goods and services provided by an overseas person, the minimum reasonable market value threshold is lower, at \$50.

⁴⁴ Electoral Act 1993, section 207(2).

- 13.137 However, our recommendations to restrict who is eligible to donate, limit the total amount a registered elector can donate, and increase donor transparency may mean these risks are reduced. Under our recommendations:
- businesses, such as venues, caterers or printers, would be limited to giving discounted or free goods or services with a reasonable market value of \$500 or less
 - only registered electors would be permitted to purchase goods and services from a political party for above market value
 - any registered elector who contributes over \$1,000 would be reported as a donor and disclosed publicly.
- 13.138 It also appears to us that some issues arise from donations not being disclosed when they should be, under the current rules. Existing Electoral Commission guidance for party secretaries and candidates states that if there is no objective basis to work out the reasonable market value of a good or service, then the political party or candidate should err on the side of caution.⁴⁵
- 13.139 Later in this chapter, in **Loopholes and avoidance issues**, we also recommend additional offences to prohibit cooperation, consultation or collusion between third parties, political parties and their agents to avoid regulation. This may also reduce the risk of donors attempting to avoid disclosure under the current definition.
- 13.140 Other issues, such as lack of transparency over donors who purchase a good or service at reasonable market value may be more appropriately dealt with outside of the political finance rules. The political finance rules are intended to increase the transparency of non-commercial transactions between political parties and candidates and individuals and organisations. Transparency over broader activities (such as who has attended a particular event with a minister in attendance) would be better addressed through lobbying regulation or other disclosures.

⁴⁵ For example, see Electoral Commission, 2023. *Candidate Handbook - Pukapuka Aratohu Kaitono*, Wellington: Electoral Commission, p. 47.

Interaction with our other recommendations

- 13.141 In **Appendix 1: Minor and Technical Recommendations**, we recommend a change to clarify that free labour or services must be provided on a voluntary basis.

The Panel recommends:

- R65. Amending the minimum reasonable market value threshold for the donation of goods and services so that any good or service provided free of charge, or at a discount, with a reasonable market value of \$500 or less is not a donation.**

Reporting and disclosure

- 13.142 Party secretaries and candidates must keep records of the donations they receive,⁴⁶ and loans they enter into.⁴⁷ Only party secretaries can enter into loans on behalf of a political party.⁴⁸ Unless the donation is from an anonymous source, they must make a record of the amount of each donation and each donor's details. Individual electorate candidates are personally responsible for recording and reporting donations and loans to their campaign.
- 13.143 Reporting and disclosure requirements provide transparency over how much political parties and candidates receive in donations and loans, including disclosing the identity of certain donors and lenders.
- 13.144 The current rules adopt a tiered approach to public disclosure, with more transparency required as the amount of a donation increases. A tiered approach is taken because it is assumed that smaller donations are less likely to result in undue influence and there is, therefore, less of a public interest in disclosing personal information.
- 13.145 Some donations and loans must be reported almost immediately. If a person donates over \$20,000 in an election year (either by a single donation or cumulatively over several donations) the party secretary must report the donor's identity and address to the Electoral Commission within 10 working days.⁴⁹ This

⁴⁶ Electoral Act 1993, section 207M (candidate donations), section 207N (political party donations).

⁴⁷ Electoral Act 1993, section 214B (political party loans), section 214BA (candidate loans).

⁴⁸ Electoral Act 1993, section 213.

⁴⁹ Electoral Act 1993, section 210C.



information is made available on the Electoral Commission’s website. The purpose of this requirement is to let the public know who is providing relatively large donations to a political party ahead of an election.

- 13.146 If a political party receives a loan of more than \$30,000 from the same person (either in a single payment, or cumulatively) within a year, it must report that lender’s identity, address and other details about the loan to the Electoral Commission within 10 working days.⁵⁰
- 13.147 Other donations of more than \$5,000 and loans of more than \$15,000 must be reported by a political party in their annual return to the Electoral Commission.⁵¹
- 13.148 Political parties have a new obligation introduced in 2023 to disclose their annual financial statements, including details of income, spending, assets, and liabilities.⁵²
- 13.149 Candidates have to provide returns after every election, including details of all donations, or contributions to donations, above \$1,500 and all loans.⁵³
- 13.150 There are various offence provisions for failure to comply with reporting and disclosure obligations.

Is there a case for change?

Issues identified

Public disclosure of donor identity

- 13.151 Most submitters who responded to our questions in our first consultation were in favour of increasing transparency and public oversight of political party and candidate funding. Some submitters supported lower public disclosure thresholds. A few submitters thought that lower disclosure limits could reduce the risk of “donation splitting”, where a large donation is split into many smaller donations to hide the true identity of the donor. A few other submitters considered that there should be full transparency over donations, with all donations being disclosed. On the other hand, a few submitters suggested that disclosure thresholds should be raised.
- 13.152 Some think that increased disclosure of donor identity will lead to fewer donations being made to political parties and candidates, as some donors do not wish to be publicly known in case there are negative consequences for donors (for example, at work or for their business) if they are publicly connected to a political party or candidate.

⁵⁰ Electoral Act 1993, section 214F.

⁵¹ Electoral Act 1993, section 210 (donations over \$5,000), section 214C (loans over \$15,000).

⁵² Electoral Act 1993, section 210G.

⁵³ Electoral Act 1993, section 209 (donations), section 214GA (loans).

13.153 Some jurisdictions have lower disclosure thresholds than our current settings. For example, in Canada a donor that contributes over CAD\$200 to a political party is publicly disclosed.⁵⁴ In Ireland a donor contributing over €1,500 to a political party is also publicly disclosed.⁵⁵

Reporting frequency

13.154 Some submitters to our first consultation were in favour of political parties having to disclose their funding more frequently. Views varied on the frequency that should be required. A few suggested a sliding scale of reporting, with increasing frequency in an election year. A few other submitters suggested disclosure should happen in real time.

13.155 Some thought that donations should be disclosed before an election. Those submitters thought public disclosure after an election did not assist voters to understand potential influences on political parties and candidates ahead of casting their vote.

13.156 While some particularly large donations must be reported almost immediately, meaning they can be subject to media and voter scrutiny before voting, most information about political party and candidate funding is provided well after an election. This delay means that the public has little oversight of who is funding political parties in the lead-up to an election.

Our initial view

13.157 Overall, our view in our interim report was that the current disclosure regime is largely satisfactory, but we recommended some changes to increase transparency while balancing donor privacy:

- Political parties and candidates should disclose the identity of donors who donate above \$10,000 (or in the aggregate) in an election year at the start of the regulated period (that is, three months before election day) and during the regulated period, on a weekly basis. This was a modification of the existing rule requiring disclosure of donations in an election year above \$20,000 within 10 working days. The existing rule would continue to apply until the beginning of the regulated period.
- The current disclosure threshold for donations should be reduced from \$5,000 to \$1,000 for political parties, and reduced from \$1,500 to \$1,000 for candidates. To address privacy concerns, we recommended that only the donor or lender's name is made publicly available, not their address. However, we thought that political parties and candidates should continue

⁵⁴ Canada Elections Act 2000 (Canada), section 432(2)(c).

⁵⁵ Electoral (Amendment) (Political Funding) Act 2012 (Ireland), section 15(d).

to be required to report donor and lender addresses to the Electoral Commission.

- 13.158 Finally, to reduce the burden on political parties to record small donations, we recommended that political parties and candidates are only required to record a registered elector's details for donations over \$200.

Feedback from second consultation

Lowering the public disclosure threshold to \$1,000

- 13.159 Submitters, including some political parties, raised concerns that lowering the public disclosure threshold might deter people from donating above that threshold. A few submitted that there are valid reasons why a person would not want to be publicly identified as supporting a political party or candidate through donations, such as to protect their privacy, or because they are a public servant.
- 13.160 One political party submitted that it is difficult to justify more restrictive thresholds than the current threshold for public disclosure (\$5,000). Below that, it argued donors' rights to political participation and privacy were affected. Another political party queried the rationale for requiring the names of those who donate relatively small sums to be made public.
- 13.161 The Privacy Commissioner supported our recommendation that only donor and lender names would be made public. The Commissioner considered that it struck a balance between transparency and privacy.
- 13.162 We received feedback from the Electoral Commission that our objective of transparency may not be achieved by only requiring public disclosure of donors' names, as there may be common names. It suggested we consider requiring disclosure of suburbs, or just the street name but not the house number.

Increased disclosure and reporting in an election year

- 13.163 We heard from political parties that our recommendation requiring disclosure of donations above \$10,000 on a weekly basis during the regulated period would be very difficult, if not impossible, to meet. Political parties told us that the current 10-working-day period for reporting large donations in an election year was already challenging.
- 13.164 One academic submitted that political parties should be required to rapidly disclose large donation at all times, not just in an election year, noting that until recently political parties were required to disclose donations over \$30,000 within 10 working days at any time.⁵⁶

⁵⁶ The requirement was changed in the Electoral Amendment Act 2022 section 8, which reduced the disclosure threshold to \$20,000 but only required reporting in an election year.

Reducing the administrative burden for recording small donations

- 13.165 Some political parties told us that our recommendation to reduce the administrative burden by only requiring donor details to be recorded for donations above \$200 was not required. Political parties are currently required to record all donations to track against disclosure caps. One political party told us that technology makes recording small donations relatively simple.
- 13.166 Other submitters raised concerns that the recommendation created a new loophole – a registered elector could make many donations under \$200, and despite being known to the political party, these donations would not count against their donation cap or be publicly disclosed.

Our final view

- 13.167 We recommend retaining most of the current requirements set out in the Electoral Act, with some modifications to our interim recommendations.

Reporting political party and candidate funding in an election year

- 13.168 We maintain our view that during an election year, there is insufficient public disclosure of political party and candidate funding. Requiring additional disclosure in the lead-up to an election will enable the public to identify potential influences, and potential breaches of the requirements, in advance of election day. It will be an important accountability measure.
- 13.169 We received strong feedback from political parties that our recommended weekly reporting requirement during the regulated period would not be feasible. Having heard this feedback, we have decided to modify our recommendation and require political parties and candidates to report donations within 10 working days. We note this is the current reporting timeframe for large donations in an election year.
- 13.170 Our modified recommendation would mean that:
- During an election year, up to the beginning of the regulated period, political parties would be required to disclose donations above \$20,000 within 10 working days.⁵⁷
 - At the beginning of the regulated period, political parties and candidates would be required to disclose donations and loans received above \$10,000 (but below \$20,000) already made during the election year.

⁵⁷ As we note above, under the current rules in section 210C Electoral Act 1993, political parties are required to make these disclosures throughout the election year.

- During the regulated period, political parties and candidates would be required to disclose donations and loans received above \$10,000 within 10 working days.

13.171 In coming to this view, we note that in some other democracies, such as the United Kingdom, disclosure becomes more frequent during an election period.⁵⁸

13.172 We considered other disclosure and reporting options, such as making the rules less restrictive – for example, by increasing the thresholds for donations and loans or by reducing the frequency of disclosure. However, this would reduce public transparency over the sources of private funding. We consider this loss of transparency would reduce public trust in political funding and we, therefore, do not recommend it.

Disclosing donors and lenders to the public

13.173 We also maintain our view that the current disclosure threshold for donors to political parties should be reduced from \$5,000 to \$1,000. To ensure alignment, we also recommend that the current disclosure threshold for donors to candidates should be reduced from \$1,500 to \$1,000.

13.174 Lowering the public disclosure threshold could place a limit on political expression because those who do not wish to be publicly identified may donate less than the threshold when they want to give more.⁵⁹

13.175 In our view, this limit is justified. The increased transparency will support public trust in political financing and enable oversight over potential influences on political parties and candidates. This reduction would also reduce the risk of donation splitting, an issue that arose in a recent court case,⁶⁰ as it would become much more difficult to split a large donation.

13.176 We consider donations and loans below \$1,000 have little risk of the donor obtaining undue influence over a political party. Privacy considerations outweigh transparency considerations at this level, and we do not think it is necessary for the public to know who is making donations below \$1,000.

13.177 We are mindful of potential privacy concerns associated with the current disclosure rules, which would be exacerbated by increased public disclosure. We heard that some registered electors have legitimate reasons for not wanting their political activity to be publicly disclosed.

⁵⁸ Political Parties, Elections and Referendums Act 2000 (UK), section 63 states for example, registered political parties must provide weekly reports within the general election period for any donation of more than £7,500.

⁵⁹ Parker, D., 2021. *Report of the Attorney-General under the New Zealand Bill of Rights Act 1990 on the Electoral (Strengthening Democracy) Amendment Bill*, Wellington: House of Representatives, p. 4.

⁶⁰ *R v Zhang* [2022] NZHC 2541.

- 13.178 We understand these concerns, but consider that the objective of increased transparency and trust in the electoral system outweighs the objection to lowering the disclosure threshold. Donors wishing to remain private from the public, but still contribute to political parties and candidates, could still make anonymous donations, donate below the \$1,000 public disclosure threshold, or volunteer their free labour.⁶¹ Other avenues of participation include donating to third-party promoters.
- 13.179 To address privacy concerns, we initially recommended that only the donor's or lender's name is made publicly available, not their address. Political parties and candidates would continue to be required to report donor and lender addresses to the Electoral Commission.
- 13.180 On reflection, we agree with feedback from the Electoral Commission that this may not provide sufficient transparency over donors. We recommend that a donor's name and electorate must be made public. This would provide additional information about where a donor lives, which will assist with transparency, without a significant impact on donor privacy. We also discussed whether further information about a donor's address ought to be made public, such as their street name, but recognise that this creates privacy issues that require further investigation. If, in the future, disclosing donors' names and electorates is providing insufficient transparency, the disclosure requirements may need to be revisited.

Reducing the administrative burden for recording small donations

- 13.181 We have taken into account submitters' feedback on the potential loophole created and that recording small donations may not be a significant burden for political parties. Accordingly, we no longer recommend that political parties and candidates are not required to record a registered elector's details for donations of \$200 or less. As a result, the status quo remains, and political parties and

⁶¹ Under section 207(2) Electoral Act 1993, the labour of any person that is provided to a candidate or political party by that person free of charge is not a donation.

candidates must record a registered elector's details for all donations where the donor is known to the political party or candidate.

The Panel recommends:

R66. Requiring:

- a. at the beginning of the regulated period, political parties and candidates to disclose donations and loans above \$10,000 (but below \$20,000) made during an election year
- b. during the regulated period, political parties and candidates to disclose donations and loans above \$10,000 within 10 working days.

R67. Requiring the disclosure of all donors and lenders who give more than \$1,000 in a year to a political party or candidate, but only requiring their names and electorates to be made public.

Loopholes and avoidance issues

13.182 As we have noted in our discussion earlier in this chapter, during our second consultation many submitters raised concerns that our restrictions to private funding may incentivise donors and other electoral participants to engage in avoidance or evasion behaviour.

13.183 Below, we discuss third-party promoter regulation, political party membership and affiliation fees, a general anti-avoidance offence, and financial disclosure for political parties applying for registration.

Third-party promoters

13.184 As we discuss further in **Chapter 14**, third-party promoters have an important role to play in our democracy, and can provide information to voters that they do not receive from political parties or candidates directly.

13.185 Currently, third-party promoters are not subject to any restrictions on receiving donations and are not required to report or disclose donations received. They are subject to certain regulatory requirements on election advertising spending. Unregistered and registered third-party promoters are limited as to how much



they can spend on election advertising during the regulated period,⁶² and those that spend over \$100,000 during that period are required to disclose their expenditure.⁶³

Feedback from second consultation

13.186 During our second consultation, we heard that submitters were concerned that as a result of our significant recommended changes to private funding, donors may funnel money into third parties to avoid restrictions. If that occurred, our objectives of increased transparency and reducing undue influence would be undermined because third-party promoters are not required to disclose their funding.

13.187 A few submitters thought increased third-party promoter regulation was required to address these issues.

Our view

13.188 We share submitters' concerns about the potential for donors to use third-party promoter funding as a loophole to avoid restrictions. In our view, the potential for abuse of the loophole needs to be addressed and either closed or reduced.

13.189 To address this issue, we considered whether it was necessary to change our recommendations around political party and candidate donations to restrict donor eligibility to registered electors and the donation limit. In our view, removing either or both of these recommendations would undermine our objectives for political finance rules.

13.190 Instead, we think it is necessary to introduce some limited regulation of third-party promoter finances to mitigate risks and provide increased transparency.

13.191 We recommend that:

- All registered third-party promoters must have a separate bank account for election campaigns. Any donations for funding election expenses must be paid into this account. As a consequence, registered third parties will be required to keep records of election campaign donations. Election expenses (as defined under section 206(1) of the Electoral Act) must be paid from this account.

⁶² Electoral Act 1993, section 206V (registered third-party promoter), section 204B(1)(d) (unregistered third-party promoter).

⁶³ Electoral Act 1993, section 206ZC.

- All registered third-party promoters that are required to report election expenses⁶⁴ must disclose donations received from a donor over \$30,000 (either through one donation or in the aggregate) in an electoral cycle where those donations are used for election advertising during the regulated period.⁶⁵

- 13.192 We think a \$30,000 donation disclosure threshold for registered third parties takes into account donor privacy and compliance burden, and provides increased transparency. Our rationale for the \$30,000 donation disclosure threshold is that this amount of money could reasonably be expected to influence the activities of a registered third-party promoter, as one-third of the expenditure reporting limit. It is also aligned with our recommended limit on donations or loans to any one political party and its candidates.
- 13.193 We think this approach would help to mitigate the more serious risks identified by submitters, while minimising the regulatory burden for registered third-party promoters. Requiring a separate bank account would also assist with oversight and enforcement, including of our recommendation in **Chapter 19** prohibiting registered third-party promoters from using funds received from overseas persons to fund election advertising during the regulated period.
- 13.194 We acknowledge these recommendations would not entirely remove the risks we identified above. Organisations, for example, could avoid donor eligibility restrictions for donations to political parties and candidates by donating to third parties instead. Increased campaigning by third-party promoters could also take place outside the regulated period to avoid restrictions.
- 13.195 However, we note that these issues already exist under the status quo. By recommending that some large donations are disclosed, we hope that increased transparency will provide the public with information regarding potential influences of third-party promoter activities.
- 13.196 In **Chapter 18** we recommend an overhaul and consolidation of offences and penalties under the Electoral Act. We also recommend additional investigative powers for the Electoral Commission, including to require documents and undertake audits. These powers should extend to monitoring third-party promoter compliance with these recommended changes. While there are existing offences that prohibit third parties entering into agreements to circumvent the third-party promoter expenditure limit,⁶⁶ we recommend that additional offences prohibit

⁶⁴ Electoral Act 1993, section 206ZC provides that those that spend over \$100,000 on election advertising during the regulated period must file a return of election expenses with the Electoral Commission.

⁶⁵ Donation returns will be required at the same time as expense returns and would be made public by the Electoral Commission.

⁶⁶ Electoral Act 1993, section 206X(3).

cooperation, consultation, or collusion with candidates, political parties or their agents to avoid regulations.

- 13.197 Finally, we also considered whether to recommend more comprehensive regulation of third-party promoter funding. To introduce regulation of this type would be a significant change to how third parties operate in the electoral system. While it would address an existing regulatory gap, and potentially close loopholes, it would be complex and may have implications for participation of third parties. At this stage, we think it would be a disproportionate response to the risks identified.

Interaction with our other recommendations

- 13.198 In **Chapter 14**, we discuss other aspects of third-party promoter regulation.

The Panel recommends:

- R68. Requiring registered third-party promoters to have a separate election campaign bank account for campaign donations and election expenses.
- R69. Requiring registered third-party promoters to keep records of election campaign donations.
- R70. Requiring registered third-party promoters that spend more than \$100,000 on election expenditure during the regulated period to also disclose donors who donate over \$30,000 in total during an electoral cycle, if the donation has been used for election expenditure.
- R71. Increasing monitoring powers for the Electoral Commission and offence provisions in the Electoral Act, including restricting collusion between third-party promoters and political parties.

Membership and affiliation fees

- 13.199 As we note above in **Identifying donors and donations**, political party membership and affiliation fees are not donations. There are no restrictions on how much political parties can charge members but, in practice, they charge fairly low membership fees, in the range of \$5 to \$20 per year.

Feedback from second consultation

- 13.200 Some political parties, unions, civil society groups, and an academic raised concerns about how our recommendation to amend the definition of donation would interact with our recommendation to restrict donor eligibility.
- 13.201 One submitter was concerned that our recommendation relating to a “standard membership fee” may result in a loophole under which political parties could establish high standard membership fees, which would not be treated as donations. In this way, individual donors could avoid private funding restrictions such as our recommended limit on donations.
- 13.202 Other submitters requested clarity on whether our recommended prohibition on non-registered electors making donations would extend to the practice of union affiliation with political parties. These submitters were strongly opposed to any attempt to restrict affiliation.
- 13.203 Another submitter was concerned that the restriction on donor eligibility should not restrict non-residents living in New Zealand from becoming political party members.

Our view

- 13.204 In **Chapter 12** we discuss political party regulation. While some regulation is appropriate, in our view it must not unduly restrict the ability of political parties to organise themselves in ways they see fit. The Supreme Court has stated that political parties typically “have wide freedom in their internal arrangements, including in the determination of their own membership and the achievement of their objects”.⁶⁷
- 13.205 Our recommendations do not seek to restrict how political parties decide their own membership criteria and fees – including through affiliation relationships. We think it is important that political parties have strong engagement with civil society. A common example is union affiliation, but that is just one type of group that political parties may agree to have as members. Other examples include marae and sports clubs, which are currently allowed to affiliate under one registered political party’s rules.
- 13.206 In addition to the concerns raised about the application of our recommendation restricting donor eligibility to affiliate relationships, we also identified another potential risk. We were concerned that our restrictions on eligibility might incentivise affiliate relationships with political parties where large affiliate fees are charged or paid. This could enable organisations and corporations to bypass our recommendation that they would not be eligible to donate to political parties.

⁶⁷ *Huata v Prebble* [2005] 1 NZLR 289 (SC) at [37] per Elias CJ.

OECD research suggests that membership fees can be used to circumvent limits on private donations.⁶⁸

- 13.207 We maintain our view that a standard membership fee should not be treated as a donation. We also think there is value in allowing entities to affiliate to political parties with aligned political interests. Under section 17 of the New Zealand Bill of Rights Act 1990, all persons have the right to freedom of association. This includes the right to form, and participate in any kind of organisation – including the right to decide on an organisation’s internal structures.⁶⁹
- 13.208 Responding to submitters’ concerns about the potential loophole created by membership fees and affiliation fees, we make a new recommendation that a maximum limit of \$50 should be placed on annual membership and affiliation fees. For individual members, this fee would be per person. For legal persons, such as unions, incorporated societies or other organisations, the fee would be no more than \$50 per member, or member equivalent of that union or organisation. If the structure of the legal person does not have a “members equivalent”, the \$50 maximum fee would apply per entity.
- 13.209 As a result, entities would continue to be able to affiliate to political parties (if political parties allow such arrangements), but a limit would be placed on the maximum amount a political party could charge per affiliated member. Unions and other organisations could continue to pass on the membership fees of their members.

The Panel recommends:

- R72. Introducing a maximum political party annual membership and affiliation fee of \$50 per member, or member equivalent.**

Transparency over unregistered party finances

- 13.210 In **Chapter 12** we discuss unregistered political parties becoming component parties of registered political parties, and recommend that this no longer be allowed. One of the concerns we raised was that unregistered political parties are not required to record, report or disclose their donations or loans.

⁶⁸ Organisation for Economic Co-operation and Development, above n 27, p. 49.

⁶⁹ Butler, A. & Butler, P., 2015. *The New Zealand Bill of Rights Act: A Commentary*. 2nd ed. Wellington: LexisNexis NZ Limited, p. 779.

Feedback from second consultation

13.211 During our second consultation, we received a submission raising the issue of unregistered political parties, which noted that on application they are not required to disclose the source of their funds. This is a potential loophole. Donations that would otherwise be prohibited under our recommendations above (such as donations from people or entities other than registered electors) could be received while a political party is unregistered, but spent while registered, with no transparency over the source of those funds.

Our view

- 13.212 As we have noted in **Reporting and disclosure**, from 2024 all registered political parties are required to provide annual financial statements which, among other things, list their assets and liabilities. We recommend that on applying for registration, each political party is required to provide disclosure of its assets and liabilities. This would provide the public with some transparency over a political party's financial position on registration. We think this is reasonable in the context of our recommendation that all registered political parties will receive base funding to assist with compliance costs. We discuss base funding in our **State funding** section below.
- 13.213 This approach would not provide information about where that political party had received its money from. We thought about whether this recommendation should go further and require, for example, detailed disclosure of donations received or confirmation that donations received had been obtained from registered electors.
- 13.214 However, we think that such a requirement would be impractical as with no legal obligation on unregistered political parties to record this information, many political parties may be unable to comply with such a requirement. We think our recommended approach is an appropriate balance between transparency over newly registered political parties' finances, and regulatory burden.

The Panel recommends:

- R73. Requiring political parties to disclose assets and liabilities when applying for registration.**



Anti-avoidance offence

13.215 As we have noted in **Chapter 18**, individual electoral offences have been added and altered over time. Many of these offences relate to political finance. We have recommended an overhaul and consolidation of all electoral offences and penalties. The Justice Committee and the Electoral Commission have previously recommended the introduction of an overarching anti-collusion offence for donations in the Electoral Act.⁷⁰

Feedback from second consultation

13.216 Submitters were concerned that our recommended restrictions on donor eligibility and the donation cap may incentivise avoidance behaviour.

Our view

13.217 In addition to our recommendations to close identified loopholes, we recommend there is an overarching anti-avoidance offence relating to political finance rules. The offence could capture those situations where a person may circumvent or attempt to circumvent a particular limit or restriction on their own, or in collusion with another person or entity.

13.218 While the exact form of the offence should be developed during the overhaul and consolidation of electoral offences and penalties, we have noted an example offence in separate legislation which captures a broad range of avoidance behaviour. The Overseas Investment Act 2005 contains an offence which states:

every person commits an offence who knowingly or recklessly enters into a transaction, executes an instrument, or takes any other step, for the purpose of, or having the effect of, in any way, directly or indirectly, defeating, evading, or circumventing the operation of this Act.⁷¹

The Panel recommends:

R74. Including a general anti-avoidance offence provision relating to political finance rules in the Electoral Act.

⁷⁰ Justice Committee, 2019. *Inquiry into the 2017 General Election and 2016 Local Elections*, Wellington, p. 68; Electoral Commission, 2021. *Report of the Electoral Commission on the 2020 General Election and referendums*, Wellington: Electoral Commission, p. 54.

⁷¹ Overseas Investment Act 2005, s 43.



State funding

- 13.219 Some state (public) funding is provided for electoral purposes. Currently, registered political parties receive state funding for election campaigning through the broadcasting allocation. In 2023, that funding was approximately \$4.1 million.⁷² There have been many issues identified with this funding, which we discuss in **Chapter 14**.
- 13.220 Other public funding is provided to candidates through the Election Access Fund. This fund has been established to support disabled people to stand as candidates. The purpose of the fund is to address cost barriers for disabled people that non-disabled candidates do not face.⁷³
- 13.221 In addition to state funding, political parties that are represented in parliament receive significant funding through the Parliamentary Service. While this funding is not allowed to be used for explicit electioneering purposes (which includes communications that explicitly seek someone's political party membership or vote), it does give these political parties some electoral advantages, such as through travel allowances.
- 13.222 In considering state funding and its balance with private funding, we are conscious of the vital constitutional role that political parties have in Aotearoa New Zealand's democracy.
- 13.223 We have made several recommendations on private funding that may change the way political parties raise funds, and the amount they are able to raise. We think Aotearoa New Zealand's existing state funding through the broadcast allocation needs to change, which we discuss below in **Chapter 14**. As a result, we think the current approach to state funding requires reform and a modest increase to the overall levels provided to political parties.
- 13.224 Although the transparency of donations and loans has increased over time, there have been reporting gaps, and political parties have not been required to publicly release their financial statements. Because of this gap, we do not currently have a full understanding of political parties' finances or the costs involved in running a political party.
- 13.225 We note recent law changes will require political parties to provide annual financial statements⁷⁴ but not until 2024. Such information was not available to us when we were finalising our report.

⁷² Electoral Commission, 2023. *2023 broadcasting allocation decision*. [Online] Available at: <https://elections.nz/media-and-news/2023/2023-broadcasting-allocation-decision/> [Accessed October 2023]. \$4,145,750 incl. GST was provided to the Electoral Commission to allocate to registered political parties.

⁷³ Election Access Fund Act 2020, section 3.

⁷⁴ Electoral Act 1993, section 210G.

Earlier recommendations

1986 Royal Commission on the Electoral System

The Royal Commission recommended direct state funding for political parties and independent candidates on a sliding scale, based on voter support. It suggested political parties receive \$1 per vote for each vote up to 20 per cent of the overall total, and \$0.50 for each subsequent vote up to 30 per cent of the total vote (adjusted for inflation – this would be approximately \$2.80 and \$1.40 respectively as at the end of 2022). Political parties would not receive any funding for votes received above 30 per cent of the total vote.

It recommended that funding was distributed immediately after an election. It could be used to pay off debts incurred during the election, or for policy development or other activities before the next election.

It noted its view was that political parties should meet the bulk of their financial needs from their own supporters, and discussed needing a balance between public and private funding.

Justice Select Committee and Electoral Commission

There have also been many recommendations by both the Justice Select Committee and the Electoral Commission about issues with Aotearoa New Zealand's existing state funding through the broadcasting allocation. We set these out in **Chapter 14** below.

Is there a case for change?

Issues identified

- 13.226 Currently, there is limited state funding for electoral purposes through the broadcasting allocation. In practical terms, this means that political parties and candidates need to get funds from private sources to fund both their day-to-day political party activities and the majority of their electoral activities.
- 13.227 State funding can be contentious because it requires spending taxpayers' money on political parties that individual taxpayers may not necessarily support (although this is also true of many areas of public spending). In our first consultation, some submitters also thought having less state funding is helpful because it requires political parties and candidates to seek private donations. This ensures political parties are incentivised to engage with the public. However, European Union research suggests concerns that state funding will undermine political parties' links with voters are not supported by the evidence.⁷⁵

⁷⁵ European Parliament Policy Department for Budgetary Affairs, above n 20, p. 7.

13.228 However, many submitters to our first consultation were in favour of increased state funding for political parties, and some thought it could help provide a more equal playing field. Submitters had different ideas about the types of state funding models that could be adopted.

Our initial view

13.229 Our interim report stated that it is in Aotearoa New Zealand's interests to ensure that political parties are adequately funded, given their important constitutional and representational role. Having already recommended some restrictions on donations and loans – and taking into account socio-economic inequities – we also recommended a modest increase to the state funding that is currently made available for political parties, through:

- per-vote funding on a sliding scale
- base funding of \$10,000 per registered political party per year
- tax credits for donations of up to \$1,000 per year
- establishing a new fund – Te Pūtea Whakangāwari Kōrero ā-Tiriti / Treaty Facilitation Fund
- expanding the purpose of the Election Access Fund.

13.230 We recommended abolishing the broadcasting allocation, and reapplying the money previously allocated to it (around \$4.1 million in each of the 2020 and 2023 elections) to state funding.

13.231 We noted that it was difficult to provide a complete costing of our state funding recommendations as a package, but provided some indication of potential costs for per-vote funding and base funding.

13.232 We set out a modified version of the Royal Commission's recommended per-vote funding model on a sliding scale, to account for the Mixed Member Proportional (MMP) voting system.⁷⁶ Adjusted for inflation as at June 2022, the indicative cost of that model was approximately \$5.67 million per electoral cycle. We noted that this figure was indicative only, subject to change depending on the number of registered electors, voter turnout, and the election results for each political party after each election.

13.233 At the time of writing our interim report, we noted that there were 16 registered political parties. Providing each political party with \$10,000 per year for base funding would total \$160,000 per year.

⁷⁶ Adjusted for inflation as at June 2022, the Royal Commission's model would be \$2.80 per vote up to 20 per cent and \$1.40 per vote up to 30 per cent. We averaged the party vote results over the 2014, 2017 and 2020 elections to account for recent outlier election results, and reduced the eligibility threshold from four per cent to one per cent of the party vote.

Feedback from second consultation

- 13.234 We received mixed submissions on whether the state should fund political parties.
- 13.235 Many submitters who provided detailed submissions, including some political parties, were supportive of increased state funding generally. However, some submitters raised concerns about the adequacy of the funding recommended, and the potential for our recommended state funding to advantage incumbents. In particular, some submitters noted that the Royal Commission's recommended per-vote funding was in addition to the broadcasting allocation, and therefore its total package of funding was significantly higher than what we recommended.
- 13.236 Other political parties and many submitters were opposed in principle to all of our recommended state funding. They discussed issues such as the risks of political parties becoming overly reliant on government resources, that state funding can be subject to political influence, that state funding would be dangerous to democracy, and that state funding is "extremely unpopular" with the public.
- 13.237 Comments on our online form indicated most of those submitters were opposed to increased state funding of political parties, although we note many were also in favour of restricting private funding.

Per vote funding

- 13.238 As we note above, submitters who provided detailed submissions had two main concerns with per-vote funding. First, the adequacy of funding available to political parties and second, the incumbency advantage.
- 13.239 Some political parties and other submitters were concerned that the per-vote funding model would further embed the incumbency advantage of the larger political parties in the electoral system (similar to the unfairness between political parties in the existing broadcasting allocation). One submitter also noted the incumbency advantage would be further exacerbated by the advantage of Parliamentary Service funding for parliamentary parties.
- 13.240 Some submitters raised concerns about the lack of support for new and emerging political parties under this method of funding. One political party recommended an alternative structure to increase fairness under the per-vote model, and another suggested funding should be based on opinion polling.
- 13.241 Submitters raised concerns about the adequacy of the funding available to political parties under the modified Royal Commission model we used in the interim report, with an indicative cost of approximately \$5.67 million per electoral cycle. One political party did not think this would be sufficient funding to offset the lost revenue from private funding restrictions.

Base funding

- 13.242 Submitters were generally supportive of base funding for registered political parties. Those in favour thought it would help to level the playing field between political parties and limit the influence of wealthy individuals. Some submitters who were opposed to per-vote funding were in favour of base funding.
- 13.243 Political parties had different views on whether the recommended \$10,000 per year would be sufficient for all political parties. Some thought it would be too low, particularly for larger political parties. Others thought the funding would be sufficient.

Tax credits

- 13.244 Some submitters were opposed to tax credits for reasons including that taxpayers' funds should not be used for this purpose, that it advantaged wealthy individuals, and that they may be ineffective (particularly as most New Zealanders are not required to file tax returns). Some submitters were in favour, with one expressing the view that this was the least damaging way for state funding to be distributed.

Te Pūtea Whakangāwari Kōrero ā-Tiriti / Treaty Facilitation Fund

- 13.245 Of those submitters who made a detailed written submission (including academics, political parties, and civil society groups), most supported this recommendation. Some submitters thought it would foster equitable participation for Māori.
- 13.246 However, some did not support the fund, with some suggesting it would result in preferential treatment or that it was not necessary. Most online submitters also opposed the recommendation for these reasons.
- 13.247 Others were opposed as they thought political parties should not be funded to specifically reach out to Māori, but instead should be doing so out of their own funds.

Expanding the purpose of the Election Access Fund

- 13.248 Some submitters supported expanding the Election Access Fund, while others were opposed. We heard different perspectives from disabled persons' organisations about whether political parties should be able to use state funding for accessibility purposes, whether there should be requirements attached to state funding, and our recommended expansion of the purpose of the Election Access Fund.
- 13.249 Some disabled persons' organisations felt that if political parties are given state funding, they should be required to meet certain accessibility requirements as a condition of receiving that funding. Some thought that it was inappropriate to provide political parties with state funding to cover accessibility costs, as they should not be seen as an optional extra. Concerns were also raised about diluting the primary purpose of the Election Access Fund.



13.250 The Electoral Commission submitted that this recommendation (and the recommended Te Pūtea Whakangāwari Kōrero ā-Tiriti / Treaty Facilitation Fund) would have significant operational and administrative implications. The criteria for allocating funding and how funding is accounted for would need to be carefully designed, including how the Election Access Fund would be allocated across two purposes.

Alternative types of funding

13.251 Submitters proposed several alternative funding models, including per-member funding, funding to increase diversity, and indirect funding through an independent fiscal institution to cost political parties' policy or democracy vouchers.

Our final view

13.252 We have heard that, generally, participation in and engagement with political parties has been in decline over many decades, across many democracies, including in this country.⁷⁷ One indicator of this long-term trend is declining political party membership – with a flow-on impact on political party revenue. This results in a risk that political parties become increasingly dependent on a small number of donors who make large donations to fund their activities. This situation is undesirable because it can give a few individuals and organisations undue influence, and risks the integrity of the electoral system.

13.253 Political party finances will also be impacted by our recommended changes to the current private funding rules, including introducing restrictions on who can donate, and how much they can donate. We have also discussed several issues with the existing broadcasting allocation, and in **Chapter 14** we recommend it is abolished.

13.254 Cumulatively, we are conscious these factors will reduce the amount of funding available for political parties, potentially affecting their ability to fulfil their important role in the electoral system.

13.255 Some people think that the ability of a political party or candidate to raise private funds reflects their appeal to voters. However, one of the objectives of this review is to ensure that New Zealand continues to have an electoral system that is fair. We think that means voters should be afforded a reasonable choice between a plurality of political viewpoints – particularly during an election campaign.

13.256 While we value and promote the ability of political parties and candidates to raise funds from registered electors, we also need to take into account that some registered electors will be able to afford to privately fund the political party or

⁷⁷ Chapple et al., above n 15, p. 5.

candidate they support; others will not. This could disproportionately impact those political parties that are supported by voters with less financial means than others. It is in Aotearoa New Zealand's interest to have political parties that represent the diverse views of the public.

- 13.257 One political party told us that state funding would be extremely unpopular with the public, and we did receive many submissions to that effect. However, as noted, many of these submitters also opposed large private donations. We have considered the information available to us, and while some polling does demonstrate the unpopularity of state funding,⁷⁸ recent academic research suggests the public may support political parties receiving at least part of their funding from the state.⁷⁹
- 13.258 For these reasons, and the important part political parties must play in elections, we maintain our view that a modest increase in state funding should be provided to registered political parties to offset the stronger restrictions we are placing on their ability to fundraise. To be eligible for any state funding, a political party must be registered and have complied with all reporting and disclosure obligations under the Electoral Act, such as filing donation, loan, and expense returns.
- 13.259 We also maintain our view that the approximately \$4.1 million in state funding currently provided through the broadcasting allocation at each election should be reapplied to our recommended state funding.
- 13.260 We acknowledge that increased state funding will be a significant change to the current political financing regime. However, when considered as part of a package of political financing reforms, we think it would support a fairer contest of political ideas (and provide the public with a reasonable opportunity to understand these ideas). We also think it would enable political parties to put more resources into their core functions, which has public benefits (such as more robust policy development), and ensure greater compliance with transparency requirements.
- 13.261 In coming to this view, we have noted that in many other democracies, political parties and candidates receive significant percentages of their total funding from the state.⁸⁰

⁷⁸ Trevett, C., 2022. Politics and money: Poll gives a big fat no to taxpayers funding political parties instead of donations. [Online] *NZ Herald*, 25 October. Available at: <https://www.nzherald.co.nz/nz/politics-and-money-poll-gives-a-big-fat-no-to-taxpayers-funding-political-parties-instead-of-donations/2QQUIYTZRmk6RZDFQ4PVJSFIMA/> [Accessed October 2023].

⁷⁹ Rashbrooke & Marriott, above n 16, at p. 53 found that, when asked “What is the right balance for where political parties should get their money?”, 48 per cent of respondents preferred some combination of state funding and donations, with a further seven per cent preferring mostly state funding and 3 per cent preferring only state funding.

⁸⁰ Organisation for Economic Co-operation and Development, above n 27, at p. 38 notes that for example, between 2007 to 2015, Belgium received 85 per cent, Norway 67.4 per cent and Denmark 75

13.262 In summary, we recommend adopting a combination of direct and indirect state funding models, involving:

- per-vote funding on a sliding scale for registered political parties that receive two per cent of the party vote
- base funding of \$15,000 to each registered political party per annum
- tax credits for donations up to \$1,000 per annum
- establishing a new fund – Te Pūtea Whakangāwari Kōrero ā-Tiriti / Treaty Facilitation Fund
- expanding the purpose of the Election Access Fund to allow political parties to apply for funding
- establishing an independent fiscal institution to cost political parties' policies.

13.263 Below, we set out our rationale for each of these recommendations in more detail.

Per vote funding

13.264 We recommend that per-vote funding is introduced on a sliding scale, with the most funding being available for an initial tranche of votes and funding diminishing as the vote count increases. The sliding scale approach attempts to avoid entrenching the incumbency advantage of larger, more established political parties at the expense of smaller, newer, or emerging political parties.

13.265 Per-vote funding on a sliding scale was recommended by the Royal Commission in 1986.⁸¹ This method of funding is tied to a political party's performance at each previous election, and only those political parties with some electoral support are eligible for funding. It is relatively easy to understand. Per-vote funding is common in other democracies, with significant funding being available to political parties in Australia and many countries in the European Union.⁸²

13.266 There are several potential disadvantages to per-vote funding, including that it could run the risk of increasing the incumbency advantage of those political

per cent of their total funding from the state. We note there are limitations to this information, as it is not clear whether this funding is inclusive of support for parliamentary parties, or exclusive.

⁸¹ Royal Commission on the Electoral System, 1986. Report of the Royal Commission on the Electoral System, Wellington: House of Representatives, p. 229.

⁸² International IDEA, 2023. *Political Finance Database - 30. What is the allocation criteria for political parties to receive public funding?* [Online]. Available at: https://www.idea.int/data-tools/data/question?question_id=9432&database_theme=302 [Accessed October 2023] states that funding either proportional to votes received, or a flat rate by votes received, is available in around 75 per cent of European countries.

parties that receive the largest number of votes. In our second consultation, we received submissions to this effect. Political parties that enter parliament also gain access to Parliamentary Service funding and the benefits to incumbents that come with it.

- 13.267 We acknowledge the per-vote funding model benefits established political parties, but that is not necessarily entirely negative. Per-vote funding is intended to provide more funding to those that have higher levels of public support. These political parties may also be the most likely to be impacted by our recommended changes to private funding.
- 13.268 We believe the incumbency advantage can be somewhat mitigated by introducing a sliding scale, with the most funding being available for an initial tranche of votes – up to a certain percentage of the party vote.
- 13.269 In our interim report, we set out a modified version of the Royal Commission’s model to give an indication of the potential cost of a per-vote model. In that model, we used a sliding scale point of 20 per cent of the party vote, as recommended by the Royal Commission. We also averaged the party vote results over the 2014, 2017 and 2020 elections to account for recent outlier election results.
- 13.270 Based on feedback, and on reflection of the model’s application under MMP, we recommend a lower sliding scale point of 10 per cent. Lowering the sliding scale point would benefit all political parties equally up to that point, with less funding available for those receiving more than 10 per cent of the vote.
- 13.271 During our second consultation, we heard submitters concerns, particularly from those that completed our online form, about providing public funds for funding political parties. On reflection, we think the eligibility threshold to receive per-vote funding should be two per cent of the party vote rather than the one per cent we recommended in our interim report.
- 13.272 This increased percentage will ensure that political parties must demonstrate a fairly significant level of public support before becoming eligible for additional public funding. In the 2023 general election, this would equate to approximately 57,000 votes. Two per cent is still lower than our recommended change to the party vote threshold (to 3.5 per cent), meaning smaller and emerging political parties who are not able to enter parliament via the party vote will benefit from funding.
- 13.273 Per-vote funding should be allocated based on the results after each election. This will ensure the funding is responsive to changes in public support.
- 13.274 We do not make a recommendation as to the exact amounts that should be payable per vote. This is because we feel we have not received enough information in submissions about the amounts that political parties need to fund themselves.

This information may become available once political parties are required to publish their annual financial statements in 2024.⁸³

13.275 We expect that the lower sliding scale, combined with the other state funding measures, will lessen the incumbency advantage of per-vote funding. However, we acknowledge that new political parties registered between elections will not be eligible to receive any funding until the next electoral cycle (assuming they reach the eligibility threshold). These political parties will, however, benefit from our recommended base funding.

Base funding

13.276 We have heard that for political parties, particularly smaller or newer political parties heavily reliant on volunteers, compliance costs and resourcing needs are significant.

13.277 We retain our recommendation that all registered political parties should receive an amount in base funding each year to support compliance with their legal obligations. These legal obligations exist to ensure disclosure over funding and expenses.

13.278 Some political parties told us that the annual payment of \$10,000 we recommended in our interim report would not be sufficient to meet their annual compliance costs. Taking this into account, and considering that smaller and newer political parties may not receive per-vote funding, we recommend introducing annual payments of \$15,000 per year to help registered political parties meet their ongoing core compliance obligations. This includes, for example, financial and expense reporting requirements in the Electoral Act.

13.279 The base funding could be used to contribute to the cost of software to track donations, or auditing costs. It could help to level the playing field between smaller and larger political parties, reduce the incumbency effect of per-vote funding, reduce financial barriers to participation, and improve compliance. For some political parties this funding may be sufficient to cover all compliance costs, but for others it may only cover part (but these political parties would likely benefit more from per-vote funding).

13.280 As at the time of writing, there are 20 registered political parties. As an indicative cost, annual payments of \$15,000 to each registered political party would result in a total cost of \$300,000 per year.⁸⁴

⁸³ Electoral Act 1993, s 210G.

⁸⁴ The amount of funding required for base funding will fluctuate depending on the number of registered political parties at the time funding is distributed.

Tax credits

- 13.281 As well as providing political parties with some direct funding, we think it is also important to incentivise voters to donate to political parties and candidates. We retain our recommendation of a tax credit system to provide credits for political donations up to \$1,000. Under this system, a registered elector could receive a maximum of 33.33-per-cent tax credit on their total political donations in a year, up to a limit of \$1,000. This recommendation would significantly reduce the cost of the donation for the donor. This credit is set at the same percentage for charitable donations.
- 13.282 We consider that a limited tax credit system for small donations could help to encourage registered electors to make donations. The relatively low tax credit limit might incentivise political parties and candidates to seek support from a large number of donors. We acknowledge submitters' concerns about the efficacy of tax credits. It is difficult to know how donor behaviour would shift as a result of our recommended changes to private funding. However, as one part of our broader state funding recommendations, we think tax credits are a suitable component.

Te Pūtea Whakangāwari Kōrero ā-Tiriti / Treaty Facilitation Fund

- 13.283 As we discuss in **Chapter 3**, existing evidence indicates there are ongoing impacts of colonisation on Māori participation in the electoral system. These impacts have been exacerbated by a series of breaches of te Tiriti / the Treaty, including the Crown's failure to protect Māori rights to political participation by failing to provide sufficient funding and services regarding the Māori electoral option in the 1990s, and by disenfranchising those in prison.
- 13.284 This is not a historic issue for Māori. During our first stage of engagement, we heard that political parties and candidates do not always reach out to, or engage with, Māori in the ways that work for them. We heard that this can lead to inequities in the amount and type of information that Māori receive during election campaigns, with a corresponding impact on Māori voter engagement and participation.
- 13.285 To address these inequities, we continue to think it would be consistent with the Crown's obligations as Tiriti / Treaty partner to establish a fund to facilitate political party and candidate engagement with Māori – Te Pūtea Whakangāwari Kōrero ā-Tiriti / Treaty Facilitation Fund. This fund would be an opportunity to encourage political parties to engage with Māori communities, in ways appropriate for Māori. It would also provide a way to hear from Māori about matters important to them and so that Māori can hear from political parties and candidates in ways that work for them.
- 13.286 Any political party or candidate could apply to this fund to cover spending relating to reaching Māori voters in a format that best engages those voters – such as te reo Māori translations or costs of hui in remote and rural areas. This would assist



political parties and candidates to build relationships with Māori communities through the use of te reo Māori and kanohi ki te kanohi (in-person) contact with those who may otherwise be overlooked.

- 13.287 We considered a range of other options for the fund's purpose, such as whether it should be aimed at reducing barriers for Māori candidates, particularly for those running in the Māori electorates. However, in our view, the fund would be more effective targeted directly at facilitating engagement with Māori, wherever they may live. We think that providing funding to facilitate the engagement of political parties and candidates could improve Māori voters' diversity of information, choice and increased confidence that their views will be represented.
- 13.288 In our interim report, we recommended that this funding should be administered by a body other than the Electoral Commission. This was consistent with our view that our recommended community funding (discussed in **Chapter 11**) should not be administered by the Electoral Commission. We have revised our view in Chapter 11, and on reflection we think the benefits set out there also apply to this fund. For that reason, we think the Electoral Commission should also administer Te Pūtea Whakangāwari Kōrero ā-Tiriti / Treaty Facilitation Fund.

Expanding the purpose of the Election Access Fund

- 13.289 As we discuss in **Chapter 1** and **Chapter 11**, New Zealand has obligations under the United Nations Convention on the Rights of Persons with Disabilities. These obligations include a requirement to ensure that persons with disabilities can effectively and fully participate in political and public life on an equal basis with others.⁸⁵
- 13.290 The United Nations Committee on the Rights of Persons with Disabilities has commented that it is:

...important that political meetings and materials used and produced by political parties or individual candidates participating in public elections are accessible. If not, persons with disabilities are deprived of their right to participate in the political process in an equal manner.⁸⁶

- 13.291 The Election Access Fund is a relatively new fund, used for the first time in the 2023 general election. It was established to increase the participation of disabled candidates, by reducing or removing financial barriers for them. For the 2023

⁸⁵ *Convention on the Rights of Persons with Disabilities* GA Res 61/106 (2006), art 29(a).

⁸⁶ *Committee on the Rights of Persons with Disabilities General comment No. 2, Article 9, Accessibility* UN Doc CRPD/C/GC/2 (22 May 2014).

election, the Electoral Commission has distributed funding of \$45,349.15 to four candidates.⁸⁷

- 13.292 Through engagement, we heard that while creating the fund was viewed favourably, members of disabled communities still face challenges in participating in the electoral system as both voters and candidates. Challenges include accessing information in New Zealand Sign Language, despite its status as an official language of Aotearoa New Zealand. We continue to recommend expanding the fund's purpose.
- 13.293 We recommend that political parties become eligible to apply for funding to meet accessibility needs in their campaigns, such as providing accessible communications and New Zealand Sign Language interpretation at events. Applying for funding should be a simple process, to ensure that political parties are not dissuaded by an administrative burden.
- 13.294 We note that political parties were originally included in the pool of potential applicants in the Election Access Fund Bill 2018, but were later removed in select committee.⁸⁸
- 13.295 This recommendation should increase the ability for disabled communities to receive information in ways that work best for them. In our view, this will enable greater participation and could increase the representation of disabled communities. It is our hope that all political parties will take up the opportunity to receive funding.
- 13.296 Given the expanded applicant pool, we recommend the funding currently available to the Election Access Fund is increased to ensure the fund can meet the needs of applicants.
- 13.297 Based on the submissions we received from civil society organisations, we also thought about other ways to increase accessibility for disabled communities. These included introducing a reimbursement system for political parties' accessibility expenses under the Election Access Fund, or making state funding contingent on meeting certain accessibility requirements. However, in our view, a reimbursement system disadvantages those political parties without pre-existing funding available to meet accessibility costs. Making state funding contingent on meeting certain requirements would also be challenging within our recommended package of direct funding.

⁸⁷ Mathias, S., 2023. Making elections accessible for everyone. [Online] *The Spinoff*, 9 October. Available at: <https://thespinoff.co.nz/politics/09-10-2023/making-elections-accessible-for-everyone> [Accessed October 2023].

⁸⁸ Governance and Administration Committee, 2019. *Final Report (Election Access Fund Bill)*, Wellington: House of Representatives, p. 2.

Independent policy costing

- 13.298 In 2018, the government consulted on establishing an “independent fiscal institution” to help strengthen accountability, transparency and debate over New Zealand’s fiscal policy framework, as well as better support the effective development of public policy of political parties.⁸⁹ Among other things, the institution was intended to provide independent costings of political party policies to better inform public debate and strengthen New Zealand’s democracy.
- 13.299 Internationally, most OECD countries have an independent fiscal institution of some kind. These institutions have been described by the OECD as “publicly funded, independent bodies under the statutory authority of the executive or the legislature which provide non-partisan oversight and analysis of, and in some cases advice on, fiscal policy and performance.”⁹⁰
- 13.300 In 2017, the OECD suggested that an effective mechanism to independently assess the policy proposals of opposition political parties would strengthen New Zealand’s fiscal policy framework.⁹¹
- 13.301 During an election year, we often see significant debate between political parties and in the media about the cost of political party policies. Although some political parties will have their policies independently costed by economic consultancies and release that information to the public, some will not. This may be due to the cost of doing so. Disputes about the true cost of policy can lead to uncertainty for the public, and can draw attention away from the substance of proposals.
- 13.302 We recommend that an independent fiscal institution is established to provide costings of registered political party policies at its request. In our view, this would be a valuable form of indirect state funding for registered political parties, as it would give those political parties access to independent costings of their policies. It would also improve the information available to voters. The function could have other benefits too, such as reducing misinformation or disinformation about political party policies, particularly in an election year. We discuss disinformation in **Chapter 19**.
- 13.303 Our recommendation is focused on improving the electoral system, but the independent fiscal institution would likely have a broader scope (as proposed in the 2018 government consultation documents⁹²).

⁸⁹ New Zealand Government, 2018. *New Zealand's Fiscal Policy Framework – Establishing an Independent Fiscal Institution*, Wellington: New Zealand Government.

⁹⁰ Organisation for Economic Co-operation and Development, 2014. *Recommendation of the Council on Principles for Independent Fiscal Institutions*, Paris: OECD Publishing.

⁹¹ Organisation for Economic Co-operation and Development, 2017. *OECD Economic Surveys: New Zealand 2017*, Paris: OECD Publishing, p. 32.

⁹² New Zealand Government, above, n 89.

Parliamentary Service funding

- 13.304 The discussion on state funding becomes further complicated when we take into account the significant state funding that parliamentary parties and MPs currently receive. This funding is provided for parliamentary parties and MPs to carry out parliamentary responsibilities, including communicating with constituents and communities of interest.
- 13.305 Parliamentary Service funding is not within our Terms of Reference, but it is an important part of the state-funding picture for parliamentary parties.
- 13.306 Some submitters to our first consultation stated that Parliamentary Service funding is a type of state funding that places parliamentary parties at an advantage over non-parliamentary parties, and results in an incumbency advantage.
- 13.307 We note that the funding made available for MPs and parliamentary parties has increased over time. For the 2023/2024 financial year, approximately \$52 million was appropriated for Parliamentary Service support to MPs and their parliamentary parties.⁹³
- 13.308 While much of this money funds purely parliamentary activities, funding can be used outside of the regulated period for advertising that promotes political party policies or attacks those of other political parties, so long as it does not explicitly tell the public to join that political party, vote for that political party, or donate to that political party.⁹⁴ On the face of it, these activities may be viewed as parliamentary business, but they also help parliamentarians to raise their profile for longer-term political advantage. Other examples we have seen include billboards that raise the profile of an MP in their electorate, or promote a political party's general "brand".
- 13.309 Although parliamentary funding is not allowed to be used for explicit electioneering purposes,⁹⁵ our examination of the issue suggests it is difficult to draw a sharp line between representative functions and election-related activities, particularly in relation to advertising and communications. There is a lack of transparency over this funding because Parliamentary Service is not subject to the Official Information Act 1982.⁹⁶
- 13.310 Parliamentary Service funding as it currently operates is a form of state funding for the activities of those political parties that have been successful in having MPs

⁹³ New Zealand Government, 2023. *Vote Parliamentary Service: The Estimates of Appropriations 2023/24 – Finance and Government Administration Sector*, Wellington: New Zealand Government.

⁹⁴ Geddis, n 26, p. 196.

⁹⁵ Parliamentary Service Act 2000, section 3B(2).

⁹⁶ Official Information Act 1982, section 2 excludes Parliamentary Service from the definition of "organisation".

elected. We do not think it is fair that political parties represented in parliament can use parliamentary funding in a way that also has potential electoral advantages, nor do we think that it is used in a way that is transparent to the public. As such, we suggest that some of this Parliamentary Service funding should be reduced, and the savings could offset our recommended modest increase in state funding.

Interaction with our other recommendations

- 13.311 We have noted the connection to private funding throughout this section of the chapter. We envisage these changes to be part of a package of political finance reform.
- 13.312 In **Chapter 3**, we recommend requiring the Electoral Commission to publish a Tiriti / Treaty policy and strategy and report on progress in its post-election reports. This reporting could include details of funding distributed from our recommended Te Pūtea Whakangāwari Kōrero ā-Tiriti / Treaty Facilitation Fund.
- 13.313 In **Chapter 14**, we recommend removing the broadcasting allocation and that the money could be used for more general state-funding purposes.
- 13.314 In **Chapter 18**, we recommend an overhaul and consolidation of electoral offences in line with three key principles. This work would include what offences and penalties should be attached to political financing rules.
- 13.315 In **Chapter 19**, we discuss the issue of disinformation. Our recommended independent fiscal institution may help to reduce misinformation and disinformation around the costs of political party policies.

The Panel recommends:

R75. Increasing state funding by:

- a. providing registered political parties with per-vote funding on a sliding scale
- b. providing registered political parties with base funding of \$15,000 per year
- c. providing tax credits for people who make donations of up to \$1,000 per year

- d. establishing a new fund – Te Pūtea Whakangāwari Kōrero ā-Tiriti / Treaty Facilitation Fund – to facilitate political party and candidate engagement with Māori communities**
- e. expanding the purpose of the Election Access Fund to include applications by political parties to meet accessibility needs in their campaigns**
- f. establishing an independent fiscal institution to provide costings of registered political party policies at their request.**

14. Election Advertising and Campaigning

General advertising restrictions

- 14.1 The Electoral Act and Part 6 of the Broadcasting Act 1989 establish a series of rules that regulate election advertising and political campaigning.
- 14.2 An “election advertisement” is an advertisement in any medium that may reasonably be regarded as encouraging or persuading voters to vote for a candidate or party, or not to vote at all. The definition does not include editorial content (such as content designed to inform) or individuals expressing their personal political views online.¹
- 14.3 Some restrictions on election advertising apply at all times and others apply for set time periods before the election and during voting. For example, election advertisements must always clearly display the name and address of the promoter of the advertisement,² and any election advertisement promoting a specific candidate or party must be authorised by that candidate or that party’s secretary in writing.³
- 14.4 Restrictions on election advertising apply during the regulated period (that is, three months before election day) support the **Campaign spending limits** put in place by the Electoral Act (discussed below). Their purpose is to help create a level playing field between those contesting the election, and prevent any one voice disproportionately influencing elections through higher levels of spending.
- 14.5 Alongside these spending limits, further restrictions on advertising and campaigning apply once voting has begun. As discussed in **Chapter 9**, during the advance voting period, election advertising is allowed except for inside or within 10 metres of the entrance to advance polling places when they are open. On

¹ Electoral Act 1993, section 3A.

² Anyone who initiates or instigates an election advertisement is considered a promoter. It might be an individual, a company, or a corporation. For example, the promoter could be a candidate, a party, or an advocacy group.

³ Electoral Act 1993, section 204G and 204H.

Earlier recommendations

1986 Royal Commission on the Electoral System

The Royal Commission identified the guiding principle that there should be no unreasonable pressure on voters on election day. Preventing the use of funding for political advertising on election day was one provision to preserve this principle.

2017 Electoral Commission post-election report

In its 2017 report, the Commission recommended that the election day exemption for websites be reviewed in light of the growth of social media. It recommended that, as a minimum, the advertising of news media websites that contain election-related material was not unduly restricted.

election day, there is a complete restriction on publishing, distributing, broadcasting, or having visible in public places any statement that may influence who an elector votes for or persuade an elector to abstain from voting.

- 14.6 Specific restrictions on party and candidate advertising on television and radio, and restrictions on campaign spending, are addressed in subsequent sections.

Is there a case for change?

Issues identified

- 14.7 Advertising restrictions limit freedom of expression, a right protected by the New Zealand Bill of Rights Act 1990.⁴ They restrict not just the freedom of electoral participants to impart information and opinions of any kind in any form, but the freedom of voters to seek and receive that information. These restrictions need to be justifiable limitations within the New Zealand Bill of Rights Act 1990.⁵
- 14.8 The Court of Appeal has commented that the Electoral Act's definition of "election advertisement" captures more political communication than is necessary to achieve the legislation's aims.⁶ Some political speech by individuals or groups not connected to any party or candidate, and who are not spending significant amounts, must still comply with the Electoral Act's requirements. The Court noted

⁴ New Zealand Bill of Rights Act 1990, section 14.

⁵ New Zealand Bill of Rights Act 1990, section 5.

⁶ *Electoral Commission v Watson* [2016] NZCA 512, [2017] 2 NZLR 63 at [65].

that this outcome unjustifiably restricts the right to freedom of expression and recommended that parliament reconsider the issue.⁷

- 14.9 Preventing all forms of election advertising on election day helps to ensure that individuals are not unduly swayed when voting. This approach aligns with the guiding principle that the Royal Commission took to their review, that there should be no unreasonable pressures on voters on election day.⁸ However, this restriction may no longer be relevant, given the rise of advance voting.
- 14.10 During our first consultation, we heard from some submitters that the requirement to include an address as part of promoter statements could create a privacy risk for promoters and may deter their participation. These submitters pointed to recent amendments to the promoter statement requirements for local election advertising, which better protect candidate privacy. They called for a similar change to the requirements for parliamentary elections.

Our initial view

- 14.11 In our interim report, we considered whether the rules for election advertising remain fit for purpose given the significant changes to how parties campaign and the rise of advance voting.
- 14.12 We recommended permitting advertising on election day everywhere except in the “buffer zone” around polling places (inside or within 10 metres of it). Given this would remove the legal obligation on parties, candidates, and third-party promoters to take down their election billboards and hoardings from public spaces, we also recommended that the Electoral Commission be empowered to remove the signs from the Monday after election day (if not already taken down) and charge the promoter (party, candidate, or third-party) for the cost of doing so.
- 14.13 In addition, we recommended that promoter statements should be able to include a PO Box number or email address in lieu of a physical address to better protect the privacy of promoters.

Feedback from second consultation

- 14.14 Most submitters, including many who completed our online form, agreed that Aotearoa New Zealand should shift to a single set of advertising rules that apply for the whole voting period. Many were in favour of our draft recommendation to allow advertising on election day, noting that this would be simpler and made sense given the increase of advance voting. However, some submitters had concerns about simply extending the advance voting rules to election day. A few

⁷ *Electoral Commission v Watson* [2016] NZCA 512, [2017] 2 NZLR 63 at [68].

⁸ Royal Commission on the Electoral System, 1986. *Report of the Royal Commission on the Electoral System*, Wellington: House of Representatives, p. 190.

submitters thought election advertising should be further restricted or not permitted at all once voting opens.

- 14.15 A few submitters supported our draft recommendation to empower the Electoral Commission to remove billboards or hoardings on the Monday after election day and charge the party or candidate. Other submitters thought we should clarify that the obligation is on parties and candidates in the first instance, rather than a service carried out by the Electoral Commission.
- 14.16 The Electoral Commission questioned its role in enforcing the removal of billboards and was concerned about the impact of our draft recommendation on its other post-election activities (including vote counting). It suggested that local councils may be better placed to enforce this requirement, given their responsibility for regulating when and where signs can be placed.
- 14.17 A few submitters supported our recommended changes to promoter statement requirements, noting the privacy concerns of candidates and the alignment with the rules for local elections. Other submitters were concerned that our recommendation may reduce transparency around who has placed an advertisement, reducing the ability of the Electoral Commission, media, voters, and others to scrutinise the advert.

Our final view

- 14.18 In recent decades, there have been significant changes to the ways that parties, candidates, and third parties advertise and campaign. The rise of the internet and social media has challenged practices that focused on traditional media. Many individuals now receive a lot of advertising, including political advertising, through a range of different media and devices.
- 14.19 We think the general approach to advertising and campaigning regulation – having low-level requirements at all times, but with increased restrictions closer to the election – should be retained. Maintaining a requirement that electoral advertisements identify who is promoting them throughout the electoral cycle ensures ongoing transparency. In the lead-up to the voting period, when advertising is likely to have a greater impact on the election, a greater level of restriction is justified.
- 14.20 However, as noted in **Chapter 9**, we recommend removing the distinction between the advance voting period and election day, and adopting the rules for the advance voting period on election day. This change would mean removing the general ban on election advertising on election day. The ban on political advertising inside and within 10 metres of the entrance of polling places that currently applies during advance voting would instead also apply on election day.
- 14.21 Our recommendation to permit election advertising on election day means there would no longer be an automatic date by which election billboards and hoardings must be removed. We think it is important that election signs are still removed

promptly and not left in communities after the election. In our interim report, we suggested that the best way to ensure this would be to empower the Electoral Commission to remove any remaining election signs from public places from the Monday after election day, with an ability to charge the party, candidate, or third-party promoter for the cost of doing so.

- 14.22 However, following feedback during the second consultation, we reconsidered what legislative changes, if any, would be needed to ensure election billboards and hoardings are removed. Local councils are already responsible for regulating when, where, and how election signs can be displayed and empowered to act on non-compliance. We are now of the view that local councils' existing powers for temporary signs in public places are sufficient for election billboards and hoardings. We think these existing powers provide an appropriate, and simpler, regulatory fix than granting a new power to the Electoral Commission.
- 14.23 We note the concerns of the Court of Appeal about the broadness of the definition of "election advertisement".⁹ In some respects, the scope of the definition has proven durable by being able to adapt to the changes in election advertising, particularly the shift to the use of the internet and social media. However, it may be capturing activity parliament did not intend to capture, and subjecting people to unnecessary regulation in the process. While we did not receive any feedback on this issue during our second consultation, we encourage the government to consider whether the definition should be further clarified when the Electoral Act is redrafted (as we recommend in **Chapter 2**).
- 14.24 We also considered whether changes should be made regarding promoter statements on election advertising. Retaining the ability to contact promoters is important to support identification and transparency, providing a means to ensure that appropriate approvals have been received and that spending can be tracked. There can be some flexibility, however, in the form this takes. We acknowledge that the existing requirements to include a physical address raises privacy and safety issues for some promoters and may deter some individuals or groups from participating in elections.
- 14.25 In our interim report, we recommended that PO Box numbers and email addresses should be able to be used in promoter statements in place of a physical address. This change would align with recent changes made to rules for local government elections. However, we agree with submitters' concerns that this may have unintentionally undermined transparency and opened up promoter statements to abuse.
- 14.26 Given most safety concerns about the current requirement are from candidates, we consider a more targeted approach is appropriate. We recommend that PO Box numbers and email addresses should be able to be used in promoter statements

⁹ *Electoral Commission v Watson* [2016] NZCA 512, [2017] 2 NZLR 63.

for candidate advertisements only. We note that, in most instances, candidates' other contact details would continue to be available to media and others via the Electoral Commission or parties.

Interaction with our other recommendations

- 14.27 These general recommendations link to our subsequent recommendations on the broadcasting regime. Given the removal of the ban on advertising on election day, these recommendations also have implications for the regulated period for election expenses.
- 14.28 The recommendation to permit election advertising on election day except within the “buffer zone” aligns with our recommendation to apply the rules that protect voters from interference during the advance voting period to election day, which we discuss in **Chapter 9**.

The Panel recommends:

- R76. Permitting election advertising on election day anywhere except inside or within 10 metres of polling places (where voters and scrutineers may only display lapel badges, rosettes, and party colours on their person).**
- R77. Allowing promoter statements for candidate advertisements to use PO Box numbers or email addresses instead of physical addresses.**

Media-specific regulation of advertising

- 14.29 The ways that political parties, candidates, and third-party promoters advertise and campaign in the lead-up to an election is changing. Increasingly, online media (including social media) are being used to reach voters, instead of – or in combination with – broadcast and print media.
- 14.30 This shift is consistent with general shifts in how New Zealanders consume media. While television continues to attract audiences for the most time per day overall, young New Zealanders now largely rely on digital platforms to access media content. In 2020, digital media attracted larger audiences than traditional media for the first time.¹⁰

¹⁰ NZ On Air, 2021. *Where Are The Audiences?*, Wellington: Glasshouse Consulting and NZ On Air, p. 27.

- 14.31 In this section, we discuss whether the advertising rules that apply only to broadcast media – known as the broadcasting regime – should continue and whether specific rules to regulate election advertising on the internet and social media should be introduced.

Earlier recommendations

1986 Royal Commission on the Electoral System

The Royal Commission recommended:

- putting criteria in place to support the fair distribution of state funding in the political process
- retaining restrictions on paid television and radio advertisements to avoid a significant escalation in political spending.

2017 Justice Select Committee

The Justice Select Committee recommended:

- the government examine both the broadcasting allocation criteria and the broadcasting regime to establish whether they were still fit for purpose
- changes be made to allow parties and candidates to broadcast election advertisements on television and radio from the start of the regulated period rather than from writ day.

2011, 2014, 2017 and 2020 Electoral Commission post-election reports

In 2011 and 2014, the Electoral Commission recommended that further consideration and debate should be had on the extent to which electioneering on the internet and social media should be regulated, and how any regulation might be effectively managed.

Since 2014, the Electoral Commission has generally recommended that parliament review both the broadcasting allocation criteria and the broadcasting regime. It has noted that applying the allocation criteria is a difficult and time-consuming exercise, requiring consideration of both tangible and intangible factors, and that the outcome is almost always unpopular as parties have different views about fairness.

From 2017 onwards, the Commission has also recommended that parties and candidates be allowed to broadcast election advertisements on television and radio from the start of the regulated period.

Broadcasting regime

- 14.32 Specific rules apply to broadcasting “election programmes” – advertising by registered political parties or individual candidates – on television and radio. These rules are contained in Part 6 of the Broadcasting Standards Act 1989 and are known as the broadcasting regime.
- 14.33 Party and candidate advertisements are only allowed to be broadcast on television and radio from writ day (a month before the election) to the day before election day; none can be broadcast outside of this time. The same restrictions do not apply to third parties, who can promote election advertisements on television and radio at any time.
- 14.34 Registered parties may only broadcast election advertisements on television and radio using public funding provided to them by the Electoral Commission from a broadcasting allocation. The Electoral Commission allocates a set amount of funding to registered political parties that have requested a share. The Commission does this by considering a range of statutory criteria based on indications of the party’s level of public support, as well as the need to provide a fair opportunity to each party to convey its policies to the public.
- 14.35 Since 2017, the funding parties receive through the broadcasting allocation can also be used for election advertisements on the internet, in addition to the parties’ own resources. Any expenses parties incur in spending the broadcasting allocation do not count towards their election spending limits.
- 14.36 While they are not eligible to receive a share of the broadcasting allocation, candidates and third-party promoters are able to purchase advertisements using other funding sources.
- 14.37 Three agencies are currently involved in the regulation of election advertising on television and radio. The Electoral Commission deals with complaints about promoter statements and advertiser identity. The Broadcasting Standards Authority has jurisdiction over party and candidate advertisements on television and radio during the election. The Advertising Standards Authority has jurisdiction over complaints about the content of all other election advertising, including election advertisements broadcast on behalf of third-party promoters.

Is there a case for change?

Arguments against change

- 14.38 In our first consultation, very few submitters who directly commented on the broadcasting regime considered it should be kept unchanged.

- 14.39 Some of the arguments that have been made against changing the broadcasting regime include:
- The restrictions on the use of television and radio for election advertising are intended to prevent one party being able to dominate advertising on the broadcast media.
 - By funding political party advertisements, the broadcasting allocation helps voters to be informed about different party policies and positions. If the allocation is removed, and not replaced, this could end state funding for election campaigns.
 - The restriction on when party and candidate advertisements can be shown reduces the exposure of voters to year-round electioneering. Allowing the broadcasting of advertisements outside of the month before election day may be unpopular with the public.

Arguments for change

- 14.40 Many of the submitters who commented on the broadcasting regime in our first consultation considered that it should be abolished. They considered that restricting the use of television and radio for election advertising was no longer appropriate or necessary, particularly given the rise of the internet.
- 14.41 Many of the submitters who called for the regime to be abolished considered that the funding set aside for the broadcasting allocation should be repurposed for other public funding of election activities. A few submitters thought that the funding should be removed entirely.
- 14.42 A few submitters pointed out that, following the 2016 Court of Appeal decision noted above, third-party promoters can broadcast election advertisements outside of the election period, but parties and candidates cannot. Consequently, the broadcasting regime now applies only in a partial way to a narrow range of electoral participants.
- 14.43 Academics have noted that, while the broadcasting regime is intended to prevent one party being able to dominate advertising on the broadcast media, some of the justification for this has been undermined by the wider limits on campaign spending that can achieve the same purpose.
- 14.44 Some of the submitters who called for the broadcasting regime to be abolished talked about its impact on smaller and newer parties, noting that the broadcasting allocation process and criteria used to award the funding are primarily based on parties' size and success in previous elections.¹¹ Smaller or emerging parties who fail to receive a significant share of the broadcasting allocation are effectively excluded from using television or radio for campaigning. This exclusion is a

¹¹ Broadcasting Act 1989, Part 6, section 78.

significant restriction on their freedom of expression and entrenches the advantage of larger and established parties.

- 14.45 Some submitters pointed out that the rise of advance voting has reduced the amount of time parties and candidates have to communicate with the public on television and radio. The regulated period for campaign expenses is three months long, but party and candidate advertisements can only be broadcast on television and radio in the final month. This leaves only two weeks for party and candidate advertisements to be broadcast before the public starts voting.
- 14.46 During our first consultation, we also heard from media organisations that the broadcasting regime has not adapted to changes in media. For instance, it is unclear whether online content from television and radio broadcasters (such as livestreamed or simulcast content) is intended to be covered. There is also confusion regarding the roles and responsibilities of the different organisations involved in enforcing advertising rules, particularly between the Advertising Standards Authority and the Broadcasting Standards Authority.

Our initial view

- 14.47 In our interim report, we discussed the intent behind the broadcasting regime, its shortcomings, and why we think the original justification is no longer compelling. We recommended that the specific rules that apply to broadcasting party and candidate advertisements on television and radio should be removed, along with the current state funding provided through the broadcasting allocation. We also recommended that the Advertising Standards Authority should be provided with funding in the lead-up to an election to support its timely response to election advertising complaints.

Feedback from second consultation

- 14.48 Most submitters who commented on the broadcasting regime were supportive of our draft recommendation to remove the restrictions on the use of television and radio for election advertising by parties and candidates. Some noted that the rules are out of date and that it would be simpler to treat election advertising the same across different platforms. Others thought that removing the restrictions would increase the freedom of parties to communicate with voters.
- 14.49 Some disabled persons' organisations were concerned that our recommendation may result in a shift away from broadcast election advertising and that this could impact the accessibility of information for some people, including those who use closed-captions or sign language and those who do not use social media.
- 14.50 A few media organisations gave their support for the Advertising Standards Authority taking on complaints about election advertising on television and radio. The Department of Internal Affairs, the Ministry for Culture and Heritage, and the Broadcasting Standards Authority questioned whether the Advertising Standards Authority would be the most appropriate body and if additional funding would be needed.

- 14.51 We heard from the Advertising Standards Authority that its industry levy funding model works well for commercial advertising (there is a high volume of ads and low volume of complaints) but does not suit the recent increase in complaints about electoral advertising, which it starts receiving a year out from the election. The Authority noted that, in the absence of external funding support, it will have to reconsider what level of service it can provide for election advertising complaints.

Our final view

- 14.52 As noted in our interim report, the broadcasting regime has operated in an unsatisfactory way for many years. The evolution of web-based media and the impact of court rulings have created additional problems. In its current form, the regime has resulted in a range of inconsistencies in advertising restrictions depending on the type of media and who is funding the advertising, each of which has implications for restrictions on freedom of expression. It also creates a barrier to smaller or newer parties from being able to use television and radio to connect with voters. Further, the current broadcast allocation criteria also appear to unfairly favour existing and larger parties.
- 14.53 A key principle underpinning the broadcasting regime was ensuring some parity in access to the then-dominant communications media for election-related purposes. Given the implementation of the campaign spending limits in 1995, and the subsequent rise in online electioneering, the need for a special broadcasting regime has been both reduced and supplanted.
- 14.54 We maintain our view that the broadcasting regime should be abolished, and we recommend that parties and candidates should be free to advertise on television and radio as they wish (subject to their campaign spending limits). Abolishing the regime would mean different types of media and political actors are treated in a simple, clear and fair way while also reducing restrictions on freedom of expression. This change would give parties and candidates more freedom in choosing how they seek to communicate their messages.
- 14.55 We acknowledge the concerns we heard about the impact that removing the broadcasting regime could have on some voters' access to information. We think our recommendation is unlikely to significantly impact parties' and candidates' choice of advertising platform because parties have already been able to use their broadcasting allocation on internet advertising since 2017. In **Chapter 11**, we note that leaders' debates have been captioned and interpreted in New Zealand Sign language in recent elections, with government funding provided via NZ On Air for the interpretation service in the 2023 election. We encourage continuing efforts to make election coverage more accessible.
- 14.56 While the broadcasting provisions expressly required broadcasters to give equal treatment to different parties and candidates, the abolition of the provisions would not remove this requirement. This point is already addressed by the Human



Rights Act 1993, which prohibits providing services in a way that discriminates on the basis of political opinion.

- 14.57 Abolishing the broadcasting regime will result in party and candidate advertisements on television and radio being able to run at any time, rather than just in the month leading up to an election. It is likely that advertising will still intensify around the time of elections as it does now, but parties and candidates will have more opportunities to connect with voters earlier.
- 14.58 Lastly, removing the broadcasting regime would also remove the requirement for complaints about party and candidate advertisements on television and radio to be directed to the Broadcasting Standards Authority. Instead, complaints would go to the Advertising Standards Authority, as happens now for internet advertising paid for by the broadcasting allocation and other election advertising.
- 14.59 We maintain our view that the Authority is the appropriate body for the complaints to go to. The Advertising Standards Authority has the most relevant skills and experience for dealing with election advertising. There would also be challenges with establishing a bespoke body that could retain sufficient expertise and skill over the electoral cycle, given most complaints will occur around elections.
- 14.60 This change is likely to increase the complaints the Advertising Standards Authority would need to process, constraining the Authority's already minimal resourcing. The Advertising Standards Authority uses a fast-track process for complaints received in the last three weeks before an election, but in 2020 it limited its service to paid election advertising only, to manage the volume. The Authority has advised us that it will not be able to maintain this service if the volume of complaints stays the same or increases, unless it receives external funding support. As the ability of the Advertising Standards Authority to respond to complaints in a timely manner is a matter of public interest, we recommend that the government provide funding to the Authority during the election period.

Interaction with our other recommendations

- 14.61 In **Chapter 13**, we suggest that the funding available through the broadcasting allocation should be reapplied to our recommended state funding.
- 14.62 Our recommendation to abolish the restrictions on broadcasting also relates to **Campaign spending limits** (discussed below), because all television and radio

advertisements during the regulated period would now count as election spending.

The Panel recommends:

- R78. Abolishing the restrictions on the use of television and radio for election advertising by parties and candidates.**
- R79. Abolishing the process for providing funding to parties to run election advertisements on television and radio, and reallocating the funding to our package of state funding recommendations.**
- R80. Providing the Advertising Standards Authority with funding during election periods to support its ability to respond to complaints in a timely way.**

Online election advertising

- 14.63 Online advertising has many advantages, including its ability to reach a wide audience at relatively low cost. This wide and low-cost reach can help to connect people and politicians, enhance political participation and engagement, and inform voters about parties' and candidates' campaigns.
- 14.64 However, it also has key differences to other forms of advertising. For example, online advertising can include sophisticated algorithms that parties, candidates, and third-party promoters can use to show different advertisements to different target audiences. In addition, most online election advertising takes place on media sites that are not operated within New Zealand, like Google and Facebook, which limits how it can be regulated.
- 14.65 Currently, all online election advertising is subject to the same regulation as election advertising in other media, including the need for authorisation and inclusion of promoter statements. During the regulated period, online advertising also comes within scope of campaign expenditure limits and reporting requirements.
- 14.66 Since 2017, parties have been able to use the party broadcasting allocation for online election advertising expenses. While some parties continue to spend most of their allocation on traditional broadcasting, others have spent their entire allocation on online advertising.

- 14.67 Any additional regulation for online election advertising will need to ensure it does not limit the positive ways it can be used and places a justifiable limit on freedom of expression, as protected under the New Zealand Bill of Rights Act 1990.

Is there a case for change?

Issues identified

- 14.68 Many of our electoral laws were put in place at a time when the internet and social media were less ubiquitous and before there was significant interest in the use of online data for election campaigns. As such, most of the rules for advertising and campaigning do not distinguish between the different characteristics of online media compared to print media, so may not regulate online election advertising as effectively.
- 14.69 Some submitters to our first consultation raised concerns about the increasing use of online media for election advertising by parties, candidates, and third-party promoters. Most of these submitters thought there should be stronger regulation, and a few wanted the targeting of online election advertisements to be banned, either for a period before election day or altogether.
- 14.70 The use of data for profiling and targeting in online election advertising has come under scrutiny internationally, particularly microtargeting. Microtargeting is the use of online data to tailor advertising messages to target audiences, based on people's personal preferences and characteristics.
- 14.71 Technological developments mean online data (for example, demographic information, consumer habits, or browsing behaviour) can be compiled about users, with different data sources linked together, and then compared to understand patterns and relationships between variables. This is done to identify who may be most interested in or susceptible to a particular message.
- 14.72 Many countries are grappling with how to ensure online election advertising uses data and targeting technology appropriately and in transparent ways, in the wake of the Cambridge Analytica scandal and other instances of voter manipulation.¹²
- 14.73 In some ways, the targeting of online advertisements is not so different to traditional forms of electioneering. Political parties and candidates have always sought to understand the interests of different groups, identify the groups they may be more likely to persuade, and frame their policies and messages to appeal to these groups.

¹² The Cambridge Analytica scandal involved a voter-profiling company harvesting private information from the Facebook profiles of more than 50 million users without their permission, breaching several privacy laws in the process, and then allowing these data to be used to target personalised political advertising.

- 14.74 It is efficient for parties to target advertising to those who they think are most receptive to their message, or messages for specific audiences. However, some may view this as unethical or undemocratic, and voters may be concerned about privacy and the use of their data. In the case of microtargeting, these concerns are heightened, because it can be unclear when and why a person is being shown a targeted political advertisement, as well as what data have been used and how.
- 14.75 Online election advertising can focus on a narrow issue and may be targeted to some people and not others. Such targeting may make it difficult for voters to know the range of policies that a party is advocating for and devolve political debate away from the political positions of parties and candidates as a whole.
- 14.76 Microtargeting has the potential to increase the polarisation of views, either by showing voters messages they already agree with or by showing voters negative campaigns to elicit strong reactions about who not to vote for and create a sense of urgency around voting.¹³
- 14.77 There are also concerns that targeting technologies could be misused by “bad-faith actors” to persuade, dissuade, or confuse voters and spread misinformation or disinformation. For example, a vulnerable community may be shown advertisements featuring disinformation about a policy area to sow distrust against a particular party. This kind of election advertising may undermine trust in election outcomes. Some tech companies have introduced their own rules and processes to manage online advertising, such as verification processes for advertisers, requirements to disclose funding sources, and archives of political advertisements.¹⁴ Other platforms, such as TikTok, have banned political advertising entirely.
- 14.78 In Aotearoa New Zealand, our privacy laws restrict how personal data can be used, but there are no specific protections in place to restrict the targeting or microtargeting of election advertisements.

Our initial view

- 14.79 In our interim report, we noted the advantages and disadvantages of the increasing use of online advertising in election campaigns. In particular, we discussed the concerns we heard about the targeting of online advertising during

¹³ Prummer, A., 2020. Micro-targeting and polarization. *Journal of Public Economics*, Volume 188.

¹⁴ Facebook launched its searchable [ad library](#) in 2018. In June 2019, it became compulsory for all advertising in New Zealand relating to issues, elections, or politics. Ads are stored for seven years. In 2022, Meta removed the ability to target by race or ethnicity, political affiliation, religion, and sexual orientation. Google introduced a [searchable library](#) for all political advertisements in May 2020, which sets out funding sources and other information such as who the ad has been targeting (which it limits to a few options).

elections, gave an overview of the existing measures in Aotearoa New Zealand, and noted the approaches being taken in other countries.

- 14.80 We did not make a specific recommendation on the targeting of online election advertising. Instead, we asked for feedback on microtargeting, suggestions on how it should be addressed, or if existing laws are sufficient.

Feedback from second consultation

- 14.81 We heard from some submitters to our second consultation about the increased use of online advertising generally. Some noted positive ways social media can be used, including targeted campaigns to improve voter participation, while others wanted more transparency, such as through a database of all online election advertising. A few wanted less regulation of social media generally, due to concerns around freedom of speech.
- 14.82 In response to our call for feedback on how Aotearoa New Zealand should approach microtargeting, a few submitters noted concerns about how it could be used during elections and the potential for microtargeting to significantly harm public trust in election outcomes.
- 14.83 The Office of the Privacy Commissioner and a few other submitters were concerned about potential breaches of privacy as part of microtargeting, including the use of data for purposes other than that which it had been collected for. These submitters questioned whether existing data collection and privacy laws are sufficient to limit misuse of data for online advertising in election campaigns. Other submitters were concerned about the use of sensitive data (such as a person's sexual orientation, religious beliefs, or health) to target election advertising and wanted this banned.

Our final view

- 14.84 In general, we think that online advertising can contribute positively to election campaigns and that existing regulation is sufficient to ensure transparency and prevent misuse. However, the feedback we received during the second consultation has consolidated our view that microtargeting is a complex, emerging issue that warrants broader consideration by government.
- 14.85 Although microtargeting has a wider application than just election campaigns – and could be used as part of any online advertising and communication – when used for political advertising it has the potential to undermine trust in democracy, particularly if used in misleading or exploitative ways. For example, if there is an increase in targeted negative campaigning, it could discourage some people and decrease voter turnout.
- 14.86 Voluntary regulation by media companies goes some of the way to providing transparency and restrictions over the online advertising activities of parties, candidates, and third-party promoters. Voluntary regulation can be strengthened

by parliaments passing legislation to regulate election campaigns, election advertising, and data use.

- 14.87 There are steps being taken overseas to protect individuals from undue influence through online election advertising and to prevent misuse of data. For example, the European Union is currently considering a package of changes that tighten the rules around targeting (including microtargeting) and the delivery of political advertising online. The measures aim to restrict harmful political advertising and make elections more transparent and resistant to foreign interference. If they become law, the use of sensitive data for targeting would be banned and non-sensitive data could only be used if explicit consent has been given for it to be used for online political advertising.
- 14.88 Some of the measures that other countries are only now considering in relation to online election advertising have been in place in Aotearoa New Zealand for some time. Examples include requiring all election advertisements to identify the advertiser and requiring ads that directly promote a party or candidate be authorised by that party or candidate.
- 14.89 Although relatively few submitters raised microtargeting specifically as an issue, overseas experience indicates it poses a significant risk to democratic integrity. We are conscious that online technologies can evolve rapidly, as can the behaviours of advertisers and consumers. Media companies could also change their approach, reducing transparency.
- 14.90 At the same time, if there was an unforeseen microtargeting scandal in Aotearoa New Zealand, this would likely be of considerable public interest, particularly if personal privacy is breached or if microtargeting is perceived to have influenced an election outcome. We are especially concerned about the harm that microtargeting of election advertising could have on minority and vulnerable communities, if used by bad-faith actors to manipulate, agitate, or suppress voters. It could undermine those communities' trust in our political system and may also impact on people's willingness to stand as a candidate if they have concerns for their safety.
- 14.91 As noted in our interim report, introducing new regulation to target microtargeting of online election advertising is not straightforward. We are not aware of a regulatory regime currently available that could be used to ban the practice of microtargeting, without significant legislative changes to an existing regime or regulator.
- 14.92 In addition, microtargeting is not currently a legally defined term in Aotearoa New Zealand. If new regulation was introduced, we think consideration ought to be given to all possible uses of microtargeting. As microtargeting is part of a spectrum of online advertising and can be used in positive and negative ways, care would need to be taken to not unduly restrict advertising and limit freedom of expression.

- 14.93 Existing privacy laws in Aotearoa New Zealand restrict the use of individuals' data for a purpose other than that which it was collected for, which should address some of the concerns people have with microtargeting. However, awareness and enforcement of these obligations may not always be adequate. For electoral advertising, we encourage political parties, candidates, and third-party promoters to ensure they are familiar with the current laws. To enhance voter privacy, we have also recommended changes to how electoral roll data can be accessed and used, including restricting the use of electoral roll data by political parties for matching against other data sources (see **Chapter 16**).
- 14.94 Given the online environment will continue to evolve, we think the use of microtargeting during election campaigns should be revisited at some point and must continue to be monitored by experts. At the same time, we recommend that the government give broader consideration to whether the laws regulating microtargeting are sufficient, including consideration of the impacts on online election advertising and whether the use of sensitive data for microtargeting should be restricted.

Interaction with our other recommendations

- 14.95 In **Chapter 16**, we discuss in detail our recommended changes to how electoral roll data can be accessed and used.
- 14.96 In **Chapter 19**, we discuss disinformation risk and recommend extending the timeframe for the offence of knowingly publishing false information to influence voters to include the entire advance voting period and election day. This recommendation could apply to advertising in any media.

The Panel recommends:

- R81. Broader consideration and monitoring by government of whether the laws regulating the use of microtargeting for online advertising are sufficient, including for safeguarding trust in elections.**



Campaign spending limits and disclosure requirements

- 14.97 All candidates, political parties, and third-party promoters¹⁵ who publish election advertisements during the regulated period are subject to spending limits.¹⁶ The regulated period normally begins three months before the election and ends the day before election day.¹⁷
- 14.98 The purpose of spending limits is to support fairness between those contesting the election and prevent any one voice disproportionately influencing elections through higher levels of spending. The United Nations Human Rights Committee has stated that reasonable limitations on campaign expenditure may be justified where necessary to ensure the free choice of voters.¹⁸
- 14.99 The limits apply to election expenses, which are defined as “only those relating to the preparation and publishing of election advertisements”. This definition includes materials and design work, but does not include surveys or polls, voluntary labour, or cars with party branding.¹⁹ Other activities involved in seeking election – such as travel, campaign advisors, and renting office space – are also not included in the regulated election expenses.
- 14.100 Spending limits are adjusted yearly, on 1 July. The current spending limits, which were in place for the 2023 general election and subsequent Port Waikato by-election, are:
- \$1,388,000 for registered political parties contesting the party vote, with an additional \$32,600 for each electoral district contested by a candidate for a party
 - \$32,600 for candidates for a general election (or \$65,100 for a by-election)²⁰
 - \$391,000 for registered third-party promoters

¹⁵ Third-party promoters are individuals or groups who are not directly contesting the election. A publisher, such as a newspaper that is just publishing an election advertisement that someone else is promoting, is not a third-party promoter.

¹⁶ Electoral Act 1993, sections 204B, 205C, 206C, and 206V.

¹⁷ Electoral Act 1993, section 3B.

¹⁸ UN Human Rights Committee (HRC), *General comment no. 25, The right to participate in public affairs, voting rights and the right of equal access to public service (article 25)* UN Doc CCPR/C/21/Rev.1/Add.7 (27 August 1996).

¹⁹ Electoral Act 1993, section 3E.

²⁰ The higher candidate limits for by-elections recognises the value that party advertising during a general election campaign can have for electorate candidates.

- \$15,700 for unregistered third-party promoters.²¹
- 14.101 There are two different limits for third-party promoters, depending on whether they are registered or unregistered. There are no restrictions on who can be an unregistered third-party promoter, but if third parties plan to spend more than \$15,700 on election advertisements during the regulated period, they must first register with the Electoral Commission.²² Overseas persons are not able to register as third-party promoters. Advertising by a third-party that promotes, and is approved by, a party or candidate counts towards that party's or candidate's spending limit.
- 14.102 As discussed in **Chapter 13**, party and candidate advertisements on television and radio can only be paid for with the broadcasting allocation, so they do not count towards the spending limits. Parliamentary Service funding is also excluded.
- 14.103 After election day, all candidates and registered parties are required to disclose their election expenses within 70 or 90 working days (respectively).²³ While candidates only need to file their expense returns, registered parties are also required to submit an auditor's report of their expenses.²⁴ Unregistered parties are not required to disclose their election expenses.
- 14.104 Registered third-party promoters must disclose their election expenses within 70 days of election day if they have exceeded \$100,000 in spending during the regulated period. Registered third-party promoters that spend below this threshold, as well as unregistered third parties, are not required to disclose their election expenses.²⁵
- 14.105 The Electoral Commission defines what form these returns need to take, including the categorisation of certain activities.

²¹ These limits are inclusive of GST and are adjusted annually each year on 1 July by Order in Council according to the Consumers Price Index (Electoral Act 1993, section 266A refers).

²² Electoral Act 1993, sections 204B and 204N

²³ Electoral Act 1993, sections 205K and 206I.

²⁴ Electoral Act 1993, section 206L.

²⁵ Electoral Act 1993, section 206ZC.

Earlier recommendations

1986 Royal Commission on the Electoral System

The Royal Commission recommended:

- that both parties and candidates should be subject to spending limits, to minimise the effect of inequalities in financial resources. It was not convinced that significantly increased spending on campaigning would necessarily lead to a better-informed electorate or a healthier democracy
- to limit election advertising to those authorised by a candidate or party, with election advertising by interest groups and others banned
- a regulated period of three months, reflecting that this is when most campaign expenses are incurred.

On disclosure, the Commission indicated the need to strike a balance between the competing demands of equal treatment between political competitors on the one hand and administrative simplicity on the other. It noted that disclosure is beneficial to the democratic process, both as a deterrent to excessive spending and so that participants are informed. It also noted that disclosure is an essential part of setting spending limits.

2011 and 2020 Electoral Commission post-election reports

In 2011, the Commission recommended reducing the period for the deadline of returns from all groups by 20 working days.

In 2020, the Electoral Commission recommended that spending limits should be adjusted once each parliamentary term – on 1 July in the year before the election.

Is there a case for change?

Spending limits

Arguments against change

14.106 In our first consultation, very few of the submitters who supported the current restrictions on campaign expenditure explained why they did.

14.107 Some of the arguments that could be made against changing the current approach to spending limits include:

- Raising the spending limits would increase the financial disparities between different political parties. This higher limit would most likely impact small parties. If the limits are set so high that no party reaches them, then the limits become meaningless.
- Lowering spending limits would increase restrictions on freedom of speech. As election advertising may be reduced, voters may be less informed about candidate and party policy positions.
- Limiting the definition of election expenses to spending associated with advertising appropriately balances the administrative burden on parties, candidates, and third-party promoters with what is required to ensure compliance. Accurately capturing and reporting all of the costs associated with their election activities would be an unreasonable burden.

Arguments for change

14.108 Many of the submitters to our first consultation who talked about restrictions on campaign expenditure considered that no spending limits should apply, and that parties and candidates should be able to campaign as they saw fit. These submitters considered this approach would promote freedom of expression. Some of these submitters also expressed doubt about the impact that spending money on campaigning has on election results.

14.109 However, we also heard from many other submitters who thought the current restrictions on campaign expenditure were not strong enough and that the spending limits were too high. In recent elections, for example, only a few parties spent close to their election expense limits (though this does not take into account the cost of advertising paid for by the broadcasting allocation). Over the four elections from 2011 to 2020, only 15 to 20 per cent of candidates spent at least half of their allowed limit on election expenses.

14.110 Some submitters to our first consultation thought spending limits for parties should be set in a different way – for example, being the same for all parties rather than being tied to the number of electorates in which they were standing candidates.

14.111 Some submitters suggested that other campaign costs should be regulated, such as private polling or campaign consultants. They noted that the current definition of election expenses may not reflect how electioneering has changed, including the shift towards the “permanent campaign” by political parties, and it may represent only a small part of actual spending.



14.112 Some other arguments that could be made for changing the current approach to spending limits include:

- Lowering the spending limits would increase their effectiveness in supporting a level playing field between parties. Electors would be exposed to a similar amount of advertising material from different parties and candidates contesting the election.
- A lower limit would also reflect the rise of online advertising, which can have a wider reach and is substantially cheaper than television and radio advertising.²⁶
- Increasing spending limits may allow parties and candidates to expand their ability to engage and communicate with electors, allowing for a more informed electorate.
- The current regulated period may be too short, and it advantages incumbent parties and candidates, particularly those that can use Parliamentary Service funding for political advertisements throughout the parliamentary term.²⁷

Disclosure requirements

Issues identified

14.113 During our first consultation, some submitters suggested that more detailed accounting of spending should be required to provide the public with more information about the activities of parties, candidates, and third-party promoters.

14.114 The Electoral Commission only prescribes the categories of spending for disclosure; those filing the returns decide how expenses are further itemised and reported. The Commission's guidance is that returns must provide details of the type of advertisement, name of advertiser or supplier, volume, duration, and size as appropriate.²⁸ However, failure to include these details is rarely enforced. In some instances, all online advertising has been included in a single line item in a return, with no associated details.²⁹

14.115 If disclosure of expenses was required before the end of the election, then it would improve the real-time transparency of election advertising and campaigning. There may also be an opportunity to act on any breaches and reduce

²⁶ Ferrer, J., 2020. *Online Political Campaigning in New Zealand*, Transparency International New Zealand, p. 7.

²⁷ Ibid.

²⁸ Electoral Commission, 2023. *Return of Electorate Candidate Donations, Expenses and Loans for the 2023 General Election*. Wellington: Electoral Commission, p. 8.

²⁹ Ferrer, above n 26, p. 6.

their impact on the election, as well as give voters the opportunity to take this spending into consideration.

- 14.116 However, increasing either the level of detail required, or the frequency and timing of disclosures, would increase the administrative burden on parties, candidates, and third parties. Requiring disclosures sooner, or before the end of electioneering, may distract parties and candidates during their busiest period.
- 14.117 Requiring more detailed disclosure may also be unnecessary, as some media companies already disclose election advertising on their platforms. For example, since 2020, Meta has made it compulsory for New Zealand parties and candidates to sign up to a transparency tool if they want to advertise on its platforms.

Third-party promoters

Issues identified

- 14.118 The current disclosure threshold treats third-party promoters differently to parties and candidates. Registered parties and candidates need to disclose their election expenses irrespective of how much they spent, whereas third parties only need to disclose if they spent more than \$100,000.
- 14.119 Currently, few third parties meet the threshold for disclosing their spending. This could mean it is too high to provide transparency of what they are spending money on to try to influence election outcomes. The current threshold may also reduce the chance of detecting bad-faith actors seeking to influence our election outcomes.
- 14.120 Lowering the disclosure threshold would increase the administrative burden on third-party promoters. Although all third-party promoters are encouraged to keep good records of their expenses (in case they need to disclose them),³⁰ a lower threshold may discourage some third parties from being involved in campaigning, resulting in a less informed public. However, in previous elections, some promoters have chosen to provide returns despite not reaching the disclosure threshold.³¹

³⁰ Electoral Act 1993, section 206ZF.

³¹ Third-party promoter expenses are published on the Electoral Commission website after each election. For example: Electoral Commission, 2020. *Registered promoter expenses for the 2020 General Election*. [Online] Available at: <https://elections.nz/democracy-in-nz/historical-events/2020-general-election-and-referendums/registered-promoter-expenses-for-the-2020-general-election/> [Accessed October 2023].

Our initial view

- 14.121 In our interim report, we noted our view that there should be a flat spending limit for registered parties and subsequent changes to the spending limits for candidates and third-party promoters.
- 14.122 We recommended setting the spending limit for registered parties at \$3.5 million, based on parties' spending for the 2020 general election. For candidates, we recommended a limit of \$31,000 (or twice that at a by-election). For third-party promoters, we recommended the limit be set at 10 per cent of that for parties (\$350,000 for third-party promoters). We also recommended that these spending limits are adjusted regularly and to the nearest \$1,000 to account for inflation. We did not suggest any changes to the definition of election expenses nor to disclosure requirements for parties or candidates.
- 14.123 We considered whether any of the rules for third-party promoters should change, such as the registration threshold, spending limit, disclosure threshold, or disclosure requirements. In particular, we discussed this in the context of our draft recommendation to restrict anyone other than registered voters from donating, which could contribute to an increase in third-party promoter spending. However, we did not recommend any changes.

Feedback from second consultation

- 14.124 Submitters held a range of views on the extent that spending during elections should be restricted. Those who supported our draft recommendation thought it would help create a level playing field between different parties and candidates. Other submitters were opposed to a flat spending limit being set for all parties and preferred how expense limits under the status quo vary depending on the number of electorates a party was contesting.
- 14.125 Some submitters thought there should be no spending limits, or that more spending should be permitted, seeing spending caps as undemocratic and a breach of freedom of speech. Others wanted spending limits to be much lower.
- 14.126 A few submitters found some or all our recommended spending limits confusing, particularly where our suggested limit was not significantly different to the current limits referred to in our interim report.³²
- 14.127 A few submitters were concerned about the impact that our political finance recommendations could have on election advertising by third-party promoters, both within and outside of the regulated period.

³² When we released our interim report in June 2023, the spending limits set on 1 July 2022 were still in place. These were: \$1,301,000 for registered political parties, with an additional \$30,600 for each electorate being contested; \$30,600 for each candidate; and, \$367,000 for registered third-party promoters.

14.128 The Electoral Commission submitted that spending limits should be updated once per cycle, rather than every year, to avoid confusion.

Our final view

14.129 In our second consultation, we did not hear any arguments that were substantially different to those we considered during the first stage of engagement. As a result, we have not made any major changes to our recommendations for party, candidate, and third-party promoter spending limits and disclosure requirements.

14.130 However, as our recommended expense limits for parties, candidates, and third parties are based on 2020 figures (being the most recent available), we note these would need to be adjusted at the time of enactment to take account of the impact of inflation and other factors since that time.

Spending limits

14.131 As noted in our interim report, we think the present approach for calculating spending limits for political parties (setting a base amount for all registered parties contesting the party vote plus an additional amount for each electorate they contest) is somewhat complex. Our understanding is that this approach was adopted to reflect the national reach of a party and encourage parties to run candidates in more electorates.

14.132 We maintain our view that setting a flat spending limit for all parties would be a less complicated approach to the current one. We consider this approach would also provide equal opportunities for all registered parties irrespective of how many electorates their candidates are contesting.

14.133 Changing the way that spending limits for parties are calculated also requires consideration of the level at which a flat spending limit should be set. We considered whether the flat spending limit should simply be set at the maximum level of the existing calculation (the base limit, plus the additional amount for each electorate). This would be a significant increase to the spending limit for most parties, who do not stand candidates in all electorates, which we do not think would be justified.

14.134 At the same time, while lowering the spending limits may strengthen their ability to address differences in spending power, it potentially comes at the cost of a less informed electorate. Any lowering would also increase restrictions on freedom of expression, which would need to be clearly justified under the New Zealand Bill of Rights Act 1990.

14.135 On balance, we concluded that the best approach was to take the actual expenditure of the two largest parties plus their broadcasting allocation in 2020 (being the latest figures available) to establish a reasonable upper limit, subject to the impact of inflation since then. While such a limit would likely be significantly

more than most parties could or would spend, we did not consider it appropriate to reduce the limit below what the larger parties have been spending to communicate with voters during the regulated period.

- 14.136 We then thought this party expense limit should form the baseline for calculating the limits for electorate candidates (1 per cent of the party expense limit) and third parties (ten per cent of the party expense limit) and These would need to be adjusted, of course, at the time of enactment to take account of the significant impact of inflation since 2020. Expense returns for the 2023 general election were not available at the time of writing, so could not be considered.³³
- 14.137 In previous MMP elections, almost all parties have spent less than permitted under the election expense limits. However, parties also currently get state funding to broadcast advertising on television and radio. This funding currently does not count towards their overall election expenses and tends to be spent in full by most parties.³⁴
- 14.138 Putting parties' own advertising spending together with their spending on broadcast advertisements, we can see parties in the 2020 General Election spent the following on their election campaigns, as shown by **Figure 14.1** overleaf.
- 14.139 We are mindful that several of our other recommendations would have a considerable combined impact on political financing and spending. In **Chapter 13**, our recommendations on who can donate to parties and candidates and how much can be donated may impact the money that parties and candidates receive.
- 14.140 In addition, we have recommended replacing the broadcasting regime with fairer and more effective forms of state funding, including per-vote funding that could be spent as parties wish, at any time during the electoral cycle. This means parties would be able to spend their own money on television and radio advertisements at any time, including in the first few months of the regulated period, the costs of which would now count toward their total campaign spending. This might make some parties more likely to reach their spending limits than they do currently, while it might encourage others to place more advertising on less expensive forms of media.

³³ The deadline for 2023 General Election expense returns is 14 February 2024 for candidates and third-party promoters, and 13 March 2024 for registered parties.

³⁴ Electoral Commission, 2020. *Party expenses for the 2020 General Election*. [Online] Available at: [Accessed October 2023].

Figure 14.1: Comparison of some parties' expenses for the 2020 General Election

Party	Election expenses	Election expense limit	Broadcasting allocation expenses	Total expenses (election & allocation)
ACT New Zealand	\$1,082,167	\$2,806,400	\$150,740	\$1,232,907
Green Party of Aotearoa New Zealand	\$792,408	\$2,891,000	\$323,046	\$1,115,454
New Conservative (formerly the Conservative Party)	\$309,722	\$3,229,400	\$64,609	\$374,331
New Zealand First Party	\$621,647	\$1,960,400	\$298,788	\$920,435
New Zealand Labour Party	\$2,387,077	\$3,229,400	\$1,248,924	\$3,636,001
New Zealand National Party	\$2,344,000	\$3,032,000	\$1,335,255	\$3,679,255
Te Pāti Māori	\$301,518	\$1,396,400	\$149,120	\$450,638
The Opportunities Party (TOP)	\$76,500	\$1,791,200	\$150,755	\$227,255

14.141 Our recommended changes to spending limits, based on 2020 figures and before any adjustments for inflation and other factors since then, are:

- **For parties:** we are recommending this rate is set at \$3.5 million for registered parties contesting the election (consistent with our view that there should be a flat rate for all parties).
- **For candidates:** set at one per cent of the spending limit for registered parties for general elections (which would be \$35,000 at present) and at two per cent for by-elections (which would be \$70,000 at present).
- **For third-party promoters:** set at 10 per cent of the spending limit for registered parties (which would be \$350,000 at present).

14.142 In **Appendix 1: Minor and Technical Recommendations** of our interim report, we had recommended that the spending limits for registered parties, candidates, and third-party promoters should continue to be regularly adjusted to allow for inflation and rounded up to the next \$1,000 for simplicity. However, in response to the Electoral Commission's submission, we are now recommending such adjustments should occur once per electoral cycle (see **Appendix 1** for more

detail). This change will provide clarity to electoral participants, but it also increases the importance of ensuring spending limits are set at a fair level.

- 14.143 As part of our consideration of spending limits, we reviewed how election expenses are defined and if changes were required. The current rules only apply to advertising expenses. Many other forms of campaign spending, including hiring venues, travel costs and hiring advisors, are not captured.
- 14.144 Any definition of campaign expenses would need to provide sufficient certainty for electoral participants about what spending they are required to account for and disclose. If the definition was expanded beyond advertising expenses, it could be difficult to distinguish campaigning activities from the day-to-day activities of the parties in parliament, some of which are funded through the Parliamentary Service. This change could make it difficult for parties to know if they have exceeded their spending limits. It is also likely that an expanded definition of campaign expenses would increase administrative costs for parties and candidates, which may detract from time spent electioneering and engaging with voters. For these reasons, we maintain our view that the current definition of election expenses should be retained.
- 14.145 We also looked at the length of time that the spending limits apply (the regulated period). The existing three-month period works well, but our recommendations to remove some of the restrictions on advertising and campaigning could result in changes to how and when parties, candidates, and third-party promoters advertise and campaign. For example, these activities will be permitted on election day, and parties and candidates will be able to broadcast on television and radio outside of the regulated period for the first time.
- 14.146 We think it is likely that advertising will remain most intense around the time of elections. Other than a small extension to account for our recommendation to remove the ban on election advertising on election day (see **Appendix 1: Minor and Technical Recommendations**), we are not recommending any significant changes to the regulated period.

Disclosure requirements

- 14.147 The primary purpose of the current disclosure requirements is to make it simple for the Electoral Commission to verify that parties, candidates, and promoters have complied with the rules for campaign spending. That is why the disclosures are required to be made after an election. We maintain our view that the current disclosure requirements are fit for this purpose.
- 14.148 Disclosure requirements could also be redesigned and imposed for an additional purpose: so that the public can follow campaign spending in “real time” during a campaign, which could increase transparency. However, we do not think there is a significant public interest in understanding where parties might choose to

advertise during the campaign. The main issue is ensuring compliance with how much they spend.

- 14.149 While there would be benefit in providing additional transparency, we think it is marginal relative to the extra administrative costs it would impose on parties, candidates and the Electoral Commission during the busy campaign period. The Electoral Commission, in particular, would have to review these disclosures and publish them immediately while it is administering the election.
- 14.150 We also note that some media companies, like Meta and Google, already disclose information about online election advertising. However, these have been voluntary decisions that could change in the future.
- 14.151 In **Appendix 1: Minor and Technical Recommendations**, we recommend some updates to the rules for filing and inspecting election expense returns.

Third-party promoters

- 14.152 We still think the rules relating to campaign spending by third-party promoters strike about the right balance between transparency, administrative burden, and supporting the Electoral Commission to monitor compliance with third-party spending limits.
- 14.153 As we noted in **Chapter 13**, third-party promoters play an important role in our democracy and can provide information to voters they do not receive from political parties or candidates directly. For example, they may assess and rank political parties' policies in particular areas (such as alignment with economic or environmental goals).
- 14.154 We think allowing third parties to advertise is, overall, healthy for democracy and supports informed voter participation. There should be a high bar for additional regulation that limits their ability to participate in election campaigns, as this may restrict their right to freedom of expression that is protected under the New Zealand Bill of Rights Act 1990. In **Chapter 19** we consider whether overseas third-party promoters should be prohibited from promoting election advertisements as unregistered third-party promoters. However, we do not think it would be justifiable at this time.
- 14.155 Third parties only need to make a disclosure to the Electoral Commission when they spend over \$100,000 during the regulated campaign period. This rule minimises compliance costs on smaller third parties who will spend much less than our recommended spending limit of \$350,000.
- 14.156 Given the purpose of these disclosures is to support the Electoral Commission to monitor compliance with the spending limit (see discussion above), we maintain our view that the \$100,000 disclosure threshold for third parties is appropriate. However, we note that some third parties already voluntarily disclose their expenses even if they have not met the threshold. We support this voluntary disclosure.

Interaction with our other recommendations

- 14.157 As noted throughout, these recommendations rely on decisions made to remove the broadcasting regime and on our recommendations for party financing. Our recommendations on other forms of advertising have also informed these recommendations.
- 14.158 In **Chapter 13**, we recommend that any spending on election advertisements requiring authorisation from a party or candidate should be treated as a donation. Because we also recommend that only registered electors can make donations, only third parties that are registered electors would be able to publish authorised advertisements. In addition, we recommend introducing some limited regulation of registered third-party promoter finances by requiring disclosure of donations over \$30,000 for registered third-party promoters that spend over \$100,000.
- 14.159 Given the potential for campaign spending and third parties to influence elections, these recommendations also relate to our recommendations on foreign interference. In **Chapter 19**, we recommend that registered third-party promoters cannot use money from overseas persons to fund electoral advertising during the regulated period.

The Panel recommends:

- R82. Adopting spending limits during the regulated period based on the sums below, after adjustments are made to allow for increases in inflation and other factors since 2020:**
- a. registered parties: \$3.5 million**
 - b. candidates: one per cent of the registered party spending limit for a general election (\$35,000 at present) and two per cent for a by-election (\$70,000 at present)**
 - c. third-party promoters: 10 per cent of the registered party spending limit (\$350,000 at present).**



5

PART 5

Electoral Administration

This part covers:

- the Electoral Commission (Chapter 15)
- accessing the electoral rolls (Chapter 16)
- boundary reviews and the Representation Commission (Chapter 17)
- electoral offences, enforcement and dispute resolution (Chapter 18)
- security and resilience (Chapter 19)



15. Electoral Commission

- 15.1 In Aotearoa New Zealand, the Electoral Commission organises and manages parliamentary elections and referendums.
- 15.2 We have considered how to maintain a fit-for-purpose electoral regime for voters, parties and candidates. This consideration involves assessing the role of the Electoral Commission, its functions, powers, governance, and the protection of its independence.
- 15.3 We note this chapter is focused on whether the Electoral Act 1993 provides the Electoral Commission the functions and powers it needs to administer our elections. While we consider some operational matters elsewhere in this report, the Commission's administration of the 2023 election came too late for us to take it into account in our deliberations. However, the Commission is required by statute to report to the Minister of Justice on the administration of elections. Operational matters also are considered by parliament through the Justice Committee's post-election inquiry process.

Objectives, functions and powers

- 15.4 The Electoral Commission's functions and powers, and its duty to act independently are set out in the Electoral Act.¹ Its core function is to administer the electoral system. Its statutory objectives² require it do so impartially, efficiently, effectively and in a way that:
- facilitates participation in parliamentary democracy
 - promotes understanding of the electoral system and associated matters, and
 - maintains confidence in the administration of the electoral system.
- 15.5 In general terms, the Commission is responsible for delivering parliamentary elections and keeping the electoral rolls up to date. It raises public awareness of electoral matters, through education and information programmes. It also

¹ Electoral Act 1993, sections 5 – 7.

² Electoral Act 1993, section 4C.

registers parties and provides guidance to parties and candidates to support their compliance with the law. After each general election, the Electoral Commission must report to the Minister of Justice on the administration of that election which the Minister must present to the House of Representatives.³

Is there a case for change?

Issues identified

- 15.6 While most submitters supported the current functions of the Electoral Commission, many others considered it should have broader functions. Most of these submitters wanted the Commission to have a role in enforcing electoral law, an idea we discuss below in **Chapter 18**. Some other submitters thought its education function should be expanded to include providing civics education (we discuss this in **Chapter 11**).
- 15.7 The Electoral Commission also facilitates participation in the electoral system. Some submitters were concerned about low participation in the system by some communities and suggested ways the Commission could contribute to improving participation.
- 15.8 In **Chapter 3**, we note the troubled history of electoral law in relation to te Tiriti o Waitangi / the Treaty of Waitangi (**te Tiriti / the Treaty**) and discuss the obligations the Electoral Commission has to uphold te Tiriti / the Treaty.

Our initial view

- 15.9 In our interim report we looked for any gaps in the Electoral Commission's objectives, functions and powers. As a result, we recommended strengthening the Electoral Commission's statutory objective relating to voter participation. We recommended that this should include a focus on "equitable" participation rather than just participation.
- 15.10 We noted that striving for equitable participation supports the review's objective of achieving a system that is fair, as well as one that encourages participation. Equitable participation will also be more likely to produce a parliament that represents the full range of communities in Aotearoa New Zealand.

Feedback from second consultation

- 15.11 Some submitters thought our interim report did not provide a clear rationale for why we were adding equitable participation to the Electoral Commission's list of

³ Electoral Act 1993, section 8.

objectives. Others thought that equitable should be defined or that the existing objective was sufficient.

- 15.12 Conversely, some submitters supported adding equitable. They thought it was a positive step given the importance of removing barriers some communities face when it comes to voting. They thought it would encourage diversity and support the Electoral Commission to be the steward of the electoral system.

Our final view

Equitable participation

- 15.13 We heard from multiple communities that there are barriers to participation in our electoral system. Some of these barriers are beyond the Electoral Commission's scope (such as issues of public transport). However, we think that changing the law would clearly signal the role of the Commission in ensuring everyone can participate in our democracy.
- 15.14 Achieving equity of participation is likely to require different measures and a targeted use of resources for groups and communities that face barriers to participation. Our recommendation would provide the Commission with a clear mandate to do this.
- 15.15 We also think that ensuring equitable participation should encourage more research to understand voting trends and barriers for certain communities. For example, as noted in **Chapter 11**, we are aware that there is limited data available about voter turnout in disabled communities.

Other roles and functions for the Electoral Commission

- 15.16 Aotearoa New Zealand's electoral system is held in high regard and the Electoral Commission generally delivers well-run elections with high levels of integrity. Almost all of the parties we spoke to said they found the Electoral Commission very good to engage with. We think the way the system is working shows that the Commission generally has the functions, powers, and objectives necessary to successfully deliver electoral services. We want the Electoral Commission to continue to be as effective as it can be.
- 15.17 We considered expanding the Electoral Commission's role in public education. Civics education, and the Electoral Commission's role within it, has been discussed in **Chapter 11**. We note the work that the Electoral Commission is currently doing to educate New Zealanders about enrolment and voting at the general election and its provision of expert advice to the Ministry of Education for the schools' programme. We do not think any change to the Commission's public education function is necessary and we encourage the Commission to continue and build on its work in these areas. We make further recommendations on civics education in **Chapter 11**.



- 15.18 In **Chapter 3** we recommend a new legislative requirement for all decision-makers to give effect to te Tiriti / the Treaty and its principles when exercising functions and powers under the Electoral Act. This obligation should apply generally across the Act and be explicitly included in the Electoral Commission's statutory objectives to actively protect Māori electoral rights and provide equitable opportunities for Māori participation.
- 15.19 We also recommend in **Chapter 3** that the Electoral Commission:
- prioritises establishing Māori governance over Māori data collected in the administration of the electoral system, and is funded by the government to do so
 - publishes and reports on a Tiriti / Treaty policy and strategy.
- 15.20 We considered whether the new objectives we recommend for the Electoral Commission should be explicitly outlined in the Electoral Commission's reporting requirements. The Commission currently has to report to parliament after each general election, report on the Election Access Fund Te Tomokanga – Pūtea Whakatapoko Pōtitanga, and provide an Annual Report under the Crown Entities Act 2004. These reports generally include reporting about the Commission's progress against its objectives, and we expect the new objectives we recommend should also form part of this reporting.

Independence

- 15.21 An independent Electoral Commission is a critical aspect of our electoral system and a feature that requires safeguarding. The Electoral Act recognises the importance of having an independent body to administer our electoral system: it requires the Commission to act independently in performing its statutory functions and duties and when exercising its statutory powers.⁴ The United Nations International Covenant on Civil and Political Rights affirms the importance of an independent electoral authority.⁵
- 15.22 The independence of the Electoral Commission is provided by it being an independent crown entity, and by board appointments being made by the governor-general on the recommendation of the House. The convention of cross-party involvement in the board nomination process and unanimous (or near unanimous) approval by parliament also protects against politicising the role of the Commission.

⁴ Electoral Act 1993, section 7.

⁵ *General comment no. 25, The right to participate in public affairs, voting rights and the right of equal access to public service (article 25)* UN Doc CCPR/C/21/Rev.1/Add.7 (27 August 1996), pp. 6 – 7.

Is there a case for change?

Issues identified

- 15.23 The Electoral Commission needs to be sufficiently independent to remove the potential for political manipulation. During Select Committee consideration of the 2010 legislation that created the current Electoral Commission, most submitters supported the Commission instead being an officer of parliament to provide the highest level of independence.
- 15.24 The purpose of an officer of parliament, such as the ombudsman and the controller and auditor-general, is to carry out inquiries and reviews as a check on government activity on behalf of the House of Representatives.⁶ The Select Committee concluded that the roles and responsibilities of the Electoral Commission were of a different nature to that of an officer of parliament.

Our initial view

- 15.25 In our interim report we did not recommend any changes to the Electoral Commission's independence. We noted the process was generally working well and there has been a high level of consensus among members of parliament when candidates are proposed.

Feedback from second consultation

- 15.26 We did not receive any substantive comments on the Electoral Commission's independence. A few submitters noted the importance of the Electoral Commission remaining independent and politically neutral.

Our final view

- 15.27 An independent Electoral Commission helps ensure that election results are trusted by the public and that the way the electoral system is administered is free from partisan political influence and corruption. In this way, its independence helps to protect democracy, something especially important in Aotearoa New Zealand given our limited constitutional safeguards.
- 15.28 We considered whether the Electoral Commission should be an officer of parliament instead of an independent crown entity. We do not think it is necessary or appropriate for the Electoral Commission to become an officer of parliament. In

⁶ See for example the information on parliament's website: New Zealand Parliament, 2019. *Who are the Officers of Parliament?* [Online] Available at: <https://www.parliament.nz/en/visit-and-learn/how-parliament-works/fact-sheets/who-are-the-officers-of-parliament/> [Accessed October 2023].

the 12 years since its creation as an independent crown entity, the Electoral Commission has been able to exercise its functions with sufficient independence.

- 15.29 Across the review we heard from many submitters of the importance of the Electoral Commission maintaining its independence and neutrality. No substantive concerns or issues were raised with us about how the Electoral Commission's current model safeguards its independence. In this context, we consider that changing the model of the Electoral Commission would be an unnecessary and resource-intensive change.

Effective governance

- 15.30 The board of the Electoral Commission is currently made up of three people: the chairperson, deputy chairperson, and the chief electoral officer (who is also the chief executive).⁷
- 15.31 There are no specific requirements in the Electoral Act about the knowledge, skills or diversity of membership needed on the Electoral Commission's board. However, the Crown Entities Act 2004 requires that the relevant minister consider that board appointees have the appropriate knowledge, skills, and experience to assist the statutory entity they are being appointed to govern. The minister must also consider the desirability of promoting diversity of membership, to ensure that the work of boards benefits from participation that reflects society.

Is there a case for change?

Issues identified

- 15.32 Some submitters to our first consultation suggested that the governance of the Electoral Commission needs to be more representative of the diverse communities within Aotearoa New Zealand – including Māori – and that its board should have more than three members.
- 15.33 The Electoral Commission submitted that the restricted size of its board means that there is less opportunity for ensuring it has sufficient diversity, knowledge, skills, and experience. The Electoral Commission also invited us to consider whether its board should be responsible for appointing the chief executive, as is the case with other crown entities, but not the Commission currently.

⁷ Electoral Act 1993, section 4D.

Our initial view

15.34 We recommended changes to the governance structure of the Electoral Commission:

- increasing the size of the board to five members to ensure sufficient skills, knowledge and experience are represented on the board
- requiring the Minister of Justice to ensure that the board collectively has skills, experience, and expertise in te Tiriti / the Treaty, te ao Māori, and tikanga Māori.

Feedback from second consultation

Size of the Electoral Commission

15.35 A few parties and other submitters did not support expanding the size of the Electoral Commission's board. These submitters considered that the rationale for additional board members, including the value for the additional public money that would be required, was not clear. A few other submitters supported a larger board to ensure it had the right mix of skills and expertise, and was more representative of the population.

Expertise of the Electoral Commission

15.36 A few submitters thought more detailed definitions of the types of skills or experience should be specified in the Electoral Act (beyond collective expertise in te Tiriti / the Treaty, te ao Māori and tikanga Māori, and of working with diverse communities). Examples included data experts, and those with knowledge of Pacific communities.

Māori representation on the Electoral Commission

15.37 As discussed in **Chapter 3**, during our consultations, we heard a strong view from many Māori that broader constitutional change was a greater priority than making smaller scale amendments to the existing electoral system.

15.38 We also received comments in relation to the governance of the Electoral Commission. Some Māori submitters wanted us to go further than our recommendation to add skills, experience, and expertise in te Tiriti / the Treaty, te ao Māori and tikanga, and require the board of the Electoral Commission to have 50 per cent Māori membership, independently appointed by Māori. This change was seen as an important step on the path to broader and ongoing constitutional change where Māori make decisions about who represents them and a way to more strongly uphold te Tiriti / the Treaty. Others thought there should be at least one person of Māori descent on the board or that there should be a separate Māori Electoral Commission.



- 15.39 Others suggested the Electoral Commission should establish Māori advisory groups or better engage with Māori more generally.

Our final view

Board membership

- 15.40 We considered whether the membership of the board of the Electoral Commission should be changed to align with other independent crown entities. The Electoral Commission board – with one of its three members being the chief executive/chief electoral officer – has a relatively unique governance structure in having both governance and executive functions. Most boards of independent crown entities are just responsible for the governance of the body and do not include the chief executive (the board is often responsible for appointing the chief executive).
- 15.41 Under the current model, the board of the Electoral Commission, not just the chief electoral officer, is collectively responsible for the delivery of its statutory functions. Many of these functions are typically delegated to the chief electoral officer, but the board may choose to reserve others to itself – for example, the allocation of broadcasting funding or referrals of persons to the Police for apparent breaches of the electoral law.
- 15.42 We remain of the view that this model is appropriate. This structure recognises the unique nature and importance of the Electoral Commission and its responsibilities. It allows flexibility to allocate particular functions to the chief electoral officer or the full board as the board collectively sees fit, having regard to its statutory objectives. We therefore do not recommend any changes to the appointment process of the chief executive or their membership of the board.

Board size

- 15.43 While we do not recommend any changes to the membership structure of the Electoral Commission board, we consider that the board's current size of three members may be limiting its effectiveness and diversity. We maintain our view that the board should be increased in size to five members to ensure sufficient skills, knowledge and experience are represented.
- 15.44 Alongside our recommendation to increase the size of the board, we also think there is a need for the Electoral Act to provide more direction on what skills, knowledge and experience the board of the Electoral Commission should collectively have. We note that many boards in Aotearoa New Zealand strive for more diverse representation, and we consider increased diversity on the board would benefit its governance role.
- 15.45 We consider it important that the ability to uphold te Tiriti / the Treaty is provided for at every level of the Electoral Commission, including at board level. This is discussed in **Chapter 3** in detail.



- 15.46 In relation to the Electoral Commission’s board itself, we remain of the view that that the board collectively should have skills, experience, and expertise in te Tiriti / the Treaty, te ao Māori, and tikanga Māori. Including such a requirement would recognise the Crown’s obligations and the status of Māori as a Tiriti / Treaty partner. It would also support our objectives of an electoral system that is fair, can encourage participation, and supports the formation of a representative government and parliament.
- 15.47 Increasing the size of the board would also provide an opportunity to increase its diversity which can support the Commission’s objective to facilitate equitable participation in the electoral system.
- 15.48 For example, a board whose membership contained an understanding of the unique needs of different communities, such as rural communities, Pacific communities, voters from migrant backgrounds, and disabled people, would be valuable.
- 15.49 We note that the limited size of the board, whether it has three members or five, will inevitably constrain its ability to be representative of all New Zealanders. As discussed in **Chapter 11**, we encourage the Electoral Commission to consider how best to regularly engage with and seek input from different communities – for example, by setting up advisory groups.

Board appointment process

- 15.50 To date, appointments to the Commission have attracted a high level of consensus amongst Members of Parliament (**MPs**). We therefore believe that the current appointment process for board members is strong and sufficiently independent.
- 15.51 We considered a range of additional options in light of the feedback we received from Māori. To better align with Tiriti / Treaty principles of partnership and informed decisions (see **Chapter 3**), we recommend that before an appointment is made the Minister of Justice should seek nominations from iwi and Māori representative organisations.
- 15.52 While we recognise some submitters would prefer alternative governance structures, we believe these ideas are best pursued as part of an ongoing constitutional conversation, rather than this review of electoral administration.

Interaction with our other recommendations

- 15.53 The objectives, functions, powers, and governance of the Electoral Commission impacts on several topics within scope of this review. In **Chapter 2**, we recommend that the provisions in the Electoral Act governing the removal of members of the Electoral Commission from office should be entrenched to recognise the body’s importance as an independent and impartial electoral administrator. We also recommend that section 7 of the Act, which affirms the independence of the Electoral Commission, should be entrenched.

- 15.54 The Electoral Commission has a role in all aspects of the electoral system, from the regulation of parties (**Chapter 12**) and donation rules (**Chapter 13**); voting methods, including the vote count (**Chapter 10**) and enrolment processes (**Chapter 8**); and the process for emergencies and disruptions at the general election (**Chapter 9**).

The Panel recommends:

- R83. Amending the objective of the Electoral Commission to facilitate equitable participation.
- R84. Expanding membership of the board of the Electoral Commission from three to five members.
- R85. Requiring the board of the Electoral Commission to have a balance of skills, knowledge, attributes, experience and expertise in te Tiriti o Waitangi / the Treaty of Waitangi, te ao Māori, and tikanga Māori.
- R86. Requiring the Minister of Justice to seek nominations for appointments to the Electoral Commission board from iwi and Māori representative organisations before a recommendation is made to the House of Representatives.

These recommendations should be read in conjunction with the recommendations in Chapter 3. Recommendation 4 requires decision-makers to give effect to te Tiriti o Waitangi / the Treaty of Waitangi and its principles when exercising functions and powers under the Electoral Act. Recommendation 5 requires the Electoral Commission to publish and report on a Tiriti / Treaty strategy. Recommendation 6 requires the Electoral Commission to prioritise establishing Māori governance over data collected about Māori in the administration of the electoral system.



16. Accessing the Electoral Rolls

- 16.1 Accurate and up-to-date electoral rolls are critical to the conduct of elections and, therefore, to the overall integrity of the electoral system.
- 16.2 As discussed in **Chapter 8**, enrolling to vote is compulsory in Aotearoa New Zealand for those who are eligible. People must provide certain information to enrol, such as their full name, birthdate, place of residence, postal address, occupation (if any), and whether they are of Māori descent. This information forms the basis of the data contained in the electoral rolls.
- 16.3 The Electoral Commission administers the electoral rolls, which are used to issue votes. They are also used to identify people who are eligible to vote and help to identify issues (for example, people voting more than once). Public access to the rolls allows them to be checked for correctness. The rolls are also used to calculate the number of Māori electorates and by Land Information New Zealand to assist in drawing electorate boundaries and advising the Representation Commission.
- 16.4 Electoral roll data, including voters' addresses, can also be provided to parties, candidates, and Members of Parliament (**MPs**) to engage with voters directly on policy, to provide them with information, and to help get out the vote.
- 16.5 In addition to electoral purposes, the electoral rolls are used by:¹
- the government statistician for statistical purposes
 - local authorities for holding local body elections and polls on changes to their voting systems
 - the Ministry of Justice for administering the jury service system
 - the Māori affiliation service (discussed in **Chapter 3**)
 - state sector researchers for scientific, health, or election research.
- 16.6 Printed copies of the roll are available for general sale to the public. These copies, as well as those available for public inspection in libraries and Electoral Commission offices, are used by members of the public for activities such as

¹ Electoral Act 1993, sections 111A – 111F, 112 – 112A and 113; Juries Act 1981, section 9.

historical and genealogical research, as well as commercial purposes (for example, by debt collectors to obtain addresses).

- 16.7 It is an offence to supply, receive or use electronic roll data for an unauthorised purpose, or to digitise or otherwise try to manipulate electoral roll data electronically.²
- 16.8 In **Appendix 1: Minor and Technical Recommendations**, we make three recommendations to update processes for maintaining and accessing the electoral rolls.

Types of rolls

- 16.9 The “electoral rolls” is the generic term for the various rolls produced by the Electoral Commission:
- The *main* roll is printed at least annually for each general and Māori electorate.³
 - A *supplementary* roll is then maintained for people who have enrolled after the cut-off date for the main roll. The supplementary roll is incorporated into the main roll when the main roll is printed.⁴
 - A *composite* roll, combining the main and supplementary rolls, is produced for elections.⁵
 - During elections, *marked* rolls are produced and updated during the voting period, showing who has already voted up to that point in time. After voting is completed, consolidated *master* rolls are produced for each electorate to show whether a person voted.
 - A *dormant* roll is also maintained, containing the enrolment details of people who the Electoral Commission is unable to contact at their listed enrolment address.⁶ The Electoral Commission removes people from the dormant roll when a person either enrolls at a new address, dies, or after they have been on the dormant roll for three years.
 - *Habitation indexes* are a form of roll, where electors’ details are listed according to their residential address.⁷ These details are drawn from the main and supplementary rolls.

² Electoral Act 1993, sections 116 – 117.

³ Electoral Act 1993, section 104.

⁴ Electoral Act 1993, section 105.

⁵ Electoral Act 1993, section 107.

⁶ Electoral Act 1993, section 109.

⁷ Electoral Act 1993, section 108.



- The Electoral Commission also maintains an *unpublished* roll containing the enrolment details of people whose personal safety, or the safety of their family, may be threatened if their enrolment details were publicly available.⁸ The Electoral Commission keeps this information secure and does not give it to anyone. Any person on the electoral roll (or enrolling for the first time) can apply to be placed on the unpublished roll. The person needs to provide some evidence or explanation as to why their safety may be at risk. The Electoral Commission has discretion to consider the merits of applications.

16.10 The level of voters' personal information across these roll types varies, with those that are available publicly including fewer details (such as the master roll or habitation indexes), and those that are used only for electoral administration including more details.

Access to the electoral rolls and voter privacy

16.11 In considering options for retaining or changing electoral roll access, we sought to achieve an appropriate balance between the integrity of transparent election processes and the need to protect the personal information of registered voters.

16.12 The Privacy Act 2020 provides us with a contemporary guide to privacy settings for the use of personal, identifiable data. One purpose of the Privacy Act is to promote and protect individual privacy by providing a framework for protecting an individual's right to privacy of personal information.

16.13 Under the Privacy Act 2020, personal information can generally only be used for the purpose for which it was collected and must not be otherwise disclosed without permission. There are some exceptions to this rule – for example, if the purpose for which the information is to be used is directly related to the purpose for which it was obtained; or if the information is used in a way that the individual is not identified, including for statistical research. Another exception is where the source of the information is publicly available.⁹

16.14 We think it is appropriate that the Privacy Act 2020 principles are more strongly reflected in the electoral system. Enrolment is compulsory, and people may not be well informed about the numerous ways that their enrolment data can be accessed and used, or consent to these uses.

⁸ Electoral Act 1993, section 115.

⁹ Privacy Act 2020, section 22.

Earlier recommendations

2014, 2017 and 2020 Electoral Commission post-election reports

In its 2014, 2017 and 2020 post-election reports, the Commission recommended that electoral rolls and habitation indexes be removed from general sale.

2014 and 2017 Justice Select Committee

Following the 2014 general election, the Justice Select Committee recommended a review of roll access, noting that the current settings present privacy concerns. However, after the 2017 election, it also recommended that parties have increased access to electronic master rolls during an election period.

- 16.15 The need to strongly protect personal data has become more critical now that technology can be easily used to link people's information from a wide range of sources to build a detailed picture about a person's life and interests. This set of linked data can then be used to target particular individuals (such as through advertising).
- 16.16 We also have concerns that once roll information is provided to a third party, it is virtually impossible to control how that information may be subsequently used and, therefore, how it can be protected, especially due to potential re-formatting, data transfers, and data matching. We note any loss of control may potentially open up access to this information by foreign states.
- 16.17 Given these uses, we believe there is a need for electoral roll data to be more stringently controlled. Otherwise people might lose trust and confidence in the electoral system and be reluctant to provide their information to enrol or vote.

General inspection and sale of the rolls

- 16.18 Printed copies of electoral rolls are available for anyone to inspect at public libraries and Electoral Commission offices.¹⁰ In addition, anyone can pay to get a printed copy of the electoral rolls from the Electoral Commission.¹¹ The public electoral rolls include people's full names and home addresses, as well as their occupation (if provided).

¹⁰ Electoral Act 1993, sections 110.

¹¹ Electoral Act 1993, section 110(5).

- 16.19 The Electoral Commission produces a master roll after each election showing who has voted. This information can only be inspected by a registered voter for their electorate.

Is there a case for change?

Issues identified

- 16.20 Public inspection of the rolls was originally intended to ensure their accuracy and allow for the detection of any fraudulent enrolments.
- 16.21 The public availability of the roll now has a broader range of uses. For instance, members of the public use the rolls to find information, such as for genealogical research, or to find an address.
- 16.22 The predominant theme in our first consultation was the conflict between the Electoral Act 1993 permitting wide access to the electoral rolls and privacy standards that protect personal, identifying data.
- 16.23 Some submitters argued that the ability to inspect and purchase roll data impinges on the protection of personal data.
- 16.24 Some submitters considered that supervising people inspecting the rolls was essential to prevent data transfer through scanning or other technology. A few submitters said that roll inspection was being used to breach protection and restraining orders.
- 16.25 The strongest support for change to electoral roll access from submitters to our first engagement was to end the current ability for any person to purchase rolls and habitation indexes. Arguments supporting this change largely related to:
- the use of personal data for non-electoral purposes
 - the lack of any real control on how the data is used after it has been purchased
 - that this data can be purchased by individuals or companies from outside New Zealand, and
 - the types of businesses that see a commercial value in using this data (including debt collectors, marketers, real estate agents and finance companies).
- 16.26 These uses could undermine the primary purpose of the roll: enrolling and voting. We heard in some cases that these uses can discourage some people from enrolling.



Our initial view

- 16.27 In our interim report, we recommended changes to better protect people’s privacy, including that:
- the main and supplementary rolls should not be available for public inspection
 - the master roll, which records whether a person voted, should not be available for public inspection after an election
 - electoral rolls should not be able to be purchased by *any person*, and particularly not for commercial interests, such as debt collection and marketing, or by overseas companies, as is currently the case.

Feedback from second consultation

- 16.28 In our second consultation, we heard a wide range of views on public inspection and sale of electoral rolls – including views similar to those set out in **Issues identified** above.
- 16.29 The Privacy Commissioner supported the recommendations, noting they would better align with the Privacy Act 2020 while not undermining the rolls’ key purpose of underpinning the administration of the electoral system. The Commissioner noted that the increasingly electronic processes used for enrolment mean that manual or external scrutiny of the roll is less important than it was under a paper-based system.
- 16.30 However, some other submitters were concerned that some of our recommendations placed too much emphasis on privacy at the expense of electoral integrity and transparency. In particular, these submitters argued that:
- removing public inspection would reduce transparency and scrutiny of the electoral system, undermine public trust that our elections are free and fair, and mean there is no person or group who has sufficient information to challenge decisions made by the Electoral Commission on voter eligibility
 - removing access to the master roll after an election would negatively impact those seeking to check for voter fraud or prepare election petitions, with an impact on electoral integrity (or perceptions of electoral integrity).
- 16.31 Some other groups noted the importance of being able to purchase a copy of the electoral roll for secondary purposes. For example, genealogical societies and some libraries were concerned that our changes would negatively impact family history research, genealogy, and other historical research.



Our final view

16.32 In forming our final view, we considered the feedback we received and approaches that some other jurisdictions use for electoral rolls where electors can opt out from being on the public roll. We also considered whether the electoral roll could be available for public inspection with more limited personal information available.

Public inspection of rolls

16.33 Overall, we consider the need to strongly protect personal data has become more critical now that technology can be easily used to link people's data from a wide range of sources for other uses (such as targeted advertising). This means improving the safeguards over access to electoral rolls so people have confidence that their personal information is kept private.

16.34 We also note that public inspection of the rolls was originally intended to ensure their accuracy and allow for the detection of any fraudulent enrolments. This dates back to the 1800s, when there were far fewer voters in an electorate – for example, there were less than 300 people on the average electorate roll in the 1850s. As people often knew each other and where they lived, a public inspection of the roll could verify the correctness of the information.

16.35 With an average of almost 50,000 people per electorate now on the roll, we believe that public inspection of the rolls for the purposes of verification is a less pressing (and practical) purpose. If a person has concerns about an incorrect or fraudulent enrolment, they can raise them with the Electoral Commission, which is tasked with following up such information.

16.36 Ultimately, we still consider that an individual's privacy outweighs the potential benefits of maintaining public inspection or sale of electoral rolls. As such, we largely confirm our interim recommendations to restrict public inspection of the main, supplementary and master rolls, and to remove electoral rolls from general sale.

16.37 However, to provide confidence in the transparency of the electoral system, we propose two exceptions:

- The public should be able to access a copy of electoral roll data for the purposes of making an electoral petition or objection. This would ensure the public can have confidence that any irregularities can be investigated. This access should occur at an office of the Electoral Commission for security purposes and prevent a nefarious actor from seeking to copy the data.
- The public should be able to access master roll information to make an electoral petition, but the master roll should not be used by the public for any other purposes. As part of this, we recommend maintaining the same

overall settings for who and how the master rolls can be accessed for this more limited purpose. This includes that access must be by someone eligible to bring an election petition, with access available only at an Electoral Commission office.

- 16.38 We note as part of the redrafting of the Electoral Act (discussed in **Chapter 2**), there is an opportunity to review the statutory process for objecting to an elector's enrolment to ensure it remains fit for purpose.

Sale of roll data

- 16.39 We maintain our initial view that electoral rolls (and habitation indexes) should not be able to be purchased by *any person*, and particularly not for commercial interests, such as debt collection and marketing, or by overseas companies, as is currently the case. This would ensure electoral roll information is only used for the purposes for which it is collected.

Public, genealogists and historical researcher access

- 16.40 We are aware that members of the public, including genealogists and historical researchers, currently access information about individuals on the electoral roll via public libraries. This may be the current electoral roll available for public inspection or older versions of the electoral roll that some libraries have purchased. Under our interim recommendations, these avenues to access electoral roll data would end.
- 16.41 In our second consultation, we heard some concerns about the impacts of this change. While we recognise the value of electoral roll data for these purposes, the overriding objective when considering options for providing access to electoral data should be to maintain confidence in the electoral system. Genealogical and historical research are not the reason for which personal information is collected by the electoral system.
- 16.42 Nevertheless, we believe some additional access can be managed safely and appropriately. We are making a new recommendation to provide for limited access to historical electoral rolls for the purposes of research. Historical rolls should only be accessible after 50 years has passed, as with historical births, deaths and marriages information. We do not consider more recent electoral rolls should be able to be used to track someone down.



- 16.43 The exact mechanism to enable access to historical electoral roll access would need to be worked through, but it could be facilitated via the Electoral Commission or Archives New Zealand.

The Panel recommends:

- R87. Removing the availability of the main and supplementary rolls for public inspection, except for the purpose of making an electoral petition or an objection to a registered elector's enrolment.**
- R88. Removing the availability of the master roll for public inspection after an election, but retaining access after an election for the purposes of making an electoral petition.**
- R89. Removing the ability for any person to purchase electoral rolls and habitation indexes.**
- R90. Making historical electoral rolls publicly accessible for the purpose of research after a period of 50 years, as is the case for births, deaths and marriages records.**

Access to roll data for research

- 16.44 The Electoral Commission shares electoral roll information with state sector researchers for research relating to scientific matters, human health and electoral participation. Researchers can access more detail than is available on the public roll, including people's age range and whether they are of Māori descent.¹²
- 16.45 Electoral rolls are used for research purposes to invite a sample of the population from the main rolls to participate in research. State sector health and social scientific researchers can apply to access a copy of the electoral rolls to contact potential participants through mail. Those people who wish to participate then provide consent to complete the research if they wish to.
- 16.46 Other research takes place without participants' individual consent, or in most cases, even knowing the research is being done. For example, a master roll could be accessed over consecutive elections to see if a particular voter exercised their vote over time.

¹² Electoral Act 1993, section 112.

Is there a case for change?

Issues identified

- 16.47 In our first consultation, we heard from several academics who supported continued access to roll data for scientific research, noting this data is often the best available data source to conduct surveys. Roll data is useful for several areas of scientific study, including health, social and demographic research, and election studies. When strict conditions are placed on the use of roll data for these purposes, submitters argued that individuals' personal information can be adequately protected.
- 16.48 We heard several suggestions for improving how researchers can access the rolls in our first consultation. Views were mixed – some thought stronger protections should be implemented, including:
- greater transparency about how the rolls were used for research purposes to build trust and understanding with the wider public
 - greater controls and protections on how records are retained, stored and deleted.
- 16.49 Others wanted easier access to the rolls to improve the efficiency and reduce the cost of data collection. Some researchers wanted easier access to the master rolls, including making it available in electronic format and removing the legal requirement that the master roll can only be inspected by a registered voter from a particular electorate. Submitters considered that these changes would not have any material impact on the protection of data.

Our initial view

- 16.50 In our interim report we recommended that there should be continued access to roll data for social scientific and health research but there should be more stringent controls on how much detail is provided, how it is used and stored, and how it is subsequently retained or destroyed.
- 16.51 We noted that our recommendation to remove public inspection of the master roll would mean that researchers would no longer have access to the data contained in the master roll. We noted our view that this kind of access is different from the other provisions for access for research purposes, which focus on providing information that researchers can use to contact potential research participants to seek their consent and participation.

Feedback from second consultation

- 16.52 We did not receive many submissions on researcher access to the electoral rolls. The Electoral Commission and an academic noted the importance of access to the master roll for academic research on electoral participation and turnout. Such

research also informs the development of the Electoral Commission's participation strategies.

- 16.53 An academic thought that master roll information could be provided to researchers in digital format with names and addresses replaced by an identification number to mitigate the privacy concerns we set out in our interim report.

Our final view

- 16.54 In line with our interim recommendation, we consider that there is a case for continued access to roll data to support social scientific and health research. However, we recommend that tighter controls should be placed on how much information is provided and how it is held, stored, and retained.
- 16.55 We think it is important that researchers only receive as much information from the electoral rolls as they need. Currently researchers receive a full copy of the roll, even though it is often not needed. As an alternative, the Electoral Commission could generate randomised survey lists from roll data on a cost recovery basis. Such an approach would be more consistent with the Privacy Act 2020.
- 16.56 We consider the Electoral Commission should implement a stronger approval process before researchers can access electoral data (including ethics approval). This process should be similar to the process that applies to researchers wanting to access administrative data such as that held by Stats NZ's Integrated Data Infrastructure. In particular, we consider researchers should:
- provide reasons why there is not a reasonable or practical alternative data source that they could use instead of the electoral rolls
 - demonstrate that they have systems, policies, and procedures in place to keep any electoral roll data secure
 - be required to destroy the data at the end of research projects.
- 16.57 While a bespoke process would need be designed for these purposes, we think many of the principles outlined in Stats NZ's *Five Safes* and *Ngā Tikanga Paihere* frameworks¹³ would be relevant and should inform the design of the approval process. For example:
- researchers should be vetted to ensure they have appropriate expertise, skills, and relationships with communities, and must commit to use data safely before they can access the data

¹³ Stats NZ, 2022. *How we keep integrated data safe*. [Online] Available at: <https://www.stats.govt.nz/integrated-data/how-we-keep-integrated-data-safe/> [Accessed October 2023].

- researchers must have a project they can demonstrate is in the public interest or aligns with community objectives
- good data standards and practices should be in place, with culturally appropriate systems, policies and procedures, and involvement of communities in research decisions as early as possible
- privacy and security arrangements should be in place to keep data safe
- benefits and opportunities from research projects should be balanced against sensitivities and risks.

16.58 Tighter controls and stronger approvals are particularly important for Māori data, which are a taonga. In **Chapter 3**, we recommend the Electoral Commission should consider how to uphold tino rangatiratanga by exploring how to enable Māori governance over data collected about them. The same principle should apply to any person accessing data about Māori from the electoral roll. The nature of the requirements will differ depending on the researcher and the purpose.

16.59 We consider the detailed design of the controls and approval process we have outlined should be co-designed with Māori and be grounded in the Māori data governance model published by Te Kāhui Raraunga.¹⁴ The approval process should build in Māori oversight and participation – particularly where data on Māori descent is to be accessed. Finally, any new controls and approvals process should actively support Māori to access Māori data and ensure the use of Māori data benefits Māori. This framework would need to balance the collective interests of iwi, hapū, and Māori organisations against the privacy interests of individuals.

Researcher access to master roll information

16.60 In light of the feedback we received, we recognise there are genuine benefits in allowing those studying electoral turnout to have some limited access to master roll information. We recommend that specific provision should be made for this in the Electoral Act, rather than researchers accessing information via general public access as they currently do. This will mean there are more controls and transparency about the use of master roll information.

16.61 In particular, we recommend researchers should only be able to access master roll information if their research is specifically focused on voter turnout. It should not be able to be used for more general social or health research.

16.62 In addition, there should be a robust upfront process for researchers to gain access to master roll information. This should include going through the same approval process outlined for access to roll information. Information provided to researchers should also be de-identified format (for example, using an ID number,

¹⁴ Kukutai, T., Campbell-Kamariera, K., Mead, A., Mikaere, K., Moses, C., Whitehead, J. & Cormack, D., 2023. *Māori data governance model*, Rotorua: Te Kāhui Raraunga.

rather than an individual's name), so researchers do not have access to more information than necessary to carry out their research, such as an individual's name and address.

The Panel recommends:

- R91. Retaining access to electoral rolls and habitation indexes for scientific, human health and electoral participation research, but with tighter controls on data access and use, and a stronger approval process (including ethics approval) that requires researchers to:**
- a. provide reasons why there is not a reasonable or practical alternative data source to the electoral rolls**
 - b. demonstrate that they have systems, policies, and procedures in place to look after any electoral roll data securely**
 - c. destroy electoral roll data at the end of research projects.**
- R92. Ensuring that the controls and approval process for researcher access to electoral rolls and habitation indexes:**
- a. is co-designed with Māori and grounded in the Māori data governance model published by Te Kāhui Raraunga**
 - b. builds in Māori oversight and participation.**
- R93. Allowing electoral researchers specific access to de-identified master roll information for research directly related to voter turnout, subject to the tighter controls and approval process set out in recommendation 91.**

Party and candidate access

- 16.63 The Electoral Commission is obliged to share electoral roll information with parties, candidates, and MPs for a fee.¹⁵ This information includes the name, address and occupation of people registered in each electorate as well as people on the dormant roll. They can also access information about electors' age group and whether they are of Māori descent.
- 16.64 In addition, scrutineers appointed by parties or candidates can receive information from electoral officials about who has voted to create their own marked versions of the electoral rolls in polling places while voting is taking place.¹⁶ At the 2020 general election, scrutineers could photograph electoral officials' records of who had voted. These records could then be shared with, and used by, parties and candidates to encourage turnout.¹⁷
- 16.65 Although parties do not have special access to the master rolls, in practice they may also access the information via registered voters acting on their behalf. Parties may wish to do this to gather information about who did or did not vote to inform future election campaigns.

Is there a case for change?

Issues identified

- 16.66 Provision of roll data, including voters' addresses, allow parties, candidates, and MPs to engage with voters and constituents. In our first consultation, a few parties submitted that access to roll data supports democratic engagement and allows parties to directly engage with voters on policy.
- 16.67 In our first consultation, we heard from parties that allowing scrutineers to access the record of votes cast during the voting period enables them to contact enrolled people to encourage them to vote. They argued that access to the master roll may help parties and candidates to increase voter turnout at the next election.
- 16.68 Some submitters were opposed to parties, candidates, and MPs having access to roll data to get contact details for voters. They thought that using electoral data for political purposes was not an appropriate secondary use.
- 16.69 A few submitters expressed concern that people were being targeted by parties and that the detailed personal information that parties can obtain is an invasion

¹⁵ Electoral Act 1993, section 114.

¹⁶ Electoral Regulations 1996, regulation 65.

¹⁷ Electoral Commission, 2021. *Report of the Electoral Commission on the 2020 General Election and referendums*, Wellington: Electoral Commission, p 55.

of privacy. It was also noted that the ability to electronically crossmatch roll data with other databases exacerbated this problem.

- 16.70 A few submitters referred to the ability of party scrutineers to access the records of votes cast during voting to identify who has or has not voted. These submitters considered this a significant invasion of privacy that can lead to non-voters being targeted by parties and candidates. While parties consider this access to be a way of encouraging turnout (and have argued for easier, electronic access to this information), a few submitters referred to how this is akin to harassment and compromises their privacy.
- 16.71 Parties and candidates encouraging turnout in this way was seen by some submitters to confuse the role of the independent Electoral Commission in running elections, while also providing parties and candidates with voting data that can be used for political purposes.
- 16.72 Some submitters expressed concern that parties can use these data sources to build voting histories for individuals or communities without their consent.

Our initial view

- 16.73 In our interim report, we noted our concerns about how some parties appeared to be combining data from the electoral roll with data from other sources to build databases and collect information about individuals, electorates and voting patterns. We noted our view that, to achieve a stronger focus on the protection of personal information, party and candidate access to roll data should be ended. We recommended that:
- parties, candidates and MPs should no longer have access to electoral roll data
 - the Parliamentary Service should be able to access electoral roll data on behalf of MPs to support them to communicate with their constituents
 - the ability of scrutineers to access the records of votes cast during voting and to share that information with parties and candidates should be removed.

Feedback from second consultation

- 16.74 Parties and some civil society organisations were concerned that the recommendation to remove access to electoral rolls by parties, candidates, and MPs would have a negative impact on their ability to campaign, with a related impact on voter engagement and participation.
- 16.75 Parties emphasised that access to electoral roll data, including the record of votes cast during voting, is vital to their campaigning strategies and helps them conduct targeted and more effective campaigning. Some parties also commented that such

use is a primary purpose of electoral roll data, so it is not inconsistent with privacy principles.

- 16.76 Some smaller parties were concerned removing party access would disproportionately impact them, as they do not have infrastructure or funding to gather the data necessary for voter outreach in other ways (such as polling or purchasing other datasets). Similar concerns were raised about the recommendation to provide the Parliamentary Service with access to roll data for parliamentary purposes and the advantage this might give incumbent MPs and parties over non-parliamentary parties and candidates.

Our final view

- 16.77 During consultation, we heard different views about the access and use of electoral rolls by parties, candidates, and MPs. While many considered that MPs should be able to contact constituents for outreach activity, there were varying views as to whether access and use by parties and candidates is in line with the original purpose for which the information is collected.
- 16.78 Overall, we acknowledge that if there is a legitimate reason for MPs to have some access to electoral roll information, then parties and candidates should also have some access to this information. Otherwise, there could be some unintended consequences, including an incumbent advantage for current MPs when campaigning in elections. We recognise that, subject to the safeguards we recommend being in place, making roll information available to parliamentary candidates and parties facilitates their communication with voters in ways that can promote a more democratically engaged and better-informed electorate.
- 16.79 We are amending our interim recommendation accordingly. We consider that there should be specific, limited purposes for which each group can access and use electoral roll information, with tighter controls than currently. In particular, we think that each group should be required to destroy roll information when it is no longer needed for the purpose it was given, and be prevented from combining the data with other information (for example, by creating a database of linked information about individual voters).
- 16.80 We recommend:
- **MPs** should be able to access information for the purpose of communicating with their constituents about parliamentary business. Data must be destroyed when they cease to be an MP, and the data cannot be combined with any other information.
 - **Electorate candidates** should only be able to access information for the purpose of election campaigning. Data must be destroyed after the election, and the data cannot be combined with any other information.



- **Registered parties** should have ongoing access to the electoral roll information for the purpose of election campaigning. Information must be destroyed if a party is de-registered, and the data cannot be combined with any other information.
- 16.81 We also consider that MPs, candidates, and parties should be provided with clear instructions and guidance about the permitted uses of the information they access. They should also be required to provide assurance that they have systems and processes in place to keep the information secure.
- 16.82 Existing offences pertaining to access and use of electoral roll data will need to be reviewed as part of the broader overhaul and consolidation of offences we have recommended in **Chapter 18**. This will also be an opportunity to consider whether any new offences relating to electoral rolls are needed to enforce the new requirements on parties, candidates, and MPs.

Scrutineer access to the record of votes cast

- 16.83 We maintain our view that scrutineers should not be able to share data on who has cast a vote with parties to support parties with their campaigning activities. While it is compulsory to enrol to vote, it is not compulsory to vote, and we consider that the act of voting itself is a private matter.
- 16.84 In our view, parties should not have access to turnout data at the level of an individual without that individual's consent. We consider that there are other ways to mobilise people to vote. For example, aggregated turnout data for specific regions could be provided to parties and community groups by the Electoral Commission to support their efforts encouraging voter turnout.

The Panel recommends:

- R94. Allowing Members of Parliament, candidates and parties to have access to electoral rolls for specified, limited purposes, and with controls on use and retention of information, including that:**
- a. Members of Parliament can access information for the purpose of communicating with constituents about parliamentary business. Data must be destroyed when they cease to be a Member of Parliament, and the data cannot be combined with any other information.**
 - b. Electorate candidates can access information for the purpose of election campaigning. Data must be destroyed after the election, and the data cannot be combined with any other information.**

c. Registered parties can have ongoing access to electoral roll information for the purpose of election campaigning. Information must be destroyed if a party is de-registered, and the data cannot be combined with any other information.

R95. Removing the ability for scrutineers to access records of votes cast during the voting period and to share this information with political parties and candidates.

Unpublished roll

16.85 Persons whose personal safety or that of a member of their family would be at risk if their name was included in the roll can apply to go on the unpublished roll.¹⁸ The details of persons on the unpublished roll do not appear in the printed roll and their details are not released by the Electoral Commission to anyone, including parties, candidates, or researchers.

Is there a case for change?

Issues identified

16.86 During our first consultation, some submitters argued that it should be easier to be placed on the unpublished roll, given that enrolled people have no control over who may access their personal information on published rolls. It was suggested that Aotearoa New Zealand adopt an opt-in/opt-out system, so that people enrolling can choose whether to be on the published or unpublished roll, as is provided in some other countries, such as the United Kingdom.¹⁹ A few others suggested that enrolment on the unpublished roll for protected persons under the Family Violence Act 2018 or the Sentencing Act 2002 should be automatic.

16.87 Many submitters considered that there should be greater availability and awareness of the unpublished roll.

¹⁸ Electoral Act 1993, section 115.

¹⁹ Government of the United Kingdom. *The electoral register and the 'open register'*. [Online] Available at: <https://www.gov.uk/electoral-register/opt-out-of-the-open-register> [Accessed October 2023].

Our initial view

16.88 In our interim report, we recommended retaining the existing settings relating to the unpublished roll, noting our other recommendations on accessing the electoral rolls would better protect people’s privacy without a complex “opt-in or out” approach.

Feedback from second consultation

16.89 A few civil society organisations argued it should be easier for a person to get on the unpublished roll, which would also allow less stringent restrictions on access to the electoral rolls generally.

16.90 The Privacy Commissioner suggested that, if we amended our other recommendations concerning electoral roll access, we should consider a voluntary system where people could “opt out” of their data being accessible. The Commissioner, along with the Department of Internal Affairs, also suggested that if the voting age is lowered to 16, we should consider whether 16- and 17-year-olds should be on the main roll or on the unpublished roll by default.

Our final view

16.91 We maintain our view that the current settings for the unpublished roll are broadly satisfactory. Less than five per cent of unpublished roll applications are declined, primarily due to insufficient evidence being provided or the application being discontinued. This indicates there is reasonable access to being placed on the unpublished roll.

16.92 However, we consider that some improvements could be made to how the unpublished roll operates in practice. The Electoral Commission has some flexibility as to how it implements the unpublished roll. We want to ensure that there is a minimal compliance burden for individuals wanting to go on the unpublished roll, including any evidence requirements.

16.93 We heard that some people may not know about the unpublished roll. Others may be unsure whether they are eligible so are reluctant to apply and consequently put their safety at risk. Some people may perceive there is a high eligibility threshold.

16.94 Currently individuals can provide different types of evidence to go onto the unpublished roll. These include, for example, a copy of a protection order, or a letter from an employer, lawyer, social worker, advocate, or someone else of standing in the community explaining why an individual’s work or personal circumstances place them at risk. While these options are likely to be suitable for most situations, we suggest that additional alternative options should be made available, such as a statutory declaration by the applicant, to cover as many situations as possible.

- 16.95 We also consider that the unpublished roll, including the process for going on it, should be more widely communicated to increase public awareness. This communication should include a focus on debunking the perception that there is a high eligibility threshold and stringent evidence requirements, so more people who are currently eligible to go on the unpublished roll are encouraged to take up the option to protect their or their family's safety. For example, information on the unpublished roll could be included in relevant information packs and through ensuring that service providers have knowledge of the unpublished roll.
- 16.96 Some submitters suggested that if the voting age is lowered to 16, then consideration should be given to whether 16- and 17-year-olds should automatically be placed on the unpublished roll.
- 16.97 Given our recommendation that main rolls should not be available for public inspection except in strictly limited circumstances, we do not consider any different approach needs to be taken for 16- and 17-year-olds. We consider that 16- and 17-year-olds should be placed by default on the main roll, but note they would be able to go on the unpublished roll following the general approach we have outlined. We note this is consistent with current practice, where 17-year-olds are placed on the main roll when they enrol in advance of turning 18.

Interaction with our other recommendations

- 16.98 In **Chapter 11**, we recommend that people on the unpublished roll should be able to cast an ordinary vote, subject to the development of a unique identifier for inclusion in the electoral rolls that meets privacy requirements without disclosing a voter's address. We also recommend providing targeted information about the use of preferred names for enrolment and voting purposes to relevant communities.

The Panel recommends:

- R96. Retaining the existing provisions for being enrolled on the unpublished roll.**
- R97. The Electoral Commission better publicise the unpublished roll and ensure flexibility in its administration, particularly for the evidence required to prove eligibility.**

17. Boundary Reviews and the Representation Commission

- 17.1 The boundary review process sets out how Aotearoa New Zealand is divided into electorates and where their boundaries are drawn. An independent body called the Representation Commission has sole responsibility for undertaking this review.
- 17.2 The Electoral Act 1993 sets out the calculations and steps that must be followed to determine the number of electorates, using data from both the census and the results of the exercise by persons of Māori descent of their Māori electoral option. As the census takes place every five years, boundary reviews also operate on a five-yearly cycle.¹
- 17.3 The Representation Commission consists of:
- the chairperson, who by convention has normally been a current or retired judge
 - two members appointed by parliament, one representing the government and one the opposition
 - four government officials (the surveyor-general, government statistician, chief electoral officer, and the chairperson of the Local Government Commission).²
- 17.4 When determining the boundaries of the Māori electorates, membership also includes the chief executive of Te Puni Kōkiri and two people of Māori descent who represent the government and the opposition.³
- 17.5 The boundary review process consists of the following steps:
- The government statistician reports the general and Māori electoral populations.⁴

¹ Electoral Act 1996, section 35(2)(c); Data and Statistics Act 2022, section 34(1).

² Electoral Act 1993, section 28(2).

³ Electoral Act 1993, section 28(3).

⁴ Electoral Act 1993, section 35.

- The surveyor-general then prepares maps showing the distribution of the population and provisional electorate boundaries.⁵
- The Representation Commission as a whole then reviews these provisional boundaries against criteria (set out in the following paragraph) and ensures that the number of people residing in each electorate fits within plus or minus five per cent of the “population quota” – that is, the population size for each electorate.⁶
- The proposed boundaries are then made available for public review and there is an “objection” and “counter-objection” process. Any party represented in parliament and any independent member of parliament may also make submissions to the Commission on the division of the country into general and Māori electorates.⁷ The Representation Commission publishes all submissions and must consider any objections or counter-objections before making its final boundary decisions.⁸

17.6 When determining where to place boundaries for the general electorates, the Representation Commission must consider the following criteria:

- existing boundaries of general electoral districts
- communities of interest⁹
- infrastructure that links communities (called facilities of communications in the Electoral Act)
- topographical features
- any projected variation in the general electoral population of those districts over the next five years.¹⁰

⁵ Electoral Act 1993, section 35.

⁶ Electoral Act 1993, section 36.

⁷ Electoral Act 1993, section 34.

⁸ Electoral Act 1993, section 38.

⁹ A term commonly used in boundary reviews but rarely defined in statute. Generally, the term refers to a group united by shared interests or values. For example, a river valley may contain a community of interest, and drawing an electoral boundary down the river line would divide that community.

¹⁰ Electoral Act 1993, section 35(3)(f).

Earlier recommendations

1986 Royal Commission on the Electoral System

The Royal Commission recommended:

- Exploring whether alternatives to the census could be used. It considered that if suitable projections of usually resident or electoral populations could be devised, they should be used.
- Using a 10 per cent tolerance in the determination of electorate boundaries to support better treatment of communities of interest. It noted that, under Mixed Member Proportional (**MMP**), having about the same number of people in each electorate was less necessary than under First-Past-the-Post.
- That each of the parties represented in parliament should have its own representative on the Representation Commission to avoid issues in appropriate representation through the single “government” and “opposition” appointees alone.
- That all unofficial members should be non-voting members, and that the representatives of Māori interests should have a voting majority when setting the boundaries for the Māori electorates.

2014 Justice Select Committee

In its 2014 post-election report, the Justice Select Committee recommended:

- that the electorate boundary review process be decoupled from the census in light of possible future census changes
- that all submissions on proposed electoral boundaries should be made available online to provide greater transparency and to ensure submissions could be made available to the public faster.

2014 Electoral Commission post-election report

The Commission recommended that all submissions on proposed electoral boundaries should be made publicly available – instead of the current summaries of objections.

17.7 When setting the Māori electorate boundaries, the Representation Commission must consider the same criteria but with the following modifications:

- the community of interest criteria is specified as “among the Māori people generally and members of Māori iwi”

- projected variations in the Māori electoral population are used, rather than those for the general electoral population.¹¹
- 17.8 The United Nations General Comment to the International Covenant on Civil and Political Rights in 1996 states that “the drawing of electorate boundaries and the method of allocating votes should not distort the distribution of voters, or discriminate against any group”. The General Comment also states that boundary drawing “should not exclude or restrict unreasonably the right of citizens to choose their representatives freely”.¹²
- 17.9 As noted in **Chapter 2**, three provisions in the Electoral Act concerning the boundary review and Representation Commission are entrenched:
- the membership of the Representation Commission (section 28)
 - the process for dividing New Zealand into general electorates, as well as the definition of “general electoral population” (section 35)
 - the allowance for adjusting the population quota within electorates (section 36).
- 17.10 These provisions can only be changed by a majority vote in a public referendum or by a 75 per cent vote in the House of Representatives.¹³ In **Chapter 2**, we recommend that the sections of the Electoral Act that provide for the electorates set by the Representation Commission to take legal effect without any parliamentary role or oversight should also be entrenched.

Relationship to the census

Is there a case for change?

Issues identified

- 17.11 The census is the definitive count of Aotearoa New Zealand’s population, but response rates to the census have been decreasing over time, resulting in missing data. Some populations are less likely to be accurately counted than others. Any resulting inaccuracies in the census – for example, when Māori were significantly

¹¹ Electoral Act 1993, section 45(6).

¹² *General comment no. 25, The right to participate in public affairs, voting rights and the right of equal access to public service (article 25)* UN Doc CCPR/C/21/Rev.1/Add.7 (27 August 1996), p. 7.

¹³ Electoral Act 1993, section 268.

undercounted in the 2013 and 2018 census – may result in fewer electorates being allocated.¹⁴

- 17.12 While the Estimated Resident Population methodology involves more estimation, it may be a more accurate basis for calculating electoral populations than the census, as it uses other data sources (for example births, deaths, and migration data) to adjust for those people that have been missed by the census.
- 17.13 The calculation of the Māori electoral population and the number of electorates uses the Māori descent indicator.¹⁵ There is currently no established, robust Māori descent indicator in the Estimated Resident Population data that is independent of census data. Under the Estimated Resident Population methodology, where someone is missing data for being of Māori descent from the census, Stats NZ determines who is and is not of Māori descent from administrative data sources. This is different to the census, where individuals have the opportunity to self-report as being of Māori descent (that is, descended from a Māori ancestor).
- 17.14 Using administrative data for electoral purposes (a purpose for which the data was not collected) also raises issues with Māori data sovereignty, and social licence more generally, that would need to be addressed if the Estimated Resident Population data was to be used.
- 17.15 The new Data and Statistics Act 2022 allows a broader range of methods for collecting data for future censuses. In the future, the census might not involve the direct collection of self-reported data from the entire population at the same time (that is, there may no longer be a traditional census).
- 17.16 Many submitters who answered our question about boundary reviews in our first consultation were concerned about the quality of census data.

Our initial view

- 17.17 In our interim report, we noted that there are clear issues with the census that may increase in the future. For that reason, we recommended removing the requirement that the boundary review process is based on census data and instead providing flexibility to Stats NZ on the data source or sources it uses. We noted that such a change would rely on social licence. This recommendation was also contingent on our recommendations to improve Māori data sovereignty

¹⁴ Stats NZ, 2022. *Māori population under-estimation in 2013: Analysis and findings*. [Online] Available at: <https://www.stats.govt.nz/reports/maori-population-under-estimation-in-2013-analysis-and-findings/> [Accessed October 2023]; Jack, M. & Graziadei, C., 2019. *Report of the Independent Review of New Zealand's 2018 Census*, Wellington: Stats NZ.

¹⁵ That is, the number of people in the population who descend from Māori. Note that someone may be of Māori descent but not necessarily identify themselves as Māori ethnicity. Kukutai, T. & Cormack, D., 2018. Census 2018 and Implications for Māori. *NZ Population Review*, Volume 44, p. 144.

(which we discuss in **Chapter 3**), and on a robust calculation of the Māori descent population.

Feedback from second consultation

- 17.18 A few submitters supported our recommendation to remove the requirement that the boundary review is based on census data, noting that other data sources are likely to be more accurate and up to date when boundaries are redrawn.
- 17.19 By contrast, a few other submitters were concerned about whether alternative data sources would be sufficiently robust or transparent. The New Zealand Law Society, for example, was concerned that providing greater flexibility to Stats NZ may risk creating a perception of involvement by government in matters relating to electoral boundaries. Another submitter was concerned that using less transparent data sources could impact on trust in the boundary review process and the electoral process more broadly.
- 17.20 One submitter suggested that our recommendation should be amended to provide that the calculation of the Māori descent population is also independently reviewed and transparent, as well as robust. Another submitter suggested that our recommendation should only call for consideration of other reliable data sources, rather than being solely based on them.

Our final view

- 17.21 We maintain our view that, on balance, the requirement that the boundary review process is based on census data should be removed so that other data sources may eventually be used.
- 17.22 However, we acknowledge the concerns we heard about what such a change will mean, many of which we share. We consider that, to mitigate those concerns, there will need to be strong protections in place to ensure that the robustness of the boundary review process is upheld.
- 17.23 The census has long been the data source for the boundary review process. As we outlined in our interim report, it is a more concrete measure, grounded in counting the number of actual people who say they live in an area (that is, an electorate) on a given day. It also provides a population-level indicator of Māori descent and allows people of Māori descent to self-report their descent.
- 17.24 However, the census has not been without issues in recent years, including a significant undercounting of the Māori population. The census is also likely to face increasing challenges in the future as it appears that, over time, fewer people are participating in the census while its cost of delivery is significantly increasing.
- 17.25 As a result, in recent censuses, census data has had to be supplemented with other forms of data (such as the Estimated Resident Population, which draws on data sources from across government) to provide a more accurate measure of



population. It seems clear the use of other forms of data will also be required for future censuses.

- 17.26 We note that the population calculations that are undertaken for the boundary review process have constitutional significance; they determine the number of general electorate seats in the North Island, as well as the number of Māori electorate seats. For that reason, they need to be calculated carefully and transparently. The census provides a reasonably concrete and transparent basis for these calculations, and any moves to use more administrative data collected for non-electoral purposes in these calculations will need to be pursued with care. In particular, such moves should only occur following meaningful engagement with relevant stakeholders, including Māori, and independent review of the methods proposed. The outcomes of this consultation and any resulting methodological change should also be published for transparency.
- 17.27 When the Data and Statistics Act 2022 was being considered by parliament, some concerns were expressed by submitters to Select Committee about the independence of the government statistician under the Act. Under section 44, the Minister of Statistics can direct the government statistician to produce or cease production of official statistics. We consider that it would be inappropriate for electoral data to be subject to any ministerial input. As such, it should be clear in the Electoral Act that, for the purposes of the data gathered and provided to the Representation Commission, the government statistician is not subject to any direction from ministers on the sources they use.
- 17.28 Using administrative data collected for non-electoral purposes also raises concerns for us around Māori data sovereignty and social licence more generally. Appropriate protections would need to be put in place for ownership and use of this data for this purpose. We would expect these issues to be explored in any work by Stats NZ if it moves away from the current census methods.
- 17.29 A more robust and transparent process would also be required to help calculate the Māori descent population. At present, the Māori descent indicator for the Estimated Resident Population dataset is largely based on self-identified Māori descent status from the census, supplemented with administrative data from other government agencies and statistical imputation where there are gaps. If the census becomes less reliable or moves to be based primarily on administrative data rather than a nationwide survey, there could be fewer opportunities for individuals to self-identify their Māori descent. Such opportunities would need to be added over time, as we do not think it would be appropriate for Stats NZ to decide descent on people's behalf. Improved processes for Māori data would also help ensure that the interests of Māori are actively protected through the correct allocation of Māori electorate seats.
- 17.30 For these reasons, our recommendation to remove the requirement that the boundary review is based on census data relies on social licence about such a change. This recommendation is also contingent on our recommendations to improve Māori data governance (which we discuss in **Chapter 3**), the transparency,

robustness, and independent review of other data sources, and on a robust and transparent calculation of the Māori descent population.

The Panel recommends:

- R98. Removing the requirement that the boundary review is based on census data, so that other data sources could be used once improved processes are in place to ensure:**
- a. the transparency, robustness, and independent review of those data sources**
 - b. Māori data governance and a more robust and transparent calculation of the population of Māori descent.**

Population quota tolerance

Is there a case for change?

Issues identified

- 17.31 A few submitters to our first consultation thought the population variation tolerance was too low, and should be plus or minus 10 per cent. Others thought the current low tolerance level appropriate in that it supports the principle that all votes are of equal value – increasing it may be perceived as eroding this principle.
- 17.32 The population of each electorate is based on the total population within it (that is, of all ages), not the population of voters.
- 17.33 The Electoral Act's current tolerance of plus or minus five per cent for population variation between electorates means the Representation Commission has limited flexibility when applying the other criteria (such as existing boundaries, communities of interest, and topographical features, as set out at the beginning of this chapter). For example, it cannot always avoid splitting communities of interest.¹⁶ A higher permitted population variance would also better accommodate

¹⁶ Representation Commission, 2020. *Report of the Representation Commission 2020*, Wellington, p. 13.

the topography of Aotearoa New Zealand – and may partially address concerns about geographically large electorates.

- 17.34 The current quota tolerance was adopted under First-Past-the-Post. Under that system, it was appropriate to have a relatively strict adherence to equal representation for equal populations because the results of electoral contests directly determined the shape of parliament. Under MMP, the principle we adhere to is proportional representation based on nationwide support for parties, making a larger tolerance for population variance between electorates more acceptable.
- 17.35 Frequently changing electorate boundaries (and names) can create public confusion and add administrative costs. A higher tolerance would mean boundaries need to change less often.¹⁷

Our initial view

- 17.36 In our interim report, we recommended that, to stabilise electorate boundaries, the population quota tolerance should be increased to plus or minus 10 per cent.

Feedback from second consultation

- 17.37 Only a few submitters to our second consultation commented on this recommendation. Those who supported it did so because they considered it would give the Representation Commission greater flexibility when setting electorate boundaries.
- 17.38 Those submitters who opposed the recommendation were concerned about the impact of increasing the population quota tolerance, which could result in a 20 per cent difference in the number of people residing in different electorates. In their view, such a difference could grant disproportionate voting power to residents of one geographic region at the expense of another, or exacerbate existing inequities in the population size of electorates, particularly between the North and South Islands. One submitter did not consider that boundaries changing less frequently was sufficient reason to diminish the principle of all votes being as equal as possible.

Our final view

- 17.39 We maintain our view that, to stabilise electorate boundaries, the population quota tolerance should be increased to plus or minus 10 per cent.
- 17.40 As we explained in our interim report, the context for the population quota tolerance has changed since the current five per cent threshold was first set under

¹⁷ Beever, G., 2003. The New Game with the Old Rules: Boundary Determination Under MMP. *Victoria University of Wellington Law Review*, 34(1), p. 151.

the First-Past-the-Post electoral system. Under First-Past-the-Post, where the outcome of individual electorate races would directly impact the make-up of parliament, a low quota tolerance was important to ensure equal parliamentary representation of all population groups. Under MMP, where the nationwide party vote has the primary role in defining the make-up of parliament, the need for a low tolerance is less critical.

- 17.41 However, maintaining a low variation between electorates supports the important aim that each electorate Member of Parliament (**MP**) represents a similar number of people, ensuring each population group has equal and direct local representation in parliament. If this is allowed to increase without good reason, then this key principle of our voting system will be undermined.
- 17.42 We understand that a higher tolerance would, however, give the Representation Commission the flexibility to better apply the other statutory criteria it must consider. For example, this may result in fewer communities of interest needing to be bisected by electorate boundaries.
- 17.43 We also received evidence from the Surveyor-General in our first consultation that increasing the tolerance to 10 per cent would result in boundaries needing to change less frequently. The Surveyor-General's analysis of boundary reviews from 2002 to 2013 showed that the number of electorates exceeding a 10 per cent threshold – and therefore needing a boundary change – was 64 per cent lower than the number exceeding a five per cent threshold. The average number of electorates exceeding five per cent was 29, while the average number exceeding 10 per cent was 10 electorates. Fewer changes in boundaries may help voters – and the candidates seeking to represent them – to know and form a connection to their electorate.

The Panel recommends:

- R99. Increasing the population quota tolerance (that is, the extent to which it can vary from the average population in an electorate) to plus or minus 10 per cent when setting electorate boundaries.**

Criteria for setting electorate boundaries

Is there a case for change?

Issues identified

- 17.44 Some submitters to our first consultation were concerned about splitting communities of interest and thought more focus should be put on keeping communities of interest together by focusing on geography, rather than just population.
- 17.45 Adding a requirement to consider Māori communities of interest (defined by whakapapa links across hapū and iwi, among other considerations) in general electorates would reduce the chances of these natural communities being split. It would also reflect that many people of Māori descent choose to be on the general electoral roll. Such a change would match the existing criteria for general electorates, upholding the Crown’s equity and participation obligations under te Tiriti o Waitangi / the Treaty of Waitangi (**te Tiriti / the Treaty**).
- 17.46 The Surveyor-General suggested adding a new criteria relating to the geographical size of electorates to ensure that the Representation Commission is able to consider reducing the geographic size of some electorates (to the extent that it can within the population quota tolerance).

Our initial view

- 17.47 In our interim report, we recommended that Māori communities of interest should also be considered when setting the boundaries for general electorates as well as when setting Māori electorates.
- 17.48 We also noted the concern we heard about the large geographical size of some electorates. We considered, but did not recommend, including a “geographical size of electorates” criteria in the boundary review process.

Feedback from second consultation

- 17.49 Only a few submitters to our second consultation commented on this recommendation. A few supported our recommendation to add Māori communities of interest as a criteria for setting general electorates. While supporting the recommendation, the Surveyor-General noted the additional criteria may not have a major impact on boundary determinations because other criteria (particularly population quota, topographic features, and general community of interest) would continue to be the primary constraints on the Representation Commission’s decision-making.



- 17.50 A few other submitters considered that communities of interest for Māori were not relevant to setting boundaries for general electorates.
- 17.51 A few submitters were concerned about the declining number of rural electorates. One submitter suggested that population density or geographic area of electorates should be additional factors to enable the number of people residing in rural electorates to be smaller than urban electorates.

Our final view

- 17.52 We maintain our view that Māori communities of interest should also be considered when setting the boundaries for general electorates as well as when setting Māori electorates. We consider this change would reduce the chances of natural communities defined by whakapapa links across hapū and iwi being split. It would also reflect that many people of Māori descent choose to be on the general electoral roll.
- 17.53 As we did in our interim report, we acknowledge the concerns we heard over the large geographical size of some electorates. For example, Te Tai Tonga electorate encompasses the entirety of the South Island, Wellington and the Chatham Islands; West Coast-Tasman spans from Jacksons Bay to Farewell Spit. This creates issues for candidates and MPs being able to connect with voters, inequity for those candidates and MPs and their voters compared with smaller electorates, and the potential for a significant breadth of issues across an electorate.
- 17.54 Much of this is outside of the control of the boundary review process. A significant contributor to large electorates is the low population density of many rural areas – some electorates need to include significant areas of land to ensure that electorates meet even the lower end of the population quota threshold. The small number of Māori electorates also need to cover the whole country, so consequently these are quite large. In **Chapter 11**, we recommend changes to enable better participation by rural and remote communities. In **Chapter 13**, we recommend the creation of a new fund – Te Pūtea Whakangāwari Kōrero ā-Tiriti / Treaty Facilitation Fund – to facilitate party and candidate engagement with Māori.
- 17.55 We considered whether to also include a “geographical size of electorates” criteria in the boundary review process, as suggested by the Surveyor-General during the first consultation and by another submitter during the second consultation. However, we are concerned this may result in more rural electorates being at the lower end of the population quota tolerance and more urban electorates at the higher end, creating inequities in representation. It may also dilute the focus on

other criteria and would be unlikely to address the large geographical size of some Māori electorates.

The Panel recommends:

R100. Considering Māori communities of interest alongside general communities of interest in the setting of general electorates as well as for setting the Māori electorates.

Frequency of boundary reviews

Is there a case for change?

Issues identified

- 17.56 Boundary reviews are conducted every five years. They are currently paired to the census.¹⁸ A few submitters thought the boundary review process should occur less frequently, but most thought it should be aligned with the parliamentary term.
- 17.57 If boundary reviews are undertaken less frequently, there would be less frequent changes to electorate boundaries and names. This added stability may help electorate candidates and parties to build relationships within electorates. Less frequent reviews would also reduce the cost and administrative burden of boundary reviews.
- 17.58 If boundary reviews were more frequent, then changes in population growth and distribution could be addressed faster.
- 17.59 As discussed in **Relationship to the census** above, there may be a future situation where the Estimated Resident Population is used instead of census data, making the five-year timetable arbitrary.

Our initial view

- 17.60 In our interim report, we recommended retaining the five-year frequency for boundary reviews, even if a four-year term of parliament was adopted. We noted

¹⁸ Electoral Act 1996, section 35(2)(c); Data and Statistics Act 2022, section 34(1).

that five years struck a reasonable balance between population growth, stability and accuracy.

Feedback from second consultation

17.61 Only a few submitters to our second consultation commented on this issue. The Surveyor-General suggested that the boundary review needs to be synchronised with the election cycle, with revised boundaries in place around nine months before a general election. The Surveyor-General suggested a review could be triggered when the proportion of existing electorates exceeding the population quota tolerance rises above a specified percentage, or that a review must be completed within two cycles of the previous review.

Our final view

17.62 As indicated previously, a key consideration for us is to provide electors with consistency and stability in their electorate, where possible.

17.63 A regular time interval needs to be chosen. We maintain the view that the five-year frequency for boundary reviews strikes the best balance between population growth, stability and accuracy. We note this is the case even if a four-year term of parliament was adopted, or if the census no longer occurred every five years. Our recommendation on the population quota tolerance might also reduce how often boundaries need to change.

17.64 We considered the suggestion by the Surveyor-General that a boundary review should be triggered based on the number of electorates exceeding the population quota tolerance. However, we note that this would mean that reviews are not regular and, depending on population trends, could mean that reviews occasionally occur more frequently than at present, which would work against the benefits of an increased population quota tolerance. Similarly, a set period of conducting a review every two electoral cycles would provide more regularity but could, depending on the length of the parliamentary term, result in boundary reviews only occurring every eight years, which would be too infrequent.

The Panel recommends:

R101. Retaining the five-year frequency of boundary reviews.



Membership of the Representation Commission

Is there a case for change?

Arguments against change

- 17.65 Just over half of submitters who answered our question about the Representation Commission in our first consultation were generally satisfied with the status quo for boundary reviews and the Representation Commission. The current composition of the Representation Commission has worked well, and the results of its work have been generally viewed as non-partisan and satisfactory.
- 17.66 Some people consider that due to their experience and on-the-ground knowledge, the political appointees can bring significant community of interest knowledge. It is difficult to find others who can bring that expertise of communities across the whole of the country. Two of three Māori members are also political appointees, and alternative mechanisms for appointment of these members would be needed if all political appointees were to be removed.
- 17.67 There is a view that in addition to the knowledge and views they bring, the non-political members are also important to ensure that the political appointees do not have a voting majority within the Representation Commission. This helps ensure that the decisions are non-partisan and objectively fair for all parties.

Arguments for change

- 17.68 The presence of political appointees brings into question the impartiality of the Representation Commission, and risks undermining public confidence in the process. The presence of its politically appointed members has been repeatedly raised as being inconsistent with the neutrality and independence of the Representation Commission, and more broadly with the fundamentals of the MMP electoral system (for example, by updating representation to reflect multi-party parliaments). The Royal Commission noted that the independence of the Commission was of critical importance to maintain public confidence in it when boundary placements may favour one party over another.¹⁹ Most submitters who argued for change were concerned about political representation on the Commission, and thought it should be altered or removed. These submitters were concerned about independence and the need to protect the work of the Commission against political interference.
- 17.69 Some people argue that if political appointees are retained, then each party represented in parliament should be allowed to appoint a member. The current

¹⁹ Royal Commission on the Electoral System, 1986. *Report of the Royal Commission on the Electoral System*, Wellington: House of Representatives, p. 134.

system is viewed as unfair to the smaller parties in parliament, as their views may not be well represented by the government and opposition appointees. The current arrangements are also more in line with First-Past-the-Post than MMP.²⁰ To date the government and opposition appointees (but not the appointees of Māori descent) have been ex-Labour and ex-National MPs.

- 17.70 Other people thought that the current lack of consideration of Māori communities when setting general electorate boundaries creates unfairness and assumes Māori are not on the general electoral roll, when many are. A few submitters said that Māori electorate boundaries should be decided solely by Māori, or that Māori should have as much say in determining general electorate boundaries as non-Māori currently have in determining Māori electorate boundaries. Some said that to ensure the right expertise is available, the Māori members of the Representation Commission should also be involved when general electorate boundaries are set.

Our initial view

- 17.71 In our interim report, we recommended that the current membership of the Representation Commission be retained, including that the membership of the political appointees should not be removed or expanded.
- 17.72 To ensure that there is sufficient expertise to understand impacts on Māori communities when general electorate boundaries are being considered, we recommended that the Māori members of the Representation Commission should also be members when general electorates are being determined. We considered this change would better uphold te Tiriti / the Treaty than currently, because it would ensure Māori interests are represented through all parts of the boundary review process.

Feedback from second consultation

- 17.73 A few submitters supported our recommendations concerning the membership of the Representation Commission, though provided few reasons why.
- 17.74 A few other submitters expressed concerns about our recommendations, and particularly the role of political appointees. One electoral law expert commented that political appointees should be removed entirely. A few other submitters noted that adding the current Māori members to the determination of general electorate boundaries would result in four political appointees on the Representation Commission. These submitters were concerned this may give political appointees too much influence over the boundary determination. One submitter suggested creating a legal obligation for the political appointees to consult all parties in a government or all parliamentary parties.

²⁰ Beaver, above n 17, p. 145.

- 17.75 The Surveyor-General argued the size of the Commission would also become unwieldy as a result of the expanded membership. He suggested the consideration of Māori communities of interest might be better served solely by the chief executive of Te Puni Kōkiri. The Surveyor-General also suggested the chairperson of the Local Government Commission should be a full member (rather than a non-voting member), given their knowledge of “communities of interest” and local government boundaries.

Our final view

- 17.76 In our interim report, we noted that we had considered a range of potential changes to the members of the Representation Commission, including whether the political appointees should be retained.
- 17.77 We considered whether all political appointees should be removed from the Representation Commission. This would help to remove any risk, perceived or otherwise, of the Representation Commission being subject to partisan political influences. In this situation, these members would be replaced by those who could bring community knowledge, and alternative mechanisms would be used to appoint Māori members.
- 17.78 However, there were no clear alternatives to replacing the community of interest expertise that the political appointees bring. While individuals with knowledge of individual regions can be found, it is difficult to identify individuals who can bring a local knowledge of, and connections to, communities across the entirety of the country, as is required. There are also few official roles that require or would be expected to have that type or level of knowledge. In contrast, parties actively build community knowledge to understand voters and the issues they face, including through being out and about in the electorates. The political appointees can often bring this knowledge and experience due to their roles as part of the political machinery.
- 17.79 We consider the current system is working as well as it can in this regard. As such, we maintain our view that the current membership of the Representation Commission should be retained.
- 17.80 We also considered whether a non-voting representative for each party with MPs in parliament should be included, as recommended by the Royal Commission in 1986, but were concerned this would make the Representation Commission unwieldy and hamper the boundary review process. This would not fit with our objective to ensure that the electoral system remains practical and enduring. We also considered reducing the number of ex officio members. However, given we are recommending that the voting rights for the political appointees be retained, the current ex officio members are required to ensure a voting majority for the non-political appointees.

- 17.81 We also considered a range of options regarding the Māori members of the Representation Commission. We considered reducing the number of members to ensure representatives of Māori interests have a voting majority when Māori electorates are considered, fitting with the view of the Royal Commission.
- 17.82 Rather than maintain or increase membership differences when considering the different types of electorates, we instead recommend that the Māori members of the Representation Commission are also members when general electorates are being determined. This would ensure there is sufficient expertise to understand impacts on Māori communities when general electorate boundaries are being considered. This change would better uphold te Tiriti / the Treaty than current settings because it would ensure Māori interests are represented through all parts of the boundary review process. In **Chapter 3**, we note the need to actively protect Māori electoral rights and provide equitable opportunities for Māori participation.
- 17.83 We acknowledge that this recommendation would have an impact on the composition of the Representation Commission, including on the number of political appointees on the Commission when determining general electorate boundaries. However, we consider that the current Māori members are the most appropriate people to bring the skill and knowledge required to consider communities of interest for Māori as a criteria for setting general electorates. While the membership of the Commission will be expanded, political appointees will remain in the minority, with the chairperson able to make a casting vote in instances of deadlock.
- 17.84 We note that, while the chairperson of the Local Government Commission has knowledge of communities of interest and local government boundaries that is valuable for determining parliamentary electorate boundaries, their role and functions relate to local government. We consider it appropriate that they continue to be a non-voting member of the Representation Commission.

The Panel recommends:

R102. Retaining the current membership of the Representation Commission.

R103. Adding the current Māori members of the Representation Commission – the chief executive of Te Puni Kōkiri and the two political representatives of Māori descent – as members for determining general electorate boundaries.



18. Electoral Offences, Enforcement and Dispute Resolution

18.1 In this chapter, we consider the current range of electoral offences and the associated penalties, and the organisations responsible for enforcing electoral law.

Electoral offences

18.2 The Electoral Act 1993, the Electoral Regulations 1996, and the Broadcasting Act 1986 contain over 100 different electoral offences.

18.3 All the offences in the Electoral Act are criminal offences, and some carry penalties specific to the electoral system alongside fines and terms of imprisonment.

18.4 Corrupt practices threaten the integrity of the electoral system. Examples include bribery, unduly influencing voters, or interfering with ballot papers.¹ Penalties include up to two years' imprisonment and/or up to a \$100,000 fine. Corrupt practices have electoral system penalties. Individuals found to have committed a corrupt practice automatically are disqualified from voting or running as a candidate for three years, and if they are a sitting Member of Parliament (**MP**) then they must vacate their seat in parliament.²

18.5 A range of other offences, some of which are called illegal practices, cover other breaches of electoral law. Examples include inducing someone to vote who is not qualified to vote, and some electoral financing offences.³ These offences attract a range of levels of fines. Some forms of behaviour can be either a corrupt or an illegal practice, depending on the circumstances of the offending. Penalties can also be incurred under the Electoral Regulations 1996.⁴ Prosecutions under the

¹ Electoral Act 1993, bribery (section 216), interfering with or influencing voters (section 197), interfering with ballot papers (section 201).

² Electoral Act 1993, sections 55, 80, 98 and 100.

³ Electoral Act 1993, section 222 and Part 6B (sections 214, 214A, 214G and 214GC).

⁴ For example, under regulation 68 of the Electoral Regulations 1996, offences relating to special voting attract up to three months' imprisonment or a fine of up to \$1,000.

Earlier recommendations

2011, 2014 and 2017 Electoral Commission post-election reports

In 2011 and 2014, the Electoral Commission recommended consideration of whether the current enforcement provisions are adequate and how better enforcement of electoral offences can be achieved. The Commission expanded on this recommendation in 2017 by commenting that there appear to be some offences that could more appropriately be dealt with by administrative penalties or other mechanisms rather than referral to the Police for prosecution.

2011 Justice Select Committee

The Justice Select Committee recommended that the government consider examining the current electoral enforcement provisions to determine whether they are adequate.

Electoral Act must be commenced within either six months or three years of the offence being committed, depending on the offence.⁵

- 18.6 In addition, there are several offences in the Broadcasting Act 1989 applying to broadcasters and those arranging broadcasts during the election period. Examples include broadcasting advertisements outside of the permitted period and broadcasters not giving identical terms to each party or candidate.⁶ Penalties include fines of up to \$100,000.⁷
- 18.7 Some behaviours are also captured by the Crimes Act 1961, which can attract higher penalties than those under the Electoral Act.⁸ Prosecutions can be brought over a longer time under the Crimes Act, and stronger search and seizure powers are available to the Police when investigating Crimes Act offences.⁹

⁵ Electoral Act 1993, section 226.

⁶ Broadcasting Act 1989, sections 70 and 72.

⁷ Broadcasting Act 1989, section 80I.

⁸ However, see *Zheng v R* [2023] NZCA 551 (holding that the offence of obtaining by deception under the Crimes Act 1961, s 240(1)(a) does not apply to a donor who unlawfully disguises the source of donations to a political party).

⁹ Search and Surveillance Act 2012.

Is there a case for change?

Issues identified

Offences and penalties generally

- 18.8 Individual electoral offences have been added and altered over time, with some directly carried over from the previous law (the Electoral Act 1956). There has not been a systematic review of the offences, to ensure internal consistency and/or alignment with penalties under other areas of the law.
- 18.9 All electoral offences are criminal offences, resulting in criminal convictions irrespective of the severity of the offence, and can only be enforced through the criminal courts.
- 18.10 Many low-level electoral offences may be more appropriate as infringement offences, such as instant fines (infringement offences are criminal offences that do not result in a conviction). Civil sanctions may also be appropriate and could include monetary penalties, injunctions, and enforceable undertakings. The United Kingdom Electoral Commission, for example, is able to impose civil sanctions, such as fixed-term monetary penalties and stop notices.
- 18.11 Electoral Act penalties do not always align with penalties under other statutes. For example, recent prosecutions of alleged donation offences have been brought under the Crimes Act 1961 with a maximum penalty of seven years imprisonment, rather than under the Electoral Act which has a maximum penalty of two years imprisonment.
- 18.12 No consistent distinction is made between the penalties for candidates, MPs, party office holders – and other offenders. What works as a deterrent for people working within the political system may differ from those outside it. The need for limitation periods in the Electoral Act is another issue that could be investigated.
- 18.13 Under the Electoral Act, a political party's secretary is personally liable for a failure to comply with many of the rules governing fundraising, election expenses and financial reporting. There is no ability to hold the party as an organisation legally accountable. Penalties applied to parties directly could potentially create stronger in-system regulation, with parties exerting more pressure on their members and affiliates to conform with the law. However, the voting public's response to any revelations of unlawful behaviour by a political party is already a strong deterrent.
- 18.14 The current rules in many areas of electoral law are also not easily understood by parties and candidates or voters. This lack of understand could mean many unintentional offences may be committed. It also means the Electoral Commission's time may be taken up advising participants of what meets the rules.

Treating

- 18.15 The Electoral Commission has previously raised specific concerns with the offence of “treating”. Treating is when someone provides food, drink or entertainment before, during, or after an election for the purpose of “corruptly” influencing a person to vote or refrain from voting. It is also an offence to corruptly accept food, drink or entertainment under these conditions. There is an exception for “the provision of a light supper after any election meeting”.¹⁰
- 18.16 The offence of treating creates many problems and confusion in practice.¹¹ It is unclear how much food, drink and entertainment can be offered or accepted and under what circumstances. This lack of clarity might mean that such great care is taken not to treat voters that it prevents behaviour that is acceptable, such as providing ordinary hospitality. In particular, the current offence fails to acknowledge manaakitanga, where hospitality shows connection, kindness and respect in Māori culture. Hospitality is also important in many other cultures.
- 18.17 The offence of treating also requires a corrupt intent, which can be difficult to prove. In its submission to our first consultation, the Electoral Commission indicated its view that there would need to be an understanding or contract in place that voters would vote in a certain way to provide sufficient evidence that the offence of treating had been committed. Providing voters with food, drink and entertainment without the necessary corrupt bargain is legal, adding further confusion about what is allowed.

Protecting election officials

- 18.18 Electoral officials can have anyone removed who is obstructing or disrupting the voting process and can order the arrest of anyone who they reasonably suspect of interfering with ballot papers or boxes.¹² There is no offence for harassing an electoral official.

Our initial view

- 18.19 After considering a range of issues, we recommended an overhaul and consolidation of the offences and penalties in the Electoral Act in our interim report.
- 18.20 We noted the central importance offences play in upholding the electoral system and that they had not been reviewed for a long time. The lack of recent reviews led us to question whether the offences regime remained fit for purpose.

¹⁰ Electoral Act 1993, section 217.

¹¹ See Geddis, A., 2023. *Electoral Law in Aotearoa New Zealand*. 3rd ed. Wellington: LexisNexis New Zealand Ltd, pp. 127 – 129.

¹² Electoral Act 1993, sections 165 and 194.

- 18.21 We recommended repealing of the offence of treating, noting several problems with it, including its ability to negatively impact on efforts to turn out the vote.
- 18.22 We also recommended making it a criminal offence to harass an electoral official to ensure the safe conduct of elections, especially voting.

Feedback from second consultation

Overhaul and consolidation of offences and penalties

- 18.23 Most submitters, including those responding to our online form, agreed that offences and penalties in the Electoral Act should be overhauled. Some did not agree, although few provided reasons for their view.
- 18.24 Some particular points were raised in support of an overhaul, including that:
- limitation periods should be reviewed (when the Criminal Procedure Act 2011 applies, charges must be filed within six months of the offence being committed)
 - the offence of including an unauthorised election expense (section 206B Electoral Act) should be repealed (it being no longer possible to charge this offence since changes made by the Electoral (Finance Reform and Advance Voting) Amendment Act 2010)
 - section 206D (paying election expense in excess of the prescribed minimum) should be amended so that the offence occurs when the expense is incurred, to avoid not being able to charge the offence when an invoice is not paid.

Treating

- 18.25 A few submitters, including the New Zealand Law Society, supported repealing the offence of treating, with two submitters supporting repeal only in the pre-election period and retaining the offence on polling day. Of the two parties who expressed support for the repeal of the treating offence, one wanted to be able to offer hospitality. However, another party was concerned about advantages given to large parties with big entertainment budgets. This submitter thought entertainment should be defined in the Act.
- 18.26 A few submitters opposed repeal. These submitters were opposed to any means of undue influence and of bribing voters or buying their votes. They wanted to retain the offence to retain this aspect of the Act.

Protecting election officials

- 18.27 The Electoral Commission and a few other submitters supported our recommendation to make it a criminal offence to harass electoral officials. The Electoral Commission questioned whether a similar offence could be introduced for the harassment of candidates, since this behaviour could undermine

democracy. A few submitters thought existing offences, including those in the Crimes Act 1961, would be sufficient.

Party liability

- 18.28 One submitter expressed concern about the inability to directly hold parties liable under the Act, especially for election finance and advertising breaches. This submitter considered party liability for systemic breaches was fairer and more effective than only being able to prosecute a party secretary. They thought a defence of reasonable excuse should apply.

Our final view

- 18.29 We remain in favour of an overhaul and consolidation of offences under the Act, and we note the recently released decision of the Court of Appeal stating the inability to charge the defendants under the Electoral Act represented a significant weakness in the Electoral Act's offence provisions.¹³
- 18.30 Electoral offences seek to ensure compliance with the electoral rules, maintaining the integrity of and confidence in the electoral system. Offences should be targeted at those elements of electoral law most critical to upholding our electoral system. Penalties need to be set at levels and enforced to the extent that they deter offending in the first place and demonstrate that breaking the rules will result in appropriate consequences.
- 18.31 Given the breadth of our work, and the detailed, technical legal nature of prescribing offences in the law, we consider this consolidation is best undertaken by legal and policy experts when the Electoral Act is redrafted in line with our recommendation in **Chapter 2**.
- 18.32 Electoral offences have been added and amended over time, with some carried over from earlier electoral laws. There are some clear inconsistencies in how various forms of behaviour is treated as a result. For example, paying an elector to display a poster or notice on their property is an offence, but paying them to wear a rosette or clothing expressing support for a candidate is not.
- 18.33 We remain concerned that the penalties applied to Electoral Act offences may not be aligned with enforcement regimes in other areas of the law. Inflation alone may have reduced the deterrent effect of many of the financial penalties over time.
- 18.34 We think there is merit in questioning whether all breaches of electoral law should be criminal offences. For example, a party secretary who is late filing the party's expenses return could still be liable for a fine of up to \$40,000, but as a civil penalty, rather than a criminal offence. We also question whether all offences are still required or remain relevant.

¹³ *Zheng v R* [2023] NZCA 551 at [21].

Treating

- 18.35 We also consider that the offence for treating is no longer fit for purpose. Treating dates from the 1850s, when candidates would ply potential voters with alcohol and entertainment before taking them to the polls. The offence pre-dated the introduction of the secret ballot, which made treating less effective in practice because it was no longer possible to know if a voter actually voted the way they claimed they would. Some of the behaviours that treating is meant to prevent are also likely to be covered by the bribery offence.
- 18.36 The offence is also problematic because it may negatively affect efforts to turn out the vote. Providing food and entertainment can help to encourage participation during elections by creating a more festive atmosphere, but the uncertainty about what constitutes treating may make people reluctant to do so.
- 18.37 The treating offence is confusing for parties, candidates and the public, and as a result it may be ineffective in preventing harm while constraining acceptable behaviour. We recommend its repeal.
- 18.38 One of the objectives of our review is to consider whether the law is fit for purpose. The offence of treating as it currently stands is out of date and repealing it would not dilute the importance of making sure anyone attempting to bribe or influence voters could be held to account under other offences in the Act.

Protecting election officials

- 18.39 We think that creating an offence of interfering with or harassing an electoral official would recognise that electoral officials may be the target of attempts to obstruct, undermine or interfere with the conduct of elections, as well as violent threats. It would provide a safeguard if election environments became more contested and disrupted in the future.
- 18.40 The definition of harassment in the Harassment Act 1997 requires a pattern of ongoing behaviour, which would not fully cover election officials, who may be subject to a single act not involving ongoing contact. For the purposes of this new offence, we see harassment as any intentional behaviour that obstructs, undermines, or interferes with the work of an electoral official in conducting elections. This interpretation would align more closely with protections in place for voters. We think this offence should apply at any point in the electoral cycle, not just to election day, as there has been post-election intimidation of electoral officials in other countries.

Protecting candidates

- 18.41 We considered whether to recommend a similar offence relating to candidates. We consider that there are significant differences between candidates and election officials. Election officials are hired to do a job and should be free to carry out their tasks. Candidates have put themselves into the public sphere to represent a

party and to contest ideas and viewpoints. Some degree of spirited dispute and argument goes with the territory and the right to free speech is important.

- 18.42 Conversely, the targeting of candidates can create a climate of fear that may lead to people becoming unwilling to stand for parliament. The effects of this may be inequitable across demographics, such as gender and ethnicity, with potential impacts on Māori participation and could erode participation.¹⁴
- 18.43 While it is important that election campaigns are robust, candidates should not be subject to harassment or other violent or intimidating behaviour, and we note with concern that the incidence of such behaviour towards candidates is being reported more frequently. Addressing this issue may become necessary in the future to preserve the integrity of the system.
- 18.44 At the time of writing, best practice for responding to this behaviour, including the adequacy of the criminal law response to it is not clear.¹⁵
- 18.45 We have decided against making a recommendation in this area, but it could become part of the overhaul and consolidation of offences. One possible option could be considering politically motivated behaviour against a candidate as an aggravating factor at sentencing, rather than setting a new level of liability.

Party liability

- 18.46 We have also considered the issue of party liability, which was raised in consultation. A closer look at whether parties, rather than – or as well as – individuals within them, should be liable for breaches of electoral law is advisable. The ability to hold a party directly liable would be particularly valuable for systemic breaches of donations and expenditure rules. Some comparable countries including Canada, the UK, and Australia have adopted party liability using a range of mechanisms.
- 18.47 In **Chapter 12**, we recommend that a consequence of failing to comply with existing statutory requirements to provide for member participation in the selection of candidates could be party de-registration.
- 18.48 We note that party liability is achievable without requiring that parties adopt a particular legal structure. The protection of the right to freedom of association in the New Zealand Bill of Rights Act 1990 can, therefore, be upheld.

¹⁴ The threat of gender-based violence was a theme emerging from research: Commonwealth Women Parliamentarians (New Zealand Group), 2018. *Sexism, harassment, and violence against women parliamentarians in New Zealand*. Geneva: Inter-Parliamentary Union and Commonwealth Women Parliamentarians (New Zealand Group).

¹⁵ Every-Palmer, S., Barry-Walsh, B. & Pathe, M., 2015 Harassment, stalking, threats and attacks targeting New Zealand politicians: A mental health issue. *Australian & New Zealand Journal of Psychiatry*, 49(7), pp. 634 – 641.

Review principles

18.49 For all of these reasons, we recommend that, when the Electoral Act is redrafted, all electoral offences and penalties are reviewed to ensure they are consistent and still fit for purpose. This work will need to ensure the Electoral Act's offences and penalties are:

- **Proportionate** to the nature of the conduct involved and the harm caused. This will mean greater use of penalties beyond the criminal law, including infringements and civil sanctions. For example, it will generally be inappropriate to use the criminal law to address matters relating to a minor or technical breach of the rules (such as a failure of a voter to update their address). By contrast, conduct that involves deliberate activity that undermines the integrity of an election and is motivated by political objectives (such as interference with ballot papers) should be met with more serious criminal sanctions.
- **Effective:** will the offence and penalty achieve the desired enforcement objective for the prohibited act? For example, if deterrence is the primary objective for a penalty, issuing a \$1,000 infringement notice to a large party may not meet that objective. To be effective, the offences and penalties will also need to consider situations where associates or agents of a party undertake the prohibited action on their behalf and the issue of party liability. Timeliness will also need to be considered – for example, prosecutions taking place long after an election may weaken the deterrent effect of the offence.
- **Practical:** electoral offences and penalties should be clear, consistent, easily understood, with the sanctions able to be applied without undue complexity or legal risk. This will require consolidation of the many and highly specific offences and penalties.

18.50 We consider that the seriousness with which the Act responds to corrupt practices is appropriate and plays an important role in signalling the importance of protecting electoral integrity.

Consequences of being placed on the Corrupt Practices List

Is there a case for change?

Issues identified

- 18.51 A few submitters to our first consultation thought it was appropriate that offenders lost the right to vote when they had specifically set out to undermine the integrity of elections.
- 18.52 Given that the right to vote is guaranteed under the New Zealand Bill of Rights Act 1990, there must be a strong justification for automatically removing that right from those found to have committed a corrupt practice. Further, these offenders lose the right to vote at a lower penalty level than prisoners currently do (although see our recommendation on prisoner voting in **Chapter 7**).
- 18.53 Disenfranchisement also fails to reflect that the harm caused by most corrupt practices is in the loss of trust and confidence in the system. Relative to the other penalties – fines and imprisonment – removal from the electoral roll may not be an effective deterrent for individual voters although its loss to those who abuse it signals the importance with which we hold the right to vote. However, it may be appropriate for some, depending on the circumstances of the case. For example, it may be an effective penalty for candidates and sitting MPs because it involves the loss of a seat or the ability to stand for parliament in the next electoral cycle. In other cases, the seriousness of the offending or the extent of the offender's influence may call for disenfranchisement.

Our initial view

- 18.54 We also considered changes to the most serious category of electoral offences, corrupt practices. Our initial view was that these most serious offences are important and should be retained.
- 18.55 We considered whether the automatic consequence of disenfranchisement for being placed on the Corrupt Practices List should be retained and concluded that a judge should have discretion to waive this consequence if it is not justified by the circumstances. The right to vote is a fundamental right, and its removal should allow for the circumstances of the case to be considered.

Feedback from second consultation

- 18.56 Only a few submitters responded to our recommendation for judicial discretion to restore voting rights to someone placed on the Corrupt Practices List as a result of being convicted of a corrupt practice. One submitter thought conviction was an



adequate penalty because it would likely lead to removal from a position of influence. Another thought the existing judicial ability to restore the vote through downgrading the offending to an illegal practice under section 225 of the Act, and the fact that disenfranchisement ended after three years, placed sufficient parameters on the penalty.¹⁶

18.57 In terms of disenfranchising candidates from standing, one submitter thought it was better to allow them to stand and then to let the voters decide.

Our final view

18.58 As corrupt practices are deliberate attempts to influence election outcomes, most of the current penalties – including imprisonment, significant fines, disqualification from running as a candidate, and loss of seat for sitting MPs – are appropriate and should be retained, if not increased.

18.59 However, we did consider whether disenfranchisement was an appropriate penalty for corrupt practices. Disenfranchisement is an automatic consequence of being placed on the Corrupt Practices List.

18.60 We note that the disenfranchisement penalty limits the fundamental right to vote and that the current law does not, at first glance, uphold the principle of accessibility or align with our recommendation to return voting rights to prisoners. The other penalties, such as large fines and terms of imprisonment, may be sufficient on their own.

18.61 The United Nations has commented that restricting the right to vote may only be subject to reasonable restriction and, under the New Zealand Bill of Rights Act 1990, the right can only be limited to the extent that can be demonstrably justified in a free and democratic society.¹⁷

18.62 Disenfranchisement for committing a corrupt practice reflects the principle that, if someone acts to undermine the electoral system, then their ability to participate in any part of it should be removed for a time. We therefore consider disenfranchisement should be retained as a default penalty for corrupt practices. It is a justified limitation on the right to vote because of the need for effective penalties that protect the integrity of the electoral system.

18.63 We think the Electoral Act should make provision for the fact that the motivations of some individuals in committing corrupt practices may warrant more serious consequences than for other individuals. For example, a candidate bribing people

¹⁶ Under section 225 of the Electoral Act 1993, a judge can find a person charged with a corrupt practice guilty of an illegal practice if the circumstances warrant it.

¹⁷ *General comment no. 25, The right to participate in public affairs, voting rights and the right of equal access to public service (article 25)* UN Doc CCPR/C/21/Rev.1/Add.7 (27 August 1996), p. 4; New Zealand Bill of Rights Act 1990, section 5.

for their votes is attempting to corrupt the electoral system, whereas a voter who casts a vote on behalf of a family member or friend may have a different intent. The two examples may have very different impacts. We think the consequence of committing a corrupt practice should be able to reflect this difference.

- 18.64 Under section 225 of the Electoral Act, a judge can find a person charged with a corrupt practice guilty of an illegal practice if the circumstances warrant it. That change would remove disenfranchisement as a consequence, because being placed on the Corrupt Practices List is not an option for an illegal practice. However, our recommendation would allow a finding of guilt for the corrupt practice, along with the higher fines and terms of imprisonment some of these offences attract, while introducing the ability of a judge not to remove the right to vote where the circumstances warrant that. It would also provide higher protection of the right to vote because this would get judicial attention for each case, rather than being an automatic consequence.
- 18.65 A temporary voting disqualification on conviction of a corrupt practice should remain the default, but we recommend that a judge should have discretion to waive this consequence if it is not justified by the circumstances.
- 18.66 After considering the second consultation responses, we remain of the view that it would be helpful to make the availability of judicial discretion clearer, so that it will be considered in appropriate cases. Although disenfranchisement is an appropriate penalty for attempting to undermine the integrity of the electoral system, flexibility in its application would help to distinguish between the different behaviours and their impact. These factors will often depend on the circumstances of the case.
- 18.67 The overhaul of electoral offences that we recommend should include reviewing what constitutes a corrupt practice, ensuring that disenfranchisement only applies in the most serious cases.

Interaction with our other recommendations

- 18.68 We recommend new offences and changes to existing offences in other chapters of this report. In **Chapter 12**, we recommend a new offence for obstructing or failing to provide information to the Electoral Commission in a timely manner when it is auditing party membership.
- 18.69 In **Chapter 13**, we recommend a new anti-avoidance offence provision to strengthen enforcement of our recommended changes to political finance rules. We also recommend increasing the Electoral Commission's monitoring powers over third-party promoter compliance and offence provisions, including restricting collusion between third-party promoters and political parties. Our recommendations in **Chapter 13** would require a review of the political finance offences generally.

- 18.70 In **Chapter 13**, we also recommend removing the protected disclosure regime. This recommendation would result in removing the offence of prohibited disclosure in section 208F of the Electoral Act. Our recommendation to abolish the broadcasting regime in **Chapter 14** would also result in all the broadcasting offences being removed.
- 18.71 The changes we recommend to accessing electoral rolls in **Chapter 16** will require updating the offences in sections 116 to 121 of the Electoral Act.
- 18.72 In **Chapter 19**, we recommend amending the offence of knowingly publishing false information by extending it throughout the voting period, and invite further consideration of the scope of the undue influence offence.
- 18.73 Each of these recommendations should be considered as part of the general overhaul and consolidation of offences that we propose.

The Panel recommends:

- R104. Undertaking an overhaul and consolidation of all electoral offences and penalties, to ensure they are consistent and still fit for purpose. This work should be guided by the principles of proportionality, effectiveness and practicality.**
- R105. Giving judges an express discretion to restore voting rights for people found guilty of a corrupt practice.**
- R106. Repealing the offence of treating voters with food, drink or entertainment before, during or after an election for the purpose of influencing a person to vote or refrain from voting. Also repealing the offence of corruptly accepting food, drink or entertainment under these conditions.**
- R107. Making it a criminal offence to intentionally obstruct, undermine or interfere with the work of an electoral official in conducting elections.**

Enforcement

- 18.74 Enforcement of electoral law is currently undertaken by several organisations.
- 18.75 The Electoral Commission, as electoral administrator, is the first line of compliance. The Commission undertakes a range of education, engagement, and outreach to ensure electoral rules are understood, and receives complaints from the public, candidates and parties. The Electoral Commission can enquire into the complaints reported to it.¹⁸ However, the Commission does not have any formal investigative or enforcement powers, and instead must refer any allegations or suspected offences to the Police if it believes there is sufficient basis for further investigation. For some offences, neither the Police nor the Electoral Commission can obtain information from third parties, such as internet or telecommunications companies (known as production orders), because this process is only available for sentences with a penalty of imprisonment.¹⁹
- 18.76 The Police may receive both referrals from the Electoral Commission and complaints directly from the public. The Police independently decide whether to investigate any matter referred to them, and then, following investigation, whether to prosecute. More serious offences may be referred by the Police to the Serious Fraud Office.
- 18.77 The Serious Fraud Office investigates and prosecutes serious or complex financial crimes, including bribery and corruption. The Office focuses on a relatively small number of cases that can have a disproportionately high impact, including focusing on those that could undermine confidence in the public sector or are of significant public interest.²⁰
- 18.78 Election advertising and political campaigning are also regulated by the Broadcasting Standards Authority, the Advertising Standards Authority, and the New Zealand Media Council. This regulation is discussed further in **Chapter 14**.
- 18.79 The Electoral Commission received approximately 1,000 queries and complaints during the 2020 general election, with similar numbers received in 2017.²¹ The Electoral Commission takes a range of responses. It may be satisfied by a response provided (for example, where the Electoral Act provides for a reasonable excuse) or it may send a warning letter to alert someone to a potential breach. The Commission refers potential offending to the Police, as appropriate. There has been an increase in prosecutions over time, with around two prosecutions in

¹⁸ Electoral Act 1993, section 6 empowers the Electoral Commission to make any inquiries necessary for the proper discharge of its functions.

¹⁹ Search and Surveillance Act 2012, section 72(a).

²⁰ See Serious Fraud Office, 2023. *Statement of Intent 2023-2027*. Auckland: Serious Fraud Office.

²¹ Electoral Commission, 2021. *Report of the Electoral Commission on the 2020 General Election and referendums*, Wellington: Electoral Commission, p. 53.

Earlier recommendations

1986 Royal Commission on the Electoral System

In discussing enforcement of election finance legislation, the Royal Commission was of the view that the Electoral Commission should be empowered to instruct legal counsel to initiate a prosecution if it believes a breach of the law has taken place.

2011, 2014 and 2020 Electoral Commission post-election reports

In 2011 and 2014, the Commission recommended that consideration be given for how better enforcement of electoral offences can be achieved. In 2020, support was also expressed for the Justice Select Committee recommendation that the Commission be granted investigatory, enforcement and sanction powers.

2017 Justice Select Committee

The Justice Select Committee recommended that the government give the Electoral Commission some investigatory, enforcement, and sanction powers, but that major breaches of electoral law should remain with the Police. It specifically recommended providing the Commission the power to investigate electoral offences; obtain documents and other evidence; impose fines; and impose other remedies for minor breaches of electoral law.

previous years rising to approximately 20 prosecutions taken in 2022 in relation to the 2020 election. The Serious Fraud Office has also undertaken a few high-profile prosecutions under the Crimes Act 1961 in recent years relating to donations.²²

Is there a case for change?

Arguments against change

18.80 Of those submitters who responded to the question about the roles and functions of the Electoral Commission in our first consultation, most were split between whether the Electoral Commission should take a larger role in enforcing electoral law or not. Some submitters were strongly against the Commission gaining enforcement powers, as this would conflict with the Commission's function to promote and encourage people to enrol, vote and stand for election.

²² See *R v EF* [2022] NZHC 1755, currently under appeal by the Serious Fraud Office; *Zheng v R* [2023] NZCA 551, where the court held that a defendant must obtain, either directly or indirectly, a benefit themselves, through their deceptive conduct. It is not sufficient that a party obtains a benefit.

- 18.81 Additional resource would be required to deliver the new functions, and there may be duplication with other organisations. If no new resources are allocated, then existing Commission functions may be compromised. If further investigative powers are granted, but not the ability to refer cases directly for prosecution, then this will only exacerbate the existing issue of the Police needing to independently verify the investigations of the Commission as part of their due diligence.

Arguments for change

- 18.82 Of those submitters to our first consultation who supported the Commission having further responsibilities, most wanted it to take on an enforcement function.
- 18.83 Of the current enforcement agencies, the Electoral Commission has the most detailed knowledge and experience of electoral law, and direct connections to parties, candidates and third parties. This expertise can assist in investigating potential breaches and can support enforcement action in the case of low-level breaches. The Commission also retains this expertise throughout the electoral cycle, whereas other organisations only engage in the area close to elections or when necessary. It may also enable a quicker response. Currently, charges can take many months to be laid as the Police prioritise investigating and taking enforcement action in relation to other forms of offending. Some submitters were concerned about the length of time taken to investigate and prosecute electoral offenses, and many were concerned about insufficient resourcing.
- 18.84 Some people consider that granting the Commission the power to issue infringement notices or impose civil sanctions may help accelerate enforcement action. Given electoral officials' presence at polling places where offences may be committed, infringement notices or civil sanctions could be readily administered by the Commission, as appropriate. Empowering the Commission to require information and conduct audits, rather than relying on voluntary compliance, may also reduce the burden of investigations on other agencies and improve their ability to filter cases for referral. Being able to refer some cases directly to the Crown Law Office for prosecution would also remove the need for Police involvement.

Our initial view

- 18.85 In our interim report, we noted that effective enforcement is important to deter people from breaking rules, and to ensure there are consequences when they do. Without enforcement, the public's confidence in the integrity of the electoral system may diminish, and rule breaches may increase.
- 18.86 While we did not recommend an enforcement role for the Electoral Commission, we did recommend that it be given additional investigative powers. We considered these powers should include the power to require documents and to undertake audits in relation to the financial returns of registered parties, registered promoters, and individual candidates. We also recommended that the Commission

is empowered to directly refer cases to the Serious Fraud Office for prosecution and we noted the need for adequate resourcing.

Feedback from second consultation

- 18.87 The Serious Fraud Office supported the Electoral Commission having additional investigative powers, because this would support any subsequent enforcement action.
- 18.88 The Serious Fraud Office favoured the Electoral Commission having the power to refer serious offending directly to it, considering it could then act swiftly to negate any loss of evidence. The Serious Fraud Office thought the threshold for referral should include instances where the Electoral Commission suspects a serious or complex fraud that falls below a belief that a criminal offence has occurred. This threshold would then align with the Serious Fraud Office's threshold and would allow it to begin an inquiry at an earlier stage.
- 18.89 We received a small amount of feedback about whether the Electoral Commission should have the power to impose low-level sanctions. Two submitters were opposed on the grounds that it would damage the Commission's reputation as an impartial administrator of the electoral system.
- 18.90 The Advertising Standards Authority thought that advertising complaints were best dealt with by education and support, rather than by increasing penalties. Conversely, a few submitters thought stronger enforcement would deter offending.

Our final view

- 18.91 Aotearoa New Zealand has good levels of compliance with electoral law. Parties and candidates are generally compliant. Further, competition between electoral contestants works to monitor compliance. However, several recent cases involving significant breaches demonstrate the need to ensure that the right powers are available should they become necessary.
- 18.92 We considered whether the Electoral Commission should be granted any additional enforcement powers. We acknowledge that the Commission could bring significant value to enforcement, both from its in-depth knowledge of the law and its role in administering the electoral system. Opportunities to speed up investigation and prosecutions will also be undoubtedly positive in helping to deter future offending.
- 18.93 Concern about how this may affect the perception of the Electoral Commission by both voters and political insiders may be overstated. While it is possible that an enforcement role may deter some people from seeking information from the Commission or engaging with them, the ability of the Commission to act in a non-partisan manner has not been seriously questioned.

- 18.94 On balance, we maintain the view that rather than having an enforcement role, the Electoral Commission should be given additional investigative powers to support enforcement by the Police and the Serious Fraud Office.
- 18.95 In particular, we recommend that the Electoral Commission be granted the power to require documents and to undertake audits in relation to the financial returns of registered parties, registered promoters, and individual candidates. These powers would be a natural extension of the Commission's current role in receiving and reviewing financial returns, while strengthening their ability to investigate where the Commission suspects an offence has been committed.
- 18.96 Noting that granting the investigative power alone may increase duplication of work, we also recommend that the Commission be empowered to directly refer cases to the Serious Fraud Office for prosecution. We consider the Serious Fraud Office's threshold suggestion has merit. Aligning the threshold for referral by the Electoral Commission with the Serious Fraud Office threshold makes sense. Therefore, we have revised our interim recommendation accordingly.
- 18.97 Following the broader overhaul and consolidation of electoral offences, consideration should be given to whether the Electoral Commission should be authorised to enforce low-level electoral breaches. This would be contingent on appropriate offences or groups of offences being identified for enforcement by the Commission. There may be merit in the Electoral Commission being able to issue infringement fines and apply some civil sanctions, as it may help speed some enforcement actions in addition to reducing demands on the Police. However, we consider that the prosecution of all significant offences should remain the remit of the Police.
- 18.98 Any new investigation or enforcement functions would need to be appropriately resourced and funded to ensure that the existing functions of the Electoral Commission are not affected. Clear arrangements between the enforcement organisations, and where each operates, would need to be worked through.

Interaction with our other recommendation

- 18.99 As noted, the recommendation to empower the Electoral Commission to enforce low-level offences would be contingent on suitable offences being identified as

part of the broader overhaul and consolidation of electoral offences that we have recommended.

The Panel recommends:

- R108. Giving the Electoral Commission additional investigative powers (including to require documents and to undertake audits).**
- R109. Giving the Electoral Commission the ability to refer serious financial offending directly to the Serious Fraud Office. The threshold for referral should include instances where the Electoral Commission suspects a serious or complex fraud that falls below a belief that a criminal offence has occurred, to align it with the Serious Fraud Office threshold.**
- R110. Considering whether the Electoral Commission should be able to impose sanctions for low-level electoral breaches, as part of a broader overhaul and consolidation of electoral offences.**

Dispute resolution

- 18.100 Clear and defined dispute resolution processes are a necessary part of the electoral system, to ensure that the integrity of elections and election outcomes is upheld. The Electoral Act provides for specific processes to resolve such disputes in relation to election outcomes. Other mechanisms for resolving disputes in relation to the administration of elections, or the actions of Electoral Commission officials, can be pursued through the Ombudsman's office or by asking a judge to review an administrative action.
- 18.101 In this section we discuss two specific areas of dispute resolution in the Electoral Act: election recounts and election petitions.

Election recounts

- 18.102 The Electoral Act provides for electorate-level and national-level recounts. Applications for an election recount must be lodged within three working days of the Electoral Commission's declaration of an electorate result.²³

²³ Electoral Act 1993, sections 180(2) and 181(2).

- 18.103 For electorate-level recounts, a candidate may apply to a District Court judge for a recount of electorate votes, while a party secretary can apply for a recount of party votes.²⁴ In the event of a tie in the original result, the Electoral Commission is required to apply for a recount.²⁵
- 18.104 Where a recount application is made, the judge is required to undertake and oversee the recount process as if they were a returning officer.²⁶ If the resulting vote count is different to the Electoral Commission's declared result, the judge orders the Commission to amend its declaration.²⁷ In the past five general elections, there have been eight recounts of the electorate vote in individual electorates, with only one of these overturning the original declared result.²⁸ In the three recounts after the 2023 general election, the winning margin decreased by two votes in Nelson and by three votes in Mt Albert. In the Tāmaki Makaurau electorate, the original margin of four votes increased to 42 votes after the recount. There has never been an application for a recount of the party vote in any electorate.
- 18.105 A party secretary also may apply to the Chief District Court Judge for a recount of the party vote in all electorates. The three-day period for applying for a national-level recount commences when the final declaration of electorate seats is made.²⁹ To date, there has never been an application for a nationwide party vote recount.
- 18.106 For any recount, the applicant is required to lodge a deposit, which can be returned to the applicant if the judge decides to do so.³⁰ The Electoral Act specifies the deposit fee, which has not changed since 1993, apart from being adjusted for the GST increase in 2010. The deposit fees are:
- recount of electorate votes – \$1,022.22 (originally \$1,000)
 - electorate-level recount of party votes – \$1,533.33 (originally \$1,500)
 - national-level recount of party votes – \$92,000.00 (originally \$90,000).

²⁴ Electoral Act 1993, sections 180(1) and 181(2) respectively.

²⁵ Electoral Act 1993, section 179(5).

²⁶ Electoral Act 1993, section 180(8).

²⁷ Electoral Act 1993, section 180(10).

²⁸ The original declared result was overturned in the Waitakere electorate in 2011.

²⁹ Electoral Act 1993, sections 181(1) and (2).

³⁰ Deposits are required under the Electoral Act 1993, sections 180(3) and (4) and the judge may direct the return of the deposit under section 180(11) along with making an order in relation to costs.

Election petitions

- 18.107 Since 1880, the courts have determined disputes over which candidate has won an election. Election petitions relating to an electorate result are decided in the High Court.³¹ Reasons to dispute a result may relate to the rights of particular voters to vote in an electorate, the use of corrupt or illegal practices, the conduct of an election by electoral officials, or how the allocation of list seats has been determined.
- 18.108 For an electorate result, a petition can be lodged by a person entitled to vote in the electorate, a candidate, or a person claiming to have the right to be elected. The petition, with a \$1,000 deposit, needs to be presented to the High Court within 28 days of the result, and at least 14 days' notice needs to be given before a trial can commence.
- 18.109 The High Court's decision on an electorate-level petition is final: there is no appeal.³² This avoids extended litigation and argument that would delay determining who is entitled to sit in parliament, and possibly, impact on forming a government.
- 18.110 While the High Court's decision cannot be challenged, its reasons for the decision and the basis of law used can be reviewed by the Court of Appeal. The Court of Appeal may identify errors in the High Court's interpretation of the law that will add to the understanding of the future application of the law, but it cannot change the outcome of the petition.³³
- 18.111 For electorate-level petitions, the court is able to examine the right of particular individuals to vote in the electorate and carry out a conclusive count of votes; investigate any allegations of illegal or corrupt practices; and investigate any procedural irregularities to determine if these were significant enough to affect the result.
- 18.112 Another form of election petition involves challenging the allocation of list seats.³⁴ The petition must be lodged by a party secretary and is heard before three Court of Appeal judges.³⁵ In such a case, the Court of Appeal has a narrow scope – to review whether the Electoral Commission has followed the correct statutory process in determining each party's share of seats and identifying that the correct list candidates have been chosen to fill those seats. The court cannot examine

³¹ Electoral Act 1993, section 235.

³² Electoral Act 1993, section 242.

³³ For a discussion of the role of the Court of Appeal and the case of *Re Hunua Election Petition* [1979] 1 NZLR 251 (HC) where the decision of the appellate court would have changed the outcome of the election if the law had permitted it to do so, see Geddis, above n 11, p. 275.

³⁴ Electoral Act 1993, section 229(4).

³⁵ Electoral Act 1993, section 258.

anything else – specifically. corrupt or illegal practices or procedural irregularities that may affect the party vote at a national level.³⁶ The court’s decision cannot be challenged.³⁷

Review by the courts

- 18.113 The courts are also periodically called upon to review the actions and decisions of government agencies and officials operating under statutory functions and powers. Review by the courts is an important check on the potential misuse or abuse of administrative powers, to ensure that all relevant matters are considered when a decision is made.
- 18.114 For electoral law, such cases may relate, for example, to a decision of the Representation Commission on drawing electorate boundaries, or an Electoral Commission decision on a party’s application to register as a party or to allocate broadcasting funding.³⁸ Courts may also be called on to resolve disputes within non-government electoral actors, such as whether a pre-selection process was consistent with a party’s constitution.
- 18.115 People seeking clarification on how to interpret “the rules of the game” may ask the courts for guidance. For example, by seeking a declaratory judgment of what constitutes electoral spending, ahead of incurring those costs during a campaign and potentially breaking the law.

Complaints

- 18.116 A complaint to the Ombudsman about the actions of the Electoral Commission is also an option. The Ombudsman would then consider whether the Commission’s acts or decisions were unreasonable, unfair or wrong, and suggest a solution if appropriate.

Is there a case for change?

Issues identified

- 18.117 Apart from the Electoral Commission’s submission, referring to its recommendation in its 2020 post-election report, submitters to our first consultation made few comments on current dispute resolution settings. A few submitters to the first consultation considered there should be an automatic

³⁶ Electoral Act 1993, section 260.

³⁷ Electoral Act 1993, section 262.

³⁸ For example: *NZ Outdoors & Freedom Party v The Electoral Commission* [2023] NZHC 1823.

Earlier recommendations

2020 Electoral Commission post-election report

The Commission recommended reviewing the current judicial recount and petition provisions to ensure they were fit for purpose and struck the right balance between the right to seek an independent review and the potential to delay an election outcome.

process for a recount where the margin between candidates was small. Some submitters thought the time to apply for a recount should be extended. The lack of submissions may indicate the current system is generally working well.

18.118 Other issues we initially identified included:

- The deposit required for election recounts has remained unchanged for the past 30 years (apart from the small GST increase).
- There is no ability for judges to exercise discretion in the merits of a recount application when it is presented. This means there is no way to prevent a frivolous or vexatious recount.
- There is currently no provision available to lodge a petition relating to activities that may affect the casting of party votes at a national level.

Our initial view

Recounts

18.119 In considering options to retain or change the current provisions for election recounts, we sought an appropriate balance between keeping recounts accessible while also preventing frivolous or vexatious applications that may unnecessarily delay the final outcome of an election. We noted deposit fees had not been increased since 1993 and there was no indication that the current process was being abused (about one recount was requested in each of the previous recent elections). We decided, on balance, to remove deposit fees for recounts, but limit misuse (as in the Local Electoral Act 2001) by providing judicial discretion over whether a recount proceeds.

18.120 We did not recommend that an applicant needs to demonstrate that a recount could alter the result of the election, as is the case for local government elections. The recount procedure also can serve as an important way of ensuring that electoral officials have correctly followed the law, as has been demonstrated in recent recount applications. As such, we considered an applicant should be required to demonstrate that they have a reasonable ground for believing either that the declaration is incorrect and that on a recount they might be elected, or

that the legally required processes around receiving and counting votes have not been properly followed.

- 18.121 We considered the introduction of judicial discretion removed the need for a deposit fee for recount applications. We noted that a judge would still be able to award costs in the case of a frivolous or vexatious application.

Petitions

- 18.122 In our interim report, we decided to retain the current notice periods for election petitions – both for initiating a petition (28 days) and for commencing a hearing (14 days). We considered the timeframes struck an appropriate balance between giving respondents time to prepare with the need to resolve any challenges to the final election outcome.
- 18.123 We did not consider there was a need to introduce any further provisions to allow for a national-level challenge to the election outcome.

Feedback from second consultation

Recounts

- 18.124 Submitters to the second consultation raised concerns with our recommendation to introduce judicial discretion as to whether recounts go ahead. Concerns included the potential for delays, the threshold, and the potential to involve judges in the political sphere.
- 18.125 We heard that delays of up to five weeks have been experienced in contesting local government elections, where a candidate applying for a recount must satisfy a District Court judge that they have reasonable grounds to believe the declaration of the result is incorrect, and that they may be elected if the votes were recounted.³⁹ The process has involved affidavits from candidates and expert witnesses and returning officer reports. One submitter considered judicial involvement was less contentious without a discretion. This submitter also foresaw issues for judges determining when an application was frivolous or vexatious, noting that judges could take a risk-averse approach and allow applications.

Petitions

- 18.126 We received one submission on petitions, seeking clarification about existing political avenues to respond to allegations that the party vote result had been compromised. No submissions were received relating to timeframes.

³⁹ Local Electoral Act 2001, section 90(3).

Our final view

Recounts

- 18.127 As a result of feedback from our second consultation, we have been persuaded that introducing judicial discretion may result in delays that would not be in the overall interests of the electoral system, including the need for a final election result. We base our view on what has occurred during local election recounts and also after considering the time that might be needed to review a judge's decision. Transparency and fairness may also be negatively impacted by the introduction of judicial discretion.
- 18.128 Weighing the risk of delay against the risk of frivolous or vexatious applications, we consider the right to apply for a recount should remain as it currently is.
- 18.129 Retaining deposit fees, although these are small, may help to deter unmeritorious applicants. Accordingly, given our final recommendation to revert to the status quo, we no longer recommend any change to deposit fees for recounts.

Petitions

- 18.130 We did not receive any submissions about the timeframes for initiating petitions. Our final view remains the same as our interim position: the timeframes should remain unchanged.
- 18.131 The current 28-day period for initiating an election petition is reasonable. It allows potential petitioners to gather evidence and assess the likelihood of success. We also consider the 14 days' notice required before commencing a trial strikes a good balance between giving respondents necessary time to prepare and not unduly delaying the resolution of any challenge to final election outcomes.
- 18.132 We remain of the view that although there is no provision in the Electoral Act to lodge a national-level petition, there are sufficient existing ways to respond to allegations that the party vote has been compromised. For example, such

allegations are likely to be subject to intense media scrutiny and create substantial political and public controversy.

The Panel recommends:

- R111. Retaining the deposits for recounts at the current amounts.**
- R112. Retaining the existing provisions for electorate-level or national-level recounts.**
- R113. Retaining existing notice periods for initiating an election petition and commencing the hearing for that petition.**

19. Security and Resilience

19.1 In this chapter, we consider two key risks to the security and resilience of Aotearoa New Zealand’s electoral system – disinformation and foreign interference – and discuss how these risks might be mitigated.

Managing the risks of disinformation

19.2 Informed participation and engagement is vital to Aotearoa New Zealand’s electoral system. The spread of disinformation could manipulate the basis on which voters make their choices and risks the integrity of the electoral system.

19.3 There are multiple definitions of “disinformation”, but we use it to refer to false or modified information knowingly and deliberately shared to cause harm. This is different to “misinformation”, which we use to mean information that is false or misleading, though not created or shared with the direct intention of causing harm.¹

19.4 In this chapter, we focus on disinformation. In our view, disinformation is the greater threat to the security and resilience of the electoral system as it is intended to cause harm.

19.5 The spread of disinformation could:

- undermine public confidence in the legitimacy and integrity of New Zealand’s elections and democracy, especially where the disinformation is focused on the electoral system or administration of elections
- reduce participation through diminished confidence in the system
- result in people making decisions based on incorrect information – for example, spoiling their ballot or not turning up to vote
- distort free and open debate.

19.6 Currently, it is a corrupt practice to knowingly publish (or republish) false statements with the intention of influencing the vote of an elector during the two

¹ We have updated the definitions from those used in our interim report to better reflect those used by New Zealand government agencies.

days before and on election day.² This offence was originally intended to prevent candidates from making false claims immediately before election day, when there was limited time available for them to be fact-checked or countered through the media or in public debate.³

- 19.7 It is also a corrupt practice to commit the offence of “undue influence”. The wording of this offence is outdated and covers an ambiguous range of behaviour. Relevantly, it includes someone who through “...any fraudulent device or contrivance, impedes or prevents...” someone from voting, or “compels, induces or prevails upon” someone to vote or not vote.⁴ It is possible that this offence could apply to some people who spread disinformation with the intention of disrupting a person’s voting process.⁵
- 19.8 The New Zealand Bill of Rights Act 1990 protects the rights of freedom of expression and association, including the freedom to seek, receive, and impart information and opinions of any kind in any form,⁶ even false information. In the context of managing the risks of disinformation to the electoral system, any limitations on these fundamental rights must be capable of being justified in New Zealand’s free and democratic society.⁷

Current work to address disinformation risk

Election disinformation

- 19.9 There is no one government agency responsible for proactively monitoring information in the public domain about elections.
- 19.10 The Electoral Commission works with government to establish protocols and processes for dealing with issues such as misinformation and disinformation

² Election Act 1993, section 199A. The offence was introduced in 2001.

³ Geddis, A., 2023. *Electoral Law in Aotearoa New Zealand*. 3rd ed. Wellington: LexisNexis New Zealand Ltd, p. 129.

⁴ Election Act 1993, section 218(2)(a) and (b).

⁵ See Geddis, above n 3, pp. 127-129. Geddis states that what constitutes a “fraudulent device or contrivance” to “impede the free exercise of the franchise of an elector” is unsettled.

⁶ New Zealand Bill of Rights Act 1990, sections 14 and 18.

⁷ New Zealand Bill of Rights Act 1990, section 5.

about the electoral process or the election.⁸ It also publishes information for voters on identifying misinformation and disinformation.⁹

- 19.11 There are various agencies that deal with complaints about election misinformation and disinformation in the media. Complaints about paid advertising in social media are dealt with by the Advertising Standards Authority (an industry self-regulating body), whereas unpaid content is dealt with by social media companies.¹⁰ Complaints about information on television or radio are dealt with by the Broadcasting Standards Authority.¹¹ Complaints about information in a newspaper are dealt with by the Media Council.¹²
- 19.12 Social media companies have their own rules on misinformation and disinformation, including fact-checking potential disinformation, flagging where information is false, restricting the sharing of that information, and providing links to correct information.

Other responses to disinformation

- 19.13 Work to identify and deal with disinformation is underway in government, including through the convening of a Disinformation Multi-Stakeholder Group in July 2023,¹³ and other initiatives in the Department of Prime Minister and Cabinet.¹⁴ The Multi-Stakeholder Group is made up of specialists from across Aotearoa New Zealand. It will consider what practices and structures, if any, could be developed to better understand disinformation and address its effects. The outcome of its

⁸ Department of the Prime Minister and Cabinet & Electoral Commission, 2023. *Protocol on communications related to the 2023 General Election process*, Wellington: New Zealand Government & Electoral Commission.

⁹ Electoral Commission, 2023. *Social media*. [Online] Available at: <https://elections.nz/guidance-and-rules/advertising-and-campaigning/social-media/> [Accessed October 2023].

¹⁰ Advertising Standards Authority, 2022. *Advertising Standards Code*. [Online] Available at: <https://www.asa.co.nz/codes/codes/advertising-standards-code/> [Accessed October 2023].

¹¹ Broadcasting Act 1989, Part 3.

¹² New Zealand Media Council, 2023. *Independent Forum for Resolving Complaints* [Online]. Available at: <https://www.mediacouncil.org.nz/> [Accessed October 2023].

¹³ Department of the Prime Minister and Cabinet, 2023. *Multi-Stakeholder Group to strengthen resilience to disinformation*. [Online] Available at: <https://www.dpmc.govt.nz/our-programmes/national-security/strengthening-resilience-disinformation/multi-stakeholder-group-strengthen-resilience-disinformation> [Accessed October 2023].

¹⁴ Other initiatives include establishing a one-off fund to provide financial support for community-based initiatives to build resilience against disinformation (to be managed by not-for-profit civil society organisation InternetNZ) and commissioning public research and analysis into the problem. See Department of the Prime Minister and Cabinet, 2023. *Strengthening resilience to disinformation*. [Online] Available at: <https://www.dpmc.govt.nz/our-programmes/national-security/strengthening-resilience-disinformation> [Accessed October 2023].

Earlier recommendations

2017 Justice Select Committee

The Justice Select Committee made several recommendations that touch on disinformation risk. It recommended that the government:

- ask the Electoral Commission, in its report on the 2020 General Election, specifically to address the issue of astroturfing and ways New Zealand can deal with it
- engage with international social media platforms to encourage them to adhere to our laws and customs regarding free speech, and explore regulatory tools that would assert New Zealand's strong tradition of free speech.

It also made recommendations that related to foreign interference risk through the spreading of disinformation. Those recommendations are discussed below in **Foreign interference**.

2020 Justice Select Committee

The Justice Select Committee commented that it considered it timely to review the potential ways campaigning rules might need to change to accommodate the large increase in advance voting. It stated that where it makes sense to do so, campaigning rules should be consistent from the time that advance voting begins until polls close on election day.

work is expected to be released in early 2024. Work is also being done by several civil society organisations.

- 19.14 Some social media companies are implementing self-regulation. In July 2022, the *Aotearoa New Zealand Code of Practice for Online Safety and Harms* (the Code) was launched. Among other things, the signatories (including Meta, Google, TikTok, Twitter (now X), and Twitch) have committed to providing safeguards to reduce the risk of harm from online disinformation.¹⁵

¹⁵ The Code, 2022. *Aotearoa New Zealand Code of Practice for Online Safety and Harms*. [Online] Available at: <https://thecode.org.nz/> [Accessed October 2023]. We note that some civil society organisations have expressed concerns about the efficacy of the Code.

Is there a case for change?

Issues we have identified

- 19.15 Most submitters who answered our question on misinformation and disinformation in our first consultation considered it to be a serious issue that required urgent attention.
- 19.16 Disinformation can be spread in person, through media, and online. The rise in online disinformation presents particular challenges because of how quickly it can spread, and how many people it can reach.
- 19.17 Disinformation can be hard to identify and could be spread as news, advertising, or individual comments. Bot accounts can be used to give the impression that views are coming from a multitude of individual “grass-roots” sources, but have actually come from a single source. There can also be disagreement about whether information is false, and whether it has been deliberately spread.
- 19.18 Technological developments make it easier to spread disinformation more effectively. Microtargeting can tailor disinformation for target audiences, and artificial intelligence technology could be used to make deepfake videos of candidates and public officials to spread disinformation.
- 19.19 Where disinformation relating to the electoral system is spread by individuals through paid means, it would technically be captured by the rules on election advertising. However, it can be difficult to determine whether a post has been paid for, especially when an original post is re-posted. This adds to the complexity of enforcement.
- 19.20 A civil society group has previously submitted to the Justice Select Committee that during the 2020 election period there was a significant spike in misinformation and extremist fringe content, which it expected would be repeated in future elections.¹⁶
- 19.21 Māori communities have raised the particular effects that disinformation can have on them, including inflaming racism and increasing distrust between Māori and the state. Many first consultation submitters from Māori and Pasifika communities reflected on their experiences of COVID-19 and the potential lessons learned about combatting disinformation through resourcing communities and relationship-building.

¹⁶ Tohatoha, 2021. *Inquiry into the 2020 General Election and Referendums – Submission to the Justice Committee*. [Online] Available at: <https://www.tohatoha.org.nz/2021/04/inquiry-into-the-2020-general-election-and-referendums/> [Accessed October 2023].

19.22 Submitters to our first consultation had various ideas about what could be done to reduce the risk of misinformation and disinformation influencing Aotearoa New Zealand's elections:

- **Fact-checking:** many submitters wanted an independent organisation to fact-check and regulate misinformation and disinformation, with several suggesting that the Electoral Commission take on this role. Some suggested that the Electoral Commission should be able to investigate and publicly correct false statements.
- **Extending the rules:** some submitters suggested that any rules relating to misinformation and disinformation should apply at all times, not just around election time. Or, if nothing else, they should cover at least four to six weeks before an election.
- **Education:** most submitters wanted better education to help inform people about the risks of misinformation and disinformation. A few suggested that there should be specific resourcing for educating groups who might be particularly affected.
- **Code of conduct:** a few submitters recommended creating a code of conduct to be adhered to by all election participants.
- **The role of the media:** many submitters raised concerns about media neutrality during elections, and their role in effectively countering misinformation and disinformation. A few submitters suggested that the government should work with social media platforms to prevent serious misinformation and disinformation.

19.23 In our first consultation, the Electoral Commission submitted that the harm caused by misinformation and disinformation extends beyond elections, and it needs to work with other agencies in the area. It considered that any kind of broader mandate to counter misinformation or disinformation in electoral campaigns would undermine trust and confidence, and impact perceptions of its political neutrality.

Our initial view

19.24 In our interim report, we focused on the risk that disinformation presents to the security and resilience of the electoral system, and voter participation.

19.25 We expressed the view that education is the primary way in which Aotearoa New Zealand can reduce the risk of disinformation in the electoral system, and pointed to other recommendations across our review that could help build awareness of risks, and help people to identify disinformation.



19.26 We made two recommendations:

- That the timeframe for the offence of publishing false statements to influence voters should be extended from two days before and on election day to the entire advance voting period and election day.
- That the overhaul and consolidation of the offences and penalties regime for electoral law (discussed in **Chapter 18**) considers whether the undue influence offence should be modernised, and whether it should be expanded to include disinformation methods and mechanisms.

Feedback from second consultation

19.27 Submitters were generally concerned about the risks that disinformation presented to democracy and to the electoral system. The difficulty of addressing and responding to disinformation was noted. There was support from some submitters to reduce the negative effects of disinformation, improve security and transparency, and lessen corruption. Some submitters raised concerns about the lack of regulation for social media companies, and the ineffectiveness of self-regulation.

19.28 Overall, there were different views on taking action, with one submitter suggesting ongoing monitoring, while another recommended an independent body to fact-check false information. Some submitters, who were opposed to regulating disinformation, considered that freedom of expression ruled out government regulation. Some other submitters were of the opinion that disinformation is spread by government and by the media.

19.29 Submitters were divided on our recommendation to extend the timeframe for the offence of knowingly publishing false information throughout the voting period:

- Most submitters supported the recommendation. A few submitters discussed the need for an effective penalty, and one submitter noted extending the timeframe would require work to monitor and enforce the offence. One submitter thought the offence should not be limited just to the voting period, expressing the view that election interference can happen at any time in the election cycle.
- A few submitters were opposed because they were concerned about the risks of politicisation (such as the offence being used to make accusations against political opponents) or because education was a better solution than extending the offence period. Concerns about censorship and a chilling effect on free speech were also raised.

19.30 We received a few submissions on our recommendation that the overhaul of penalties and offences should consider the undue influence offence. Of those submitters, most supported the recommendation. One submitter suggested that any future changes to the offence should not reference specific methods of circulating disinformation, such as deepfakes. Instead, it should apply to



statements in any medium. One submitter was opposed on the basis of freedom of thought and expression.

Our final view

- 19.31 As we noted in our interim report, disinformation is a broad and significant all-of-society issue. It impacts more than just the electoral system. It is not possible to address the larger issue of disinformation in this review, but we are concerned about the risk it presents to the security and resilience of the electoral system, and voter participation. In our interim report, we decided to limit our consideration to disinformation, rather than both misinformation and disinformation, and we continue to do so in this final report. In our view, disinformation poses the greater threat to our electoral system as it is spread deliberately, with the intention of causing harm.
- 19.32 There is a balance to be reached between protecting the electoral system from disinformation risk and unjustifiable restrictions on individuals and groups exercising rights such as freedom of expression and association. We note that submitters were divided on where this balance lies and what a proportionate response would be.
- 19.33 We have seen that in other countries, self-regulation by social media companies appears to be ineffective at addressing the risk of online disinformation.¹⁷ However, legislative measures to attempt to deal with disinformation are relatively new and this is a developing area. There have been concerns overseas that some legislative responses may be an unjustifiable limitation on freedom of expression.¹⁸

Education

- 19.34 We maintain the view that education is the primary way in which Aotearoa New Zealand can reduce the risk of disinformation in the electoral system. Education could build awareness of risks and help people to identify disinformation. With appropriate direction, support and resourcing, this could be delivered as part of the national curriculum standard for building active citizens in schools, which we discuss in **Chapter 11**.

¹⁷ A number of countries have moved to introducing legislation after self-regulation has proved ineffective, for example, the UK, Germany, France and the European Union.

¹⁸ Concerns about limiting free speech have been raised in Germany, for example, with one commentator saying the Network Enforcement Act 2018 forces social media platforms to be responsible for “balancing human rights and fundamental freedoms against each other and have been made gatekeepers at the threshold of fundamental and human rights.” Max Planck Institute. *NetzDG and Human Rights* [Online]. Available at: <https://csl.mpg.de/en/projects/netzdg-and-human-rights> [Accessed October 2023].

- 19.35 In the same chapter, we have recommended developing a funding model to support community-led education and participation initiatives because these have been shown to be more effective in reaching and building trust in their communities than government agencies. These initiatives could include education on identifying disinformation risks in the electoral system.

Offences

Publishing false statements

- 19.36 Currently, the offence of knowingly publishing false statements to influence voters only applies to someone who, in the two days before and on election day:¹⁹
- publishes or republishes a false statement (or arranges for it to be published or republished), and
 - knows that the statement is false, and
 - does so with the intention of influencing the vote of an elector.
- 19.37 As we have noted above, the offence is intended to discourage attempts to sway voters by spreading false information so close to the election that the media, other candidates, or parties run out of time to correct or respond to it.
- 19.38 It only applies to information published or republished during the specified time period, not historically false information that is still available online, for example, (unless the person advertises or draws attention to the statement, or promotes or encourages any person to access it).²⁰
- 19.39 Although “publish” is defined as “to bring to the notice of a person in any manner”, it does not apply to addressing one or more persons face to face.²¹ Because the offence only relates to statements of fact, and requires knowledge of the statement being false, it is unlikely to apply to election commentary or opinion.²²
- 19.40 If a person:
- knowingly publishes a false statement without the intention to influence a person’s vote, or
 - publishes something that they do not know is false, or
 - publishes a disputed fact or opinion,

¹⁹ Electoral Act 1993, section 199A.

²⁰ Electoral Act 1993, section 199A(2).

²¹ Electoral Act 1993, section 199A(3)(b).

²² Geddis, above n 3, p. 129.

they will not have committed this offence.

- 19.41 A person who is found guilty of this offence will have committed a corrupt practice. As we note in **Chapter 18**, corrupt practices are deliberate attempts to influence election outcomes. There is no value in having such knowingly false statements play a part during the voting period. In **Chapter 9**, we recommend that advance voting is to be provided for a minimum period of 12 days.
- 19.42 We maintain the view that the offence of publishing false statements to influence voters should be extended to cover the entire advance voting period and election day. We acknowledge that some submitters had different views, but we consider the risk to the integrity of the electoral system exists throughout the entire voting period.
- 19.43 The growth in the number of people choosing to vote in advance may increase the risk that voters could be impacted by disinformation that is deliberately spread in an attempt to influence their vote during that period. This could impact voter participation as well as the ability for voters to make an informed choice.
- 19.44 While this would be a restriction on freedom of expression during the advance voting period, in our view the restriction is justifiable. Our recommendation is an extension of the existing offence to reflect the rise in advance voting since that offence was originally introduced in 2001. If the timeframe is not extended, a person could knowingly publish a false statement during the advance voting period, with the intention of influencing voters during that time.

Undue influence

- 19.45 In **Chapter 18**, we recommend an overhaul and consolidation of the offences and penalties regime for electoral law. We maintain our view that in that process, consideration should be given to whether the undue influence offence should be modernised, and the extent to which it should capture, in a technology neutral way, mechanisms that may be used to spread disinformation about elections, such as deepfakes.

Interaction with our other recommendations

- 19.46 In **Chapter 9**, we make recommendations that would remove the distinction between advance voting and election day, to reflect a “voting period”. Our recommendation to extend the timeframe for publishing false statements would apply across the entire voting period.
- 19.47 In **Chapter 13**, we recommend that an independent fiscal institution is established to provide costings of registered political party policies on request. This may have the benefit of reducing the risk of disinformation about policies, particularly in an election year.
- 19.48 In **Chapter 14**, we recommend that the government gives broader consideration to whether the laws regulating the use of microtargeting, including for online

election advertising, are sufficient. Any changes in this area could impact the risk of bad-faith actors using targeting technology to spread disinformation.

The Panel recommends:

R114. Extending the timeframe for the offence of knowingly publishing false information to influence voters to include the entire advance voting period and election day.

R115. That the overhaul and consolidation of the offences and penalties regime for electoral law specifically considers the scope of the undue influence offence, and whether it should be expanded to include disinformation methods and mechanisms.

Foreign interference

- 19.49 Foreign interference, or even the perception of foreign interference, is a risk to the security and resilience of Aotearoa New Zealand’s electoral system.
- 19.50 Foreign interference can be defined as an act by a foreign state, often acting through a proxy, which is intended to influence, disrupt, or subvert Aotearoa New Zealand’s national interests by deceptive, corruptive, or coercing means.²³ Below, we use the term “foreign state” to refer to any state other than Aotearoa New Zealand, and any people or entities acting on behalf of that state.
- 19.51 There are many reasons why a foreign state might want to interfere in Aotearoa New Zealand’s electoral system. It might want to influence the outcome of an election, undermine public trust in the integrity of the electoral system or an election outcome, or generally undermine societal trust in democracy and Aotearoa New Zealand’s social cohesion. It could interfere in several ways –for example, by trying to disrupt the delivery of an election, spreading disinformation, or influencing parties and candidates.

²³ We have updated the definition from that in our interim report to reflect the definition used by the New Zealand Security and Intelligence Service, 2023. *New Zealand's Security Threat Environment 2023*, Wellington: New Zealand Security and Intelligence Service, p. 13.

19.52 Aotearoa New Zealand’s government agencies, including the New Zealand Security Intelligence Service, are concerned about the potential for electoral interference:

- In 2019, the intelligence agencies reported to the Justice Select Committee that interference in New Zealand’s elections by a state actor was plausible and that the impact of perceived or actual interference in our democracy is potentially serious.²⁴
- Following the 2020 general election, the New Zealand Security Intelligence Service reported that it did not identify systemic, state-sponsored interference activity in that election.²⁵ However, it also said that electoral interference remained a key area of focus, due to the prevalence of interference in elections around the world. It confirmed that a small number of states engage in interference activities against Aotearoa New Zealand’s interests.
- In August 2023, the New Zealand Security Intelligence Service released an unclassified security threat environment assessment.²⁶ It stated that a small number of states engage in interference activities in Aotearoa New Zealand “persistently and with the potential for significant harm”.

19.53 Currently, the Electoral Act 1993 has several provisions that may reduce the risk of foreign interference, including in relation to Member of Parliament (**MP**) and candidate eligibility, political finance and advertising:

- **MP:** An MP’s seat becomes vacant if they lose their New Zealand citizenship, become a citizen or subject of a foreign state (unless by birth or marriage), make a declaration of allegiance to a foreign state, or apply for a foreign passport.²⁷
- **Candidate:** Although residents for electoral purposes have the right to vote, only citizens are able to stand as candidates.²⁸
- **Political finance:** Donations over \$50 from “overseas persons” are banned, party secretaries and candidates must take all reasonable steps to check if donations are made by or on behalf of an overseas person, and party

²⁴ Justice Committee, 2019. *Inquiry into the 2017 General Election and 2016 Local Elections*, Wellington, p. 51.

²⁵ New Zealand Security Intelligence Service, 2021. *Annual Report 2021*, Wellington: New Zealand Security Intelligence Service, p. 18.

²⁶ New Zealand Security and Intelligence Service, above n 23.

²⁷ Electoral Act 1993, section 55.

²⁸ Electoral Act 1993, section 47(3).

secretaries are required to live in New Zealand.²⁹ It is also an offence to enter into arrangements to avoid disclosing donor identity.³⁰

- **Advertising:** Overseas persons are not able to become registered third-party promoters and are, therefore, limited to spending \$15,700 on election advertising in the regulated period.³¹ The name and address of promoters must be included on election advertisements, and the advertising rules apply to advertisements published in Aotearoa New Zealand even where the promoter is not in the country.³² As we have discussed in **Managing the risks of disinformation**, it is also an offence to publish false statements to influence voters in the two days before and on election day.³³

19.54 There are several offence provisions in the Electoral Act, such as “bribery” and “undue influence”.³⁴ We note there is ongoing policy work in government on the offences in the Crimes Act 1961 to address gaps that may curtail the ability to respond to harmful foreign interference.³⁵

19.55 The Electoral Commission works with other agencies, including the New Zealand Security Intelligence Service and the Government Communications Security Bureau, to manage foreign interference and cyber-security threats to elections.³⁶ For the 2023 general election, security advice was developed for candidates. Among other things, the guidance addressed the issue of foreign interference, why and how candidates could be targeted, and steps to keep themselves safe from foreign interference.³⁷

²⁹ Electoral Act 1993, section 207K (donations from overseas persons), section 207JA (duty to check if donations from overseas person), section 3EA(2) (party secretaries must live in New Zealand).

³⁰ Electoral Act 1993, section 207F.

³¹ Electoral Act 1993, section 204K(d) (eligibility to register as a third-party promoter), section 204B(1)(d) (unregistered third-party promoter expenses).

³² Electoral Act 1993, sections 204F and section 3F.

³³ Electoral Act 1993, section 199A.

³⁴ Electoral Act 1993, section 216 (bribery) and section 218 (undue influence).

³⁵ Lynch, T., 2023. *Aide-Mémoire: Briefing to the Incoming Minister for National Security Intelligence*, Wellington: Department of the Prime Minister and Cabinet, p. 10.

³⁶ New Zealand Government & Electoral Commission, 2023. *Principles and protocols for the GCSB and the NZSIS in relation to the 2023 General Election*, Wellington: New Zealand Government & Electoral Commission.

³⁷ New Zealand Government, 2023. *Security advice for 2023 Election Candidates*, Wellington: New Zealand Government.

Earlier recommendations

2017 Electoral Commission post-election report

The Commission recommended that parliament continue to consider whether existing legislative protections around unauthorised interference and cyber security were fit for purpose.

2017 Justice Select Committee

The Justice Select Committee considered foreign interference risk in elections. It recommended that the government:

- ask the Electoral Commission to specifically address the issue of astroturfing in its 2020 post-election report
- consider contingency systems for cyber attacks, and an offence that would prohibit hacking into computer systems owned by parliament, the Electoral Commission and its officers, parties, candidates, or MPs with the aim of intending to affect the results of an election
- consider the applicability of implementing recommendations relating to foreign interference via social media content from the UK and Australia
- increase regulation of electoral advertising by prohibiting foreigners from advertising in social media to influence a New Zealand election outcome (as in Australia); allowing only persons or entities based in New Zealand to sponsor and promote electoral advertisements; and creating an offence for overseas persons placing election advertisements as well as organisations selling advertising space to knowingly accept impermissible foreign-funded election advertising
- increase regulation of donations by examining how to prevent transmission through loopholes (for example, shell companies or trusts), making it unlawful for third parties to use funds from a foreign entity for electoral activities; and requiring registered third parties to declare where they get their donations from
- consider one overarching anti-collusion mechanism for political finance, including penalties, to replace those in the Electoral Act
- investigate whether Australia's Foreign Influence Transparency Scheme would be applicable to New Zealand
- engage with international social media platforms to encourage them to adhere to New Zealand's laws and customs regarding free speech; and explore regulatory tools that would assert New Zealand's strong tradition of free speech.

Is there a case for change?

What we heard

Feedback from first consultation

- 19.56 Many submitters who responded to our question about foreign interference in our first consultation were concerned about this issue.
- 19.57 A few submitters discussed voter eligibility requirements, and raised concern about non-citizens having the right to vote. Many of these submitters suggested that there should be a ban on overseas donations and increased resource provided for cyber-security measures.
- 19.58 Some submitters considered there is a need for public education to counteract potential foreign interference, including for candidates, politicians, and members of migrant communities. A few submitters acknowledged Aotearoa New Zealand's intelligence agencies, saying that they should continue to carry out their role in monitoring and preventing foreign interference.
- 19.59 In its first submission to us, the Electoral Commission stated that it does not think that it needs additional functions or powers in this area for the delivery of elections. It stated that it would continue to work with other agencies on risks and threats to disruption of the electoral system, including from foreign interference. It submitted that consideration be given to whether there should be an offence to hack into computer systems with the aim of affecting election results, and an offence to target or harass electoral officials.

Issues identified

- 19.60 We have identified some potential vulnerabilities that could reduce the resilience of the electoral system to foreign interference. These mainly relate to the potential for interference if a foreign state provided funding to a third-party promoter, or acted as a third-party promoter, with the goal of covertly influencing the electoral debate.

Political finance and advertising

- 19.61 A foreign state could try to interfere in the electoral system through political finance, including by hiding the true source of a donation and covertly obtaining influence and leverage over parties and candidates. As we mentioned above, there are already several provisions in the Electoral Act that may reduce the risk of this. Recommendations we have made in **Chapter 13**, such as only allowing donations to parties and candidates from people who are registered to vote, may also reduce this risk.

19.62 States could also attempt to interfere by:

- Funding third-party individuals or organisations (third-party promoters) with the intention of influencing political outcomes. Under the status quo, third-party promoter funding is not regulated, and third parties are not required to disclose donations. For this reason, funding by a foreign state would not be publicly disclosed.
- Attempting to influence the electoral system, or an election, by using a proxy unregistered third-party promoter to publish election advertising. For the 2023 election, unregistered third-party promoters could spend up to \$15,700 on election advertising during the regulated period.³⁸

19.63 Enforcement issues arise in the online advertising space. The Electoral Commission has previously stated that it can be hard to trace advertising back to its source, and prosecution of those based outside New Zealand may not be practical.

Lobbying

19.64 Lobbying is a legitimate form of political participation, and foreign states often engage in open lobbying activities to influence decision-making, policy and perceptions. Lobbying can also be covert, and in the electoral context, foreign states could covertly attempt to lobby parties and candidates in order to influence political and governmental decisions. This could be done directly or through lobbying organisations. Voters and other individuals would not be aware of this covert influence as lobbying is not regulated.

19.65 Some other countries regulate lobbying and related activities on behalf of foreign states and foreign interests. The Justice Select Committee has previously recommended that the government consider whether the Foreign Influence Transparency Scheme in Australia should be adopted in New Zealand.³⁹

Disinformation

19.66 We have seen reports that some foreign states use social media and other online tools to conduct disinformation campaigns. Disinformation from foreign states could also be spread in traditional media, such as newspapers.

³⁸ Electoral Act 1993, section 204B(1)(d).

³⁹ Justice Committee, above n 24, p. 71. The purpose of the Foreign Influence Transparency Scheme is to provide the public with visibility of the nature, level and extent of foreign influence on Australia's government and politics. It requires individuals and entities to register certain activities, such as lobbying if they are done on behalf of, or have been arranged with, a foreign principal (including a foreign government, foreign political organisation, or foreign government related individual) for the purpose of political or governmental influence.

- 19.67 We heard from a few submitters about challenges accessing information about the electoral system, as well as candidates and parties, in accessible and translated formats. This could make some New Zealand communities more vulnerable to disinformation from foreign states.

Influence and coercion

- 19.68 Foreign states may attempt to interfere in the electoral system by building relationships with parties and candidates. This could be done by covertly building influence over a person or by gathering information that is detrimental to a candidate, and using it to pressure or coerce that person to act in ways that benefit the foreign state. International reporting suggests this is an issue in other democracies. The government has published security advice for MPs and local representatives on espionage and foreign interference threats.⁴⁰
- 19.69 Communities with ethnic or kinship ties to foreign states may also experience pressure and coercion by a foreign state. In the electoral context, this could result in pressure to support certain candidates or parties through donations or when voting. This could impact a person's ability to exercise their fundamental right to vote and freedom of expression, which are protected rights under the New Zealand Bill of Rights Act 1990.⁴¹

Cyber attacks

- 19.70 Finally, foreign states could attempt to disrupt elections, or the electoral system, through cyber attacks. This might be done in the lead-up to an election (for example, "hack-and-leak" operations) or to interfere with the election process itself. There have been reports of these kinds of cyber attacks in other countries. The Electoral Commission works with relevant government agencies on cyber security.⁴²

Our initial view

- 19.71 In our interim report, we noted that foreign interference is a complex and broad issue, and expressed our concern about the potential for foreign interference to have a negative impact on the electoral system.
- 19.72 Mindful of the need to balance this risk with democratic freedoms, such as the right to freedom of expression, we recommended restricting the ability of third-party promoters to use funding from overseas persons for election advertising during the regulated period.

⁴⁰ Protective Security Requirements, 2021. *Espionage and Foreign Interference Threats: Security advice for members of the New Zealand Parliament and Locally Elected Representatives*, Wellington: New Zealand Government.

⁴¹ New Zealand Bill of Rights Act 1990, section 12 (right to vote), section 14 (expression).

⁴² New Zealand Government & Electoral Commission, above n 36.

- 19.73 We were supportive of government initiatives to regulate lobbying, but did not think that increased regulation of third-party promoter advertising or introducing an election cyber-attack offence was necessary at that time.

Feedback from second consultation

Foreign interference

- 19.74 Most submitters who discussed foreign interference were concerned about the risks and supportive of attempts to prevent it. A few academics queried whether lowering the party-vote threshold would increase the risks. A few other submitters expressed concern about the influence of non-state actors with ties to foreign governments.
- 19.75 A few submitters did not trust any government's (including any foreign government's) allegations of foreign interference.

Third-party promoters

- 19.76 We received a few submissions supporting our recommendation to prohibit third-party promoters using funding from overseas persons during the regulated period, and one submission opposing it. That submitter thought the recommendation was an unreasonable restriction on the right to freedom of expression under the New Zealand Bill of Rights Act 1990.
- 19.77 A few submitters thought the prohibition should always be in place, not just during the regulated period. The Electoral Commission queried whether there is a need to require donation disclosure obligations for third-party promoters in order to enforce the recommendation.

Our final view

- 19.78 The electoral system is just one area where a foreign state might attempt to interfere in Aotearoa New Zealand. Foreign interference issues cannot be addressed through the electoral system alone, but it is an important area.
- 19.79 Over the last decade, there have been many international reports of alleged interference in elections and the electoral systems of other democracies.
- 19.80 In our interim report, we noted our concerns about the potential for foreign interference to negatively impact the electoral system. We continue to think that foreign interference poses a serious risk to the security and resilience of the electoral system as well as to public confidence in elections. We have considered the parts of the Electoral Act that may reduce the risks of foreign interference in the electoral system, and whether any changes are necessary, or desirable, to meet the review's objectives.



- 19.81 There is a balance to be reached between protecting the electoral system from foreign interference and restricting the democratic freedoms of individuals and groups – such as freedom of expression and association. However, measures to protect the electoral system from foreign interference may protect and promote the rights and freedoms necessary for a healthy democracy. The United Nations has also commented that any abusive interference with registration or voting, and any intimidation or coercion of voters should be prohibited by penal laws that are strictly enforced.⁴³

Political finance

- 19.82 In our view, our recommended changes to political donations and loans in **Chapter 13**, in addition to the current political finance rules, may reduce the risk of foreign interference by financing parties and candidates. In particular, we recommended that only registered electors are able to make donations and loans, prohibiting overseas persons from donating. We also recommend a general anti-avoidance offence provision for political finance rules.
- 19.83 However, the Electoral Act does not address the potential risk of foreign interference through funding third-party promoters. We thought about whether there should be stronger regulation of how registered third-party promoters are able to fund their election advertising, to reduce the risk that a foreign state seeks to interfere with Aotearoa New Zealand's elections through advertising during the regulated period.
- 19.84 We considered whether registered third-party promoters should be prohibited from accepting all funds from overseas persons for election advertising, or by stopping all overseas persons from making donations to registered third-party promoters.
- 19.85 Stronger regulation of how registered third-party promoters are able to finance their election advertising could unduly impact their ability to participate in our democracy and restrict their freedom of expression. In **Chapter 14**, we conclude that allowing third parties to advertise is, overall, healthy for democracy and supports informed voter participation.
- 19.86 We maintain our view that a middle ground is to recommend that registered third-party promoters should be prohibited from using funds obtained from an overseas person for election advertising during the regulated period. Our recommended changes in **Chapter 13** to introduce some regulation of registered third parties' donations may go some way to ensuring this recommendation is enforceable.
- 19.87 In our interim report, we noted that "overseas person" is defined quite loosely in the Electoral Act, and suggested there could be merit in refining the definition. It is

⁴³ *General comment no. 25, The right to participate in public affairs, voting rights and the right of equal access to public service (article 25) UN Doc CCPR/C/21/Rev.1/Add.7 (27 August 1996), p. 5.*

defined as an individual who resides outside New Zealand and is not a New Zealand citizen or registered as an elector, or a body corporate incorporated outside New Zealand, or an unincorporated body that has its head office or principal place of business outside New Zealand.⁴⁴

- 19.88 On reflection, we strengthen our suggestion that the definition is refined to a recommendation that it is amended to close potential loopholes. For example, under the current definition, entities incorporated in New Zealand but owned and directed by non-resident foreign nationals or overseas-based corporate entities are not overseas persons. In **Chapter 2** we recommend redrafting the Electoral Act. Redrafting the “overseas person” definition could occur as part of that process.
- 19.89 We acknowledge that amending the definition of overseas person could restrict who is able to become a registered third-party promoter, as overseas persons are not eligible to register.⁴⁵

Lobbying

- 19.90 As we noted in our interim report, in April 2023 the government stated that it would begin long-term work to develop policy options to regulate lobbying.⁴⁶ We are supportive of this work, and continue to be concerned about the risk of foreign interference via lobbying and cultivation of relationships with parties and candidates. In our view, there would be merit in stronger regulation of lobbying to prevent foreign interference, such as introducing a lobbying register that requires disclosure when lobbyists are acting on behalf of foreign interests.

Advertising

- 19.91 In our view, the risk of a foreign state attempting to interfere in the electoral system through election advertising in social media or through traditional media is difficult to quantify. This is a developing area, and we note that other democracies have alleged state-sponsored interference in elections through coordinated social media campaigns.
- 19.92 The only way that this risk could be adequately dealt with would be to extend the regulation of election advertising by third parties. As we have noted above, overseas persons are already prohibited from becoming registered third-party promoters.⁴⁷ We considered whether to recommend stronger regulation of election

⁴⁴ Electoral Act 1993, section 207(2).

⁴⁵ Electoral Act 1993, section 204K(d).

⁴⁶ Ministry of Justice, 2023. *Political lobbying*. [Online] Available at: <https://www.justice.govt.nz/justice-sector-policy/key-initiatives/political-lobbying/> [Accessed October 2023]. At the time of writing, officials are conducting targeted engagement, including with industry on a voluntary code of conduct for lobbyists.

⁴⁷ Electoral Act 1993, section 204K(d).

advertising by prohibiting overseas persons from promoting election advertisements as unregistered third-party promoters. This has previously been recommended by the Justice Committee.

- 19.93 Increased regulation of overseas third-party promoters would have a significant impact on the political speech of a wide group of people and organisations. It would capture more than just those overseas persons who are attempting to interfere on behalf of a foreign state. It could capture, for example, civil society organisations that have both domestic and international branches.
- 19.94 We maintain our view from the interim report that increased regulation is not justifiable. We think that the balance is in favour of allowing overseas persons as unregistered third parties to continue to advertise without further restriction. However, the balance could change in the future, and we encourage the government to continue to pay close attention to this issue.

Disinformation from foreign states

- 19.95 We have discussed disinformation risks in the **Managing the risks of disinformation** section above. We will not repeat that discussion here, but do note that it is not always possible to identify when a foreign state is behind the spread of disinformation. This could be because someone is acting on that state's behalf, or the state is using other mechanisms, such as bots to spread disinformation.
- 19.96 As we note above, in our view, education is the primary way in which Aotearoa New Zealand can reduce the risk of disinformation in the electoral system. This includes the risk of disinformation by foreign states.
- 19.97 We do not make any recommendations specific to foreign interference disinformation risks. However, in **Managing the risks of disinformation**, we recommend increasing the timeframe for the offence of publishing false statements to influence voters to cover the entire advance voting period and election day. This offence could also apply to someone acting on a foreign state's behalf.

Influence and coercion

- 19.98 We also considered the issues of foreign interference through influence and coercion and the risk that foreign states could cultivate relationships with candidates, parties and MPs, as well as risks to communities with ethnic and kinship ties to foreign states.
- 19.99 These are serious issues, but in our view apply more widely than to just the electoral system. We note existing government work in educating candidates and MPs against foreign interference threats,⁴⁸ and encourage that work to continue in

⁴⁸ Protective Security Requirements, above n 40.

the future. We also note the ongoing government work on the offence provisions in the Crimes Act 1961 to address gaps regarding foreign interference.

Cyber attacks

- 19.100 The Justice Select Committee has previously recommended that an election-specific hacking offence is introduced to prohibit hacking into computer systems owned by parliament, local authorities, the Electoral Commission, election service providers, election officers, political parties, candidates, or MPs with the aim of intending to affect the results of an election. We considered this recommendation, but on balance maintain our view that it is not necessary.
- 19.101 We acknowledge that hacking by a foreign state with the intention to interfere with our electoral system is a serious concern. However, it is not clear to us that there is a gap in the existing law (unlike in the case of intentionally obstructing, undermining, or interfering with the work of an electoral official, which we make a recommendation about in **Chapter 18**). Under the Crimes Act 1961, it is already a criminal offence to damage or interfere with a computer system without authorisation, or to access a computer system without authorisation.⁴⁹

Interaction with our other recommendations

- 19.102 In other parts of our report, we have made several recommendations that could reduce the risk of foreign interference in the electoral system, including:
- In **Chapter 6**, we recommend retaining the rule that an MP's seat becomes vacant if they lose their New Zealand citizenship, become a citizen or subject of a foreign state (unless by birth or marriage), make a declaration of allegiance to a foreign state, or apply for a foreign passport.
 - In **Chapter 7**, we recommend that the length of time a resident for electoral purposes must have lived in New Zealand in order to be eligible to vote is increased to one electoral cycle, and keeping the time they can spend overseas without losing the right to vote as 12 months.
 - In **Chapter 11**, we recommend that funding is made available for community-led civics and citizenship education and participation initiatives.
 - In **Chapter 12**, we recommend keeping the requirement that a person must be a New Zealand citizen in order to stand as a candidate. In **Chapter 2**, we recommend entrenching the relevant provision of the Electoral Act, section 47.
 - In **Chapter 13**, as we mention above, we have made a number of recommendations on political finance, including prohibiting donations and

⁴⁹ Crimes Act 1961, section 250. We also note the government's ongoing review of the Crimes Act 1961 offence provisions mentioned above.

loans from overseas persons, introducing a limit on the total amount a person can donate or lend to any party or its candidates, increasing public disclosure of donors and lenders, including for donations made to some registered third parties, and a general anti-avoidance offence.

- In **Chapter 18**, we recommend that the Electoral Commission should be given additional investigative powers and the ability to refer serious financial offending directly to the Serious Fraud Office. We also recommend an overhaul and consolidation of the offences and penalties regime for electoral law, and that there should be a new criminal offence to intentionally obstruct, undermine, or interfere with the work of an electoral official in conducting elections.

The Panel recommends:

- R116. Prohibiting registered third-party promoters from using money from overseas persons to fund electoral advertising during the regulated period.**
- R117. Amending the overseas person definition to close potential loopholes.**



Appendices



Appendix 1: Minor and technical recommendations

We recommend several minor and technical changes in addition to the more substantive recommendations set out in the body of this report.

In many cases, these changes are previous recommendations from the Electoral Commission that we endorse, or recommendations from the Justice Select Committee. You can follow the links to the previous reports for more information.

The following tables set out the minor and technical changes we recommend for each section of the final report.

Part 3: Voters

Recommendation	Comment	Relevant report
Chapter 8: Enrolling to vote		
R118. Extending the information the Electoral Commission can access through data-matching to include email addresses and phone numbers.	<p>This change would build on existing data-matching provisions, which are currently restricted to physical addresses. It would enable the Electoral Commission to contact people through digital channels who are not enrolled or need to update their details.</p> <p>We endorse this recommendation on the condition that data-matching is done in a way that is consistent with privacy principles and takes account of privacy risks, such as shared phones or email addresses. We also believe there needs to be consideration of equity and engagement with communities, such as Māori, over any changes and their potentially unforeseen impacts.</p>	<p>Electoral Commission, Report on the 2017 General Election, page 46</p> <p>Electoral Commission, Report on the 2020 General Election, pages 45-46</p>

Recommendation	Comment	Relevant report
R119. Enabling same-day enrolment on election day for overseas voters.	<p>Currently, any eligible voter can enrol and vote on election day except for overseas voters, whose enrolment deadline is midnight the day before election day.</p> <p>The Electoral Commission has proposed work to update its system to enable election day enrolment for overseas voters, which would also require an amendment to the Electoral Act.</p>	Electoral Commission, Report on the 2020 General Election , page 43
Chapter 9: Voting in elections		
R120. Clarifying that parents can take their children into voting booths.	<p>The Electoral Act says that a person must go into a voting booth alone. This rule is meant to protect the secrecy of the vote. In practice, however, voters can take their children with them into the voting booth if they cannot be left unattended.</p> <p>For clarity, we recommend that the law should state that children under the voting age can accompany their parent or caregiver into the voting booth.</p>	
R121. Clarifying section 61 to cover people whose name appears on the electoral roll but who have moved address and need to update details.	<p>The Electoral Commission has recommended several changes to clarify and modernise special voting provisions.</p> <p>These changes should be considered as part of a redraft of the Electoral Act.</p>	Electoral Commission, Report on the 2020 General Election , page 41
R122. Updating references in section 61 about special voting eligibility to refer to electoral officials generally instead of specific officials.	<p>The Electoral Commission has recommended several changes to clarify and modernise special voting provisions.</p> <p>These changes should be considered as part of a redraft of the Electoral Act.</p>	Electoral Commission, Report on the 2020 General Election , page 41
R123. Allowing special vote declarations issued in a voting place to be completed in an approved electronic medium.	<p>The Electoral Commission has recommended several changes to clarify and modernise special voting provisions.</p> <p>These changes should be considered as part of a redraft of the Electoral Act.</p>	Electoral Commission, Report on the 2020 General Election , pages 42-43

Recommendation	Comment	Relevant report
R124. Modernising archaic language used in the provisions relating to special voting in the Electoral Act and the Electoral Regulations 1996.	The Electoral Commission has recommended several changes to clarify and modernise special voting provisions. These changes should be considered as part of a redraft of the Electoral Act.	Electoral Commission, Report on the 2020 General Election , pages 57-58
R125. Allowing scrutineers to be appointed by either the electorate candidate or the party secretary.	Permitting more flexibility in who appoints scrutineers better reflects the MMP voting systems and acknowledges the role of party secretaries in coordinating a party's election-related activities.	Electoral Commission, Report on the 2020 General Election , page 55
R126. Prohibiting Members of Parliament from being scrutineers at general elections or by-elections.	Having sitting MPs observing voters in polling places is not appropriate and should be prohibited to prevent voters from being influenced.	Electoral Commission, submission to this review
Chapter 10: Counting the vote and releasing results		
R127. Enabling roll scanning and initial special vote declaration checking to begin before the close of voting.	This change would help to reduce pressure on the official count by allowing special vote processing to begin earlier.	Electoral Commission, Report on the 2020 General Election , page 41

Part 4: Parties and candidates

Recommendation	Comment	Relevant report
Chapter 12: Standing for election		
R128. Requiring party secretaries to be enrolled voters.	<p>Currently, the only requirement for becoming a party secretary is that the person must live in New Zealand. We think there should be an additional requirement to reflect the party secretary's statutory responsibility for registered party compliance.</p> <p>We think party secretaries should be required to be enrolled voters, to mirror our recommended requirement that a party's 500 current financial members must also all be enrolled.</p>	
R129. Providing model templates for party structures, constitutions, and candidate selection rules that comply with statutory requirements.	<p>We think there is a need for help to make it easier for new and smaller parties to become registered.</p> <p>We recommend that the Electoral Commission develops model templates for party structures, constitutions, and candidate selection rules that comply with statutory requirements. Parties could use these templates if they wanted to, and could modify them to meet their particular requirements.</p>	
R130. Require candidates to provide satisfactory evidence of New Zealand citizenship if required by the Electoral Commission.	<p>Candidates are required to be citizens of Aotearoa New Zealand in order to be eligible to stand, but are not required to provide proof of citizenship.</p> <p>The Justice Select Committee has recommended that candidates are required to provide satisfactory evidence of New Zealand citizenship if required by the Electoral Commission.</p>	<p><u>Justice Select Committee Report on the Inquiry into the 2017 General Election and 2016 Local Elections</u>, page 22</p>

Recommendation	Comment	Relevant report
R131. Allowing the Electoral Commission or electoral officials to accept individual nominations.	In its submission, the Electoral Commission recommended several changes to make candidate nominations processes fairer and more efficient and effective. These changes should be considered as part of a redraft of the Electoral Act.	Electoral Commission, submission to this review
R132. Modernising the rules around notification of nomination including broadening the definition of public notice.	In its submission, the Electoral Commission recommended several changes to make candidate nominations processes fairer and more efficient and effective. These changes should be considered as part of a redraft of the Electoral Act.	Electoral Commission, submission to this review
R133. Providing that consent can be given on behalf of a candidate who is unable to complete the individual nomination form without assistance due to a disability.	In its submission, the Electoral Commission recommended several changes to make candidate nominations processes fairer and more efficient and effective. These changes should be considered as part of a redraft of the Electoral Act.	Electoral Commission, submission to this review
R134. Removing the right of inspection for nomination forms to protect privacy.	In its submission, the Electoral Commission recommended several changes to make candidate nominations processes fairer and more efficient and effective. These changes should be considered as part of a redraft of the Electoral Act.	Electoral Commission, submission to this review
R135. Allowing the Electoral Commission to refund bulk-nomination deposits before all returns have been individually filed.	In its submission, the Electoral Commission recommended several changes to make candidate nominations processes fairer and more efficient and effective. These changes should be considered as part of a redraft of the Electoral Act.	Electoral Commission, submission to this review

Recommendation	Comment	Relevant report
Chapter 13: Political finance		
R136. Making it clear that any free labour or free services must be provided on a voluntary basis.	<p>Currently, the labour of any person provided free of charge, and goods or services provided free of charge (under a certain minimum reasonable market value) are not donations under the Electoral Act.</p> <p>In its submission, the Electoral Commission recommended that “free labour” and “free or discounted services” is defined in the Act. The definition should be clear that “person” is limited to natural persons for the purpose of free labour.</p>	Electoral Commission, submission to this review
Chapter 14: Election advertising and campaigning		
R137. Following removal of the restriction on electoral advertising on election day, ensuring the regulated period also includes election day.	<p>Our recommendation to remove the current restrictions on election day advertising (except for inside or within 10 metres of polling places) means that election advertisements will be able to be run on election day. For consistency, the rules that apply to expenditure during the regulated period should be extended to include election day.</p> <p>Submitters to our second consultation were supportive of this recommendation.</p>	
R138. Adjusting spending limits once per election cycle to allow for inflation and rounding them up to the next \$1,000.	<p>Currently, when spending limits are adjusted for inflation, it results in figures that are highly specific and difficult for electoral participants to keep track of. We think rounding these limits up to the next \$1,000, when they are adjusted for inflation, will be clearer and simpler.</p> <p>In our interim report, we recommended that the spending limits should be adjusted regularly. The Electoral Commission submitted that spending limits should be updated once per cycle, rather than every year, to avoid confusion.</p> <p>We agree with the Electoral Commission that adjustments should be once per cycle. This will give more certainty ahead of elections</p>	

Recommendation	Comment	Relevant report
	and be simpler for electoral participants to keep track of, particularly in circumstances such as in 2020 where the election was postponed. We revised our recommendation accordingly.	
R139. Updating provisions for candidates that are overseas to have additional time to file campaign returns.	In its submission, the Electoral Commission recommended that the provisions for candidates overseas having additional time to file a return are obsolete now that forms can be accessed and submitted electronically, and should be updated.	Electoral Commission, submission to this review
R140. Updating the provisions for public inspection of returns.	In its submission, the Electoral Commission submitted that the public inspection provisions for returns are no longer fit for purpose, because returns are now published on the Electoral Commission's website, and should be updated.	Electoral Commission, submission to this review

Part 5: Electoral administration

Recommendation	Comment	Relevant report
Chapter 16: Accessing the electoral rolls		
R141. Specifically providing for the Electoral Commission to share electors' address information with Land Information New Zealand.	<p>The Electoral Commission submitted that the Electoral Act should clarify what information it can share with Land Information New Zealand.</p> <p>This change will improve efficiency, lower costs and help voting-place officials to issue special votes more quickly and accurately by making the information in the index much easier to use.</p>	Electoral Commission, submission to this review

Recommendation	Comment	Relevant report
<p>R142. Allowing the supply of the <i>Index of Streets and Places</i> in digital format.</p>	<p>The Electoral Commission submitted that the law should allow the <i>Index of Streets and Places</i> (a listing that links all streets and places in New Zealand to their relevant general and Māori electorate) to be supplied in digital format.</p> <p>This change will improve efficiency, lower costs and help voting-place officials to issue special votes more quickly and accurately by making the information in the index much easier to use.</p>	<p>Electoral Commission, submission to this review</p>
<p>R143. Removing provision for the sale or public inspection of the physical <i>Index of Streets and Places</i> by the Electoral Commission.</p>	<p>In our first consultation, the Electoral Commission recommended removing provision for sale of the physical <i>Index of Streets and Places</i>, noting it had not been available for sale to the public for several years.</p> <p>In our interim report, we recommended removing the <i>Index</i> from sale.</p> <p>We have made a minor amendment to our final recommendation to limit it to removing the physical <i>Index</i> from sale or public inspection at Electoral Commission offices.</p> <p>We note the <i>Index</i> is now freely available online via LINZ and should continue to be.</p>	<p>Electoral Commission, submission to this review</p>

Appendix 2: Terms of Reference

Introduction and context

- 1 Modern and accessible electoral legislation is critical for supporting maximum voter participation in elections, public confidence in election outcomes, and the integrity and effectiveness of our electoral system and wider constitutional framework.
- 2 The rules relating to elections need to be clear, simple, and up to date so voters have confidence in the outcomes of parliamentary elections, no matter their political preferences. Maintaining public confidence in elections underpins the legitimacy of New Zealand's democratic institutions.
- 3 New Zealand has robust electoral laws and our elections are well-run. However, the key piece of governing legislation, the Electoral Act 1993, is outdated and creates a barrier to modern electoral administration. Recent electoral amendments have generally focused on minor and technical fixes needed to be in force in advance of the next general election. More substantive changes, including those recommended by Justice Committee Inquiries and the Electoral Commission, have not been the focus.
- 4 The stability of electoral law is key to a functioning democracy. Electoral law benefits from infrequent change and should be changed only when well-justified to support our democratic processes and better meet the needs of voters, parties and others. Any changes should be based on broad public and cross-party consultation.

Part One: Objectives and Scope

Objective of the review

- 5 The panel's role is to provide advice to the Government on how to ensure that New Zealand continues to have an electoral system that:
 - 5.1 is fair;
 - 5.2 is clear and consistent;
 - 5.3 is practicable and enduring;
 - 5.4 encourages electoral participation;
 - 5.5 upholds Te Tiriti o Waitangi/ the Treaty of Waitangi;
 - 5.6 is open and accountable, with checks and balances to ensure its integrity;
 - 5.7 produces a representative Parliament; and
 - 5.8 produces an effective Parliament and Government.
- 6 These objectives (based on criteria used by the 1986 Royal Commission on the Electoral System) will ensure electoral law is enduring and upholds and promotes the legitimacy and integrity of New Zealand's democratic electoral system.

- 7 Electoral legislation must also remain consistent with the rights and freedoms reflected in the New Zealand Bill of Rights Act 1990.

Scope of the review

- 8 The panel is established by the Minister of Justice (the Minister) to review parliamentary electoral legislation – primarily the Electoral Act 1993 and the Electoral Regulations 1996, but also Part 6 of the Broadcasting Act 1989 and parts 2 and 3 of the Constitution Act 1986. The review is to consider, report and make recommendations on four main areas to the Minister.

Area 1: The overall design of the legislative framework for the electoral system

- 9 The review should consider the overall design of the legislative framework including:
- 9.1 Whether the legislative framework strikes the right balance between certainty and flexibility in its use of primary legislation, secondary legislation, and other instruments. If not, what is the appropriate balance?
 - 9.2 The protection of fundamental electoral rights through reserved provisions
 - 9.3 What other improvements could support the review's objectives.
- 10 Recommendations on these matters should balance the need for electoral legislation to:
- 10.1 be accessible, transparent, and easily understood by the public, parties, candidates, third party promoters and others involved in electoral process, while providing clear rules for the Electoral Commission to administer;
 - 10.2 be stable and certain;
 - 10.3 have sufficient flexibility so that unforeseen and emerging issues can be managed; and
 - 10.4 maintain parliamentary and public confidence in the integrity of New Zealand's democracy.

Area 2: Maintaining a fit-for-purpose electoral regime for voters, parties and candidates

- 11 The review should assess whether changes to the rules or practices governing the administration of parliamentary elections in New Zealand are necessary or desirable to meet the review's objectives. This requires an assessment of the underlying policy settings and rules, such as:
- 11.1 the role of the Electoral Commission, including its functions, powers, governance, and protection of its independence;
 - 11.2 the composition, representativeness and role of the Representation Commission in setting electoral boundaries, and the relationship of the boundary review process to the census;
 - 11.3 voter eligibility, enrolment and disqualification, and the administration of the electoral rolls;
 - 11.4 political party registration, rules, selection and nomination processes, and processes for filling vacancies;
 - 11.5 compliance and enforcement, including the roles of agencies such as the Electoral Commission, New Zealand Police and Serious Fraud Office, and offences and penalties;



- 11.6 the process and procedures for voting and vote counting, including advance voting, special voting and overseas voting and the use of digital technology to assist with vote counting processes;
- 11.7 political financing, including the appropriate balance between private and public funding sources, and election expenditure;
- 11.8 election advertising, including the broadcasting allocation, role of third-party promoters, election day rules, and disclosure requirements;
- 11.9 mechanisms for dispute resolution; and
- 11.10 the security and resilience of the electoral system, including flexibility to use emergency powers to conduct an election, and managing the risks of electoral manipulation and foreign interference.

Area 3: Considering previous recommendations

- 12 The review should consider the recommendations made since 2011 by the Justice Committee Inquiries and the Electoral Commission, alongside the matters identified above. This includes the Electoral Commission's 2012 suggested improvements to the MMP voting system (i.e. changes to the party vote threshold, one seat electorate rule, the ratio of electorate seats to list seats, and overhang rules). The review should not, however, look at changes to the voting system more generally, such as alternatives to the MMP voting system.

Area 4: The term of Parliament

- 13 New Zealand is one of the very few representative democracies with a three-year parliamentary term. Some suggest a three-year term of Parliament can be a barrier to governments developing, consulting on, and implementing substantive policy proposals. Others suggest a three-year term to be appropriate as a means of focussing the government on its policy agenda and providing democratic accountability on a more regular basis.
- 14 The review should also therefore consider the length of the parliamentary term, including:
 - 14.1 whether a longer parliamentary term would improve the effectiveness of government, Parliament and MPs;
 - 14.2 if the term of Parliament was longer, whether voters would still have an appropriate level of influence over government and MPs; and
 - 14.3 other related changes (such as the dissolution and expiry of Parliament).

Out of scope

- 15 The review is not a 'first principles' review of electoral law. It does not cover broader constitutional matters.
- 16 Matters specifically out of scope are: online voting, alternatives to the MMP voting system, the retention of Māori electorate seats, re-establishing an Upper House, the role and functions of the Head of State, or the current size of Parliament (except as it relates to the Electoral Commission's 2012 Review recommendation relating to the ratio of electorate seats to list seats).
- 17 The review does not cover local electoral law and associated local government matters. However, the impact of any legislative change arising from the review that affects local electoral law would need to be considered.

- 18 The panel is encouraged to seek direction from the Minister if matters are raised with it that fall outside these terms of reference that it wishes to consider in detail.

Part Two: Approach

Membership

- 19 The panel will consist of four to six members, including the chair.
- 20 Panel members will be appointed by the Minister, following consideration by Cabinet. The Minister may remove a panel member by issuing a written notice stating the date from which the removal of the member is effective. The Minister may, at their discretion, consult with the chair before removing a member.
- 21 Any panel member may tender their resignation at any time by way of a letter addressed to the Minister.

Deliverables and timeframes

- 22 The panel is required to deliver a final written report containing its recommendations to the Minister no later than 30 November 2023, for subsequent public release.
- 23 The panel should develop an engagement strategy to support two phases of engagement with Māori, iwi, hapū, political parties, the public, and other interested parties:
- 23.1 Phase one would involve informing people about the purpose of the review and engaging with them to identify problems, opportunities, and possible solutions through engagement documents; and
 - 23.2 Phase two would involve giving people the opportunity to see how their input has been used and to provide feedback on the draft recommendations.
- 24 In making recommendations, the panel must have regard to the Government Expectations for Good Regulatory Practice.¹ The panel's recommendations should ensure:
- 24.1 the underlying problem or opportunity is properly identified, and is supported by available evidence;
 - 24.2 all practical options to address the problem or opportunity have been considered;
 - 24.3 all material impacts and risks of proposed actions have been identified and assessed in a consistent way, including possible unintended consequences; and
 - 24.4 it is clear why a particular option has been recommended over others.

¹<https://www.treasury.govt.nz/information-and-services/regulation/regulatory-stewardship/good-regulatory-practice>

- 25 The chair of the panel will agree an approach with the Minister on how it will carry out its work programme. An indicative approach to the timing of the panel's work is set out in table one.

Table one: Indicative approach and timeframes for the review

Approximate timeframe	Milestone
By end of June 2022	Panel reports to the Minister on its intended work programme and engagement strategy
June 2022 - November 2022	Panel releases a summary of the issues, potential range of options, and engages broadly
December 2022 - May 2023	Panel releases a report with draft recommendations and engages broadly
By end of November 2023	Panel delivers its final report to the Minister, for subsequent public release

Accountability

- 26 The panel is accountable to the Minister for the quality and timeliness of its work programme and its final report. The panel chair will report to the Minister with progress updates on a quarterly basis.
- 27 Panel members must conduct this work as individuals, separate from any concurrent employment or business activities.
- 28 Panel members will be remunerated for their time in line with the Cabinet Fees Framework set out in Cabinet Office Circular CO(19)1 and reimbursed for actual and reasonable expenses (such as travel and accommodation).
- 29 The panel will operate according to principles that include (but are not limited to):
- 29.1 working with iwi and Māori in good faith and in accordance with the Treaty of Waitangi (Cabinet Office Circular CO (19) 5, Te Tiriti o Waitangi/ the Treaty of Waitangi Guidance);
 - 29.2 conducting engagement with political parties and the public (particularly groups with lower participation rates);
 - 29.3 ensuring timely production of documents, ensuring that information received is recorded appropriately and ensuring efficiency, transparency, and accountability in its use of public funds; and
 - 29.4 acting with good faith and integrity, and conducting the review in an independent, impartial, and fair way.

Meeting arrangements

- 30 If the chair is unavailable to attend a meeting, they must nominate the deputy chair (or another panel member if the deputy chair is also unavailable to attend) to act in their place. Members of the panel may not delegate attendance at meetings.

- 31 Meetings of the panel may be in-person or virtual. A meeting quorum will be no less than three panel members, including the chair (or their nominee).

Public communications

- 32 The panel is expected to conduct planned engagements with stakeholders. The chair will approve all such engagements. Members of the panel should seek agreement from the chair before communicating any aspects of the panel's work in public fora. This includes, but is not limited to media engagement, academic work, and social media.

Role of the secretariat

- 33 The panel will be supported by a secretariat. The secretariat's primary role is to provide advisory and analytical support to the panel. The panel may request advice and analysis from the secretariat on any matter within the scope of these terms of reference. The secretariat (as commissioned by the chair) can brief panel members on issues and assessing options for reform and will draft the engagement documents and the final report at the panel's direction.
- 34 The secretariat will also provide advice to the panel on project management and planning, and the panel's public engagement strategy.
- 35 The secretariat will be provided by the Ministry of Justice (the Ministry). However, the advice of the secretariat will be independent of the Ministry.
- 36 Secretariat staff will report to the secretariat manager who in turn is directly accountable to the chair of the panel for meeting the panel's needs consistent with these terms of reference.

Supporting advice

- 37 While the secretariat is the panel's primary advisor, the Ministry will support the panel by providing timely advice and information to the panel and secretariat as needed.
- 38 Limited funding will be made available if the panel requires to commission specific research or analysis. Requests will need to be made to the secretariat manager.
- 39 The panel may also request advice and information from the Electoral Commission on matters that fall within the Commission's expertise.

Information requests and confidentiality

- 40 All correspondence, advice or information produced or received by the panel (or between panel members) and its secretariat will be subject to the provisions of the Official Information Act 1982. The Ministry will be responsible for responding to official information requests, in consultation with the chair of the panel, if appropriate.
- 41 The work of the panel may also involve personal information. Members of the panel will ensure that the collection, use, disclosure, and storage of personal information in connection with their work is consistent with the Privacy Act 2020 and the Public Records Act 2005. These obligations continue, as appropriate, beyond panel members' appointment.



- 42 Members of the panel may be presented with a range of private or confidential information, including on aspects of government agencies' business as well as commercially sensitive information. The expectation is that panel members will act professionally, respecting each other's, third parties' and the Government's interests.

Conflicts of interest

- 43 Members of the panel should identify, disclose, manage, and review situations that might compromise their integrity or otherwise lead to actual or perceived conflicts of interest. The secretariat will put in place appropriate procedures, including a register of interests, to ensure that any potential conflicts of interest are identified and managed effectively.

Intellectual Property

- 44 Any report or work product developed by the panel will be the property of the Crown. Government agencies, at their discretion, may use reports or other work products supplied or developed by the panel.
- 45 Nothing will affect the rights of a panel member or their employer in the intellectual property owned by that member or their employer prior to entering this engagement or developed by the member other than in the performance of this engagement.





Appendix 3: Impact of changes to MMP

In tables one to three below, the same approach is followed: for each year, the first row notes what the results were under the existing rules, and the second row shows the probable changes if our recommendation or recommendations were put in place. This modelling was produced before the 2023 general election so does not include its results.

Table 1: Combined impact of our recommendations (lowering the party vote threshold to 3.5 per cent, removing the one-electorate seat threshold, and removing the provision for overhang seats) on previous election results compared to the status quo

Year	MMP settings	Allocation of seats	Impact on government formation	Disproportionality ²
2020	Status quo	Labour 65, National 33, ACT 10, Green 10, Māori 2	Govt: Labour (Majority); Confidence & Supply: Green Party (75/120)	4.15
	Changes	Labour +1 , Māori -1	No change (76/120)	No change
2017	Status quo	National 56, Labour 46, NZ First 9, Green 8, ACT 1	Coalition: Labour, NZ First; Confidence & Supply: Greens (63/120)	2.73
	Changes	No change	No change (63/120)	No change
2014	Status quo	Coalition: Labour, NZ First; Confidence & Supply: Greens (63/120)	Govt: National; Confidence & Supply: ACT, Māori, United Future (64/121)	3.72
	Changes	National -3 , Labour -1 , Green -1 , Conservatives +5 , Māori -1	Conservatives enter parliament; existing grouping insufficient to form majority (60/120)	1.40 (-2.32)
2011	Status quo	National 59, Labour 34, Green 14, NZ First 8, Māori 3, ACT 1, Mana 1, United 1	Govt: National; Confidence & Supply: ACT, Māori, United Future (64/121)	2.38
	Changes	National -1	No change (63/120)	2.32 (-0.06)

² As measured by the Gallagher Index of Proportionality. A perfectly proportional election would be zero. The higher the statistic, the greater the degree of disproportionality.

Year	MMP settings	Allocation of seats	Impact on government formation	Disproportionality ²
2008	Status quo	National 58, Labour 43, Green 9, ACT 5, Māori 5, Progressives 1, United 1	Govt: National; Confidence & Supply: ACT, Māori, United Future (69/122)	3.84
	Changes	National -3 , Labour -2 , Green -1 , NZ First +5 , ACT -1	NZ First enter parliament; Govt of the day retains majority (65/120)	1.61 (-2.23)
2005	Status quo	Labour 50, National 48, NZ First 7, Green 6, Māori 4, ACT 2, United 3, Progressives 1	Coalition: Labour, Progressives; Confidence & Supply: NZ First, United Future (61/121)	1.13
	Changes	Labour +1 , Green +1 , ACT -1 , United -2	Existing grouping insufficient to form majority (60/120)	2.12 (+0.99)
2002	Status quo	Labour 52, National 27, NZ First 13, ACT 9, Green 9, United 8, Progressives 2	Coalition: Labour, Progressives; Confidence & Supply: United Future (62/120)	2.54
	Changes	United +1 , Progressives -1	No change (62/120)	2.67 (+0.13)
1999	Status quo	Labour 49, National 39, Alliance 10, ACT 9, Green 7, NZ First 5, United NZ 1	Coalition: Labour, Alliance; Confidence & Supply: Greens (66/120)	2.99
	Changes	No change	No change (66/120)	No change
1996	Status quo	National 44, Labour 37, NZ First 17, Alliance 13, ACT 8, United NZ 1	Coalition: National, NZ First (61/120)	4.31
	Changes	National -2 , Labour -2 , Alliance -1 , Christian Coalition +5	Christian Coalition enters parliament; existing grouping insufficient to form majority (59/120)	1.71 (-2.6)

Table 2: Impact of 3.5 per cent party vote threshold in previous elections compared to status quo

Year	Party vote threshold	Allocation of seats	Impact on government formation	Disproportionality
2020	5%	Labour 65, National 33, ACT 10, Green 10, Māori 2	Govt: Labour (Majority); Confidence & Supply: Green Party (75/120)	4.15
	3.5%	No change	No change	No change
2017	5%	National 56, Labour 46, NZ First 9, Green 8, ACT 1	Coalition: Labour, NZ First; Confidence & Supply: Greens (63/120)	2.73
	3.5%	No change	No change	No change
2014	5%	National 60, Labour 32, Green 14, NZ First 11, Māori 2, ACT 1, United 1	Govt: National; Confidence & Supply: ACT, Māori, United Future (64/121)	3.72
	3.5%	National -3 , Labour -1 , Green -1 , Conservatives +5	Conservatives enter parliament; Govt of the day retains majority (61/121)	1.27 (-2.45)
2011	5%	National 59, Labour 34, Green 14, NZ First 8, Māori 3, ACT 1, Mana 1, United 1	Govt: National; Confidence & Supply: ACT, Māori, United Future (64/121)	2.38
	3.5%	No change	No change	No change
2008	5%	National 58, Labour 43, Green 9, ACT 5, Māori 5, Progressives 1, United 1	Govt: National; Confidence & Supply: ACT, Māori, United Future (69/122)	3.84
	3.5%	National -3 , Labour -1 , Green -1 , NZ First +5	NZ First enter parliament; Govt of the day retains majority (66/122)	1.49 (-2.35)
2005	5%	Labour 50, National 48, NZ First 7, Green 6, Māori 4, ACT 2, United 3, Progressives 1	Coalition: Labour, Progressives; Confidence & Supply: NZ First, United Future (61/121)	1.13
	3.5%	No change	No change	No change

Year	Party vote threshold	Allocation of seats	Impact on government formation	Disproportionality
2002	5%	Labour 52, National 27, NZ First 13, ACT 9, Green 9, United 8, Progressives 2	Coalition: Labour, Progressives; Confidence & Supply: United Future (62/120)	2.54
	3.5%	No change	No change	No change
1999	5%	Labour 49, National 39, Alliance 10, ACT 9, Green 7, NZ First 5, United NZ 1	Coalition: Labour, Alliance; Confidence & Supply: Greens (66/120)	2.99
	3.5%	No change	No change	No change
1996	Status quo	National 44, Labour 37, NZ First 17, Alliance 13, ACT 8, United NZ 1	Coalition: National, NZ First (61/120)	4.31
	3.5%	National -2 , Labour -2 , Alliance -1 , Christian Coalition +5	Christian Coalition enters parliament; existing grouping insufficient to form majority (59/120)	1.71 (-2.6)

Table 3: Impact of removing the one-electorate seat threshold in previous elections compared to status quo

Year	One-electorate seat threshold	Allocation of seats	Total seats	Impact on government formation	Disproportionality
2020	Status quo	Labour 65, National 33, ACT 10, Green 10, Māori 2	120	Govt: Labour (Majority); Confidence & Supply: Green Party (75/120)	4.15
	Changes	Labour +1 , National +1 , Māori -1	121 (+1)	No change (76/121)	4.48 (+0.33)
2017	Status quo	National 56, Labour 46, NZ First 9, Green 8, ACT 1	120	Coalition: Labour, NZ First; Confidence & Supply: Greens (63/120)	2.73
	Changes	Labour +1	121 (+1)	No change (64/121)	2.74 (+0.01)
2014	Status quo	National 60, Labour 32, Green 14, NZ First 11, Māori 2, ACT 1, United 1	121	Govt: National; Confidence & Supply: ACT, Māori, United Future (64/121)	3.72
	Changes	National +2 , Labour +1 , Māori -1	123 (+2)	National could have formed a majority government (62/123)	4.09 (+0.37)
2011	Status quo	National 59, Labour 34, Green 14, NZ First 8, Māori 3, ACT 1, Mana 1, United 1	121	Govt: National; Confidence & Supply: ACT, Māori, United Future (64/121)	2.38
	Changes	National +2 , Labour +2 , NZ First +1	126 (+5)	No change (66/126)	2.36 (-0.02)

Year	One-electorate seat threshold	Allocation of seats	Total seats	Impact on government formation	Disproportionality
2008	Status quo	National 58, Labour 43, Green 9, ACT 5, Māori 5, Progressive 1, United 1	122	Govt: National; Confidence & Supply: ACT, Māori, United Future (69/122)	3.84
	Changes	National +5 , Labour +5 , ACT -4	128 (+6)	No change, but increased importance of Te Pāti Māori for majority / ACT decreased importance (70/128)	5.43 (+1.59)
2005	Status quo	Labour 50, National 48, NZ First 7, Green 6, Māori 4, ACT 2, United 3, Progressive 1	121	Coalition: Labour, Progressives; Confidence & Supply: NZ First, United Future (61/121)	1.13
	Changes	Labour +4 , National +3 , NZ First +1 , Green +1 , ACT -1 , United -2	127 (+6)	No change (64/127)	2.15 (+ 1.02)
2002	Status quo	Labour 52, National 27, NZ First 13, ACT 9, Green 9, United 8, Progressive 2	120	Coalition: Labour, Progressives; Confidence & Supply: United Future (62/120)	2.54
	Changes	Labour +1 , United +1 , Progressive -1	121 (+1)	No change (63/121)	2.80 (+0.26)
1999	Status quo	Labour 49, National 39, Alliance 10, ACT 9, Green 7, NZ First 5, United 1	120	Coalition: Labour, Alliance; Confidence & Supply: Greens (66/120)	2.99
	Changes	Labour +3 , National +2 , ACT +1 , NZ First -4	122 (+2)	Labour & Alliance sufficient for majority (62/122)	5.35 (+2.36)

Year	One-electorate seat threshold	Allocation of seats	Total seats	Impact on government formation	Disproportionality
1996	Status quo	National 44, Labour 37, NZ First 17, Alliance 13, ACT 8, United NZ 1	120	Coalition: National, NZ First (61/120)	4.31
	Changes	No change	No change	No change	No change

Table 4: Estimated size of parliament to 2044, based on an electorate to list ratio of 60:40 and adjusted for an uneven total number of seats³

Year	Māori electorates	South Island	North Island	General electorates (total)	List seats	Initial total	Adjusted total ⁴
2018	7	16	49	65	48	120	121
2026	8	16	49	65	49	122	123
2029	8	16	50	66	49	123	No change
2032	8	16	50	66	49	123	No change
2035	9	16	50	66	50	125	No change
2038	9	16	51	67	51	127	No change
2041	9	16	51	67	51	127	No change
2044	10	16	52	68	52	130	131

³ These estimates were provided to us by Statistics New Zealand in January 2023. A medium growth scenario was used to calculate the number of electorate seats at regular intervals out to 2044 – this scenario is neither a prediction nor a forecast but is intended to give an indication of future population changes based on current demographic trends and policy settings. Note that future population change is uncertain, and the timing of boundary reviews may not match all of the years noted in the table.

⁴ Where an additional seat is needed, this would be a list seat.

Glossary

Advance vote	A vote cast in a parliamentary election before election day. The advance voting period is set by the Electoral Commission and typically starts two weeks before election day.
Astroturfing	A fake “grass-roots” campaign. Occurs when an organisation hides its financial involvement in spreading a message by making it appear as though it is coming from grass-roots participants.
Ballot paper	The voting paper on which a voter indicates their preferred candidate and political party. Ballot papers are also referred to as “ballots”.
Broadcasting allocation	State funding provided to political parties to pay for election advertising on television, radio, and the internet (parties cannot use their own money for election advertisements on television or radio). The Electoral Commission allocates this funding by considering a range of statutory criteria based on indications of the party’s level of public support, as well as the need to provide a fair opportunity to each party to convey its policies to the public.
By-election	An election held in a specific electorate to replace a Member of Parliament when the electorate seat becomes vacant.
Candidate	A person who puts their name forward for election to parliament. Candidates can contest an electorate, be on a party list, or both.
Census	The census is a nationwide population and household survey conducted every five years. It collects data on a range of topics about Aotearoa New Zealand, mainly its population.
Chief electoral officer	The person responsible, under the Electoral Act 1993, for exercising the powers, duties and functions of running elections as one member of the three-person board of the Electoral Commission.
Corrupt practices	Serious offences that pose a threat to the overall integrity of the election process. A person found guilty of a corrupt practice can be imprisoned and fined, disqualified as an elector for three years, and forced to vacate their seat if they are a Member of Parliament.
Disinformation and misinformation	Disinformation is false or modified information knowingly and deliberately shared to cause harm.

	Misinformation is false or misleading information, though not created or shared with the direct intention of causing harm.
Disabled person	Includes people with long-term physical, mental, intellectual, or sensory impairment(s), which in interaction with various barriers may hinder their full and effective participation in society on an equal basis with others.
Disenfranchisement	The loss of the right to vote.
Dissolution of parliament	The ending of a parliament by proclamation from the governor-general resulting in a general election.
Electoral official	A person who works for the Electoral Commission to help it to perform its functions.
Electoral roll	The list of names of people who are registered voters for an electorate. There is a roll for each general and Māori electorate. Only voters of Māori descent can choose to be on a Māori electorate roll.
Electorate	A geographical area that is represented by an electorate Member of Parliament. Aotearoa New Zealand currently has 65 general electorates and seven Māori electorates.
Government	Those Members of Parliament who govern the country with the support of the majority of the members of the House of Representatives.
Hapū	Māori kin community.
House of Representatives	The assembled body of elected Members of Parliament. It combines with the governor-general to form parliament.
Hui	Meeting.
Incumbency advantage	The advantages a political party represented in the current parliament has over parties not represented in parliament. Usually refers to advantages at elections.
Iwi	Māori nation/people.
Kanohi ki te kanohi / Kanohi kitea	Face to face, in person.
Kāwanatanga	Government.
Manaakitanga	Nurturing relationships.

Māori electoral option	People of Māori descent have the option to register either as a voter in a Māori electorate or as a voter in a general electorate. Recent changes allow Māori to move between the Māori roll and the general roll as often as they like except in the lead-up to a general or local election or by-election.
Master roll	A version of the electoral roll updated during the voting period, showing who has voted.
Member of Parliament (MP)	A person elected to sit in the House of Representatives either by winning an electorate or through a political party's list (see the description of Mixed Member Proportional voting system).
Mixed Member Proportional (MMP) voting system	<p>Aotearoa New Zealand's current voting system. It provides for a mix of Members of Parliament elected from electorates and those elected from a party list, and a parliament in which parties' shares of the seats roughly mirror their share of the nationwide vote.</p> <p>Each voter has two votes – a vote for a party (the party vote) and a vote for a candidate in their electorate (the electorate vote).</p> <p>Each electorate elects one Member of Parliament. The candidate with the most votes becomes the local representative for that electorate in parliament. The party vote is counted on a nationwide basis.</p> <p>A party may be eligible for a share of the list seats if it gains five per cent or more of the nationwide party vote or wins one or more electorate seats.</p>
Nomination day	The day specified in the writ as the latest day candidates can be nominated to contest an electorate in an election.
Overhang	The additional seats in parliament that are created if a party wins more electorate seats than it would be entitled to from its share of the party vote.
Overseas person	An individual who resides outside Aotearoa New Zealand and is not a New Zealand citizen or registered as an elector, or a body corporate incorporated outside Aotearoa New Zealand, or an unincorporated body that has its head office or principal place of business outside Aotearoa New Zealand.
Pākehā	New Zealander of European descent.
Parliament	The collective term for members of the House of Representatives <i>and</i> the governor-general.
Parliamentary supremacy	The doctrine that the parliament is the supreme law-making body of the three branches of government. Also known as parliamentary sovereignty.

Permanent resident	Anyone who resides in Aotearoa New Zealand and has the right to remain here indefinitely. This term has a different meaning for immigration purposes, so we use the term “resident for electoral purposes” in this report to avoid confusion.
Referendum	Where voters are given the opportunity to vote on an issue directly.
Regulated period	The three-month period before election day where there is a spending limit on election advertising for candidates, parties, and registered third-party promoters (described below).
Representation Commission	The body responsible for naming and drawing the boundaries of general and Māori electorates. The Commission is composed of public officials and representatives of the government and opposition.
Resident for electoral purposes	See “Permanent resident”.
Returning Officer	Returning Officers are appointed by the Electoral Commission to administer the election in a particular electorate.
Scrutineer	A person who observes the conduct of the election on behalf of candidates and parties. Their role is to inform those who appointed them whether or not election rules and procedures have been properly followed.
Sovereignty	Supreme power, authority or rule.
Speaker of the House	A Member of Parliament elected by the House of Representatives to manage parliament and its business. The Speaker is the chairperson of the House, oversees debates, and ensures that rules and Members of Parliaments’ rights are upheld.
Special vote	A vote cast by someone who is not able to cast an ordinary vote (for example, because they cannot vote in person in their electorate, or because they are not on the printed electoral roll). People casting special votes must also complete a declaration form.
Takatāpui	Māori rainbow community.
Tangata whenua	Indigenous / “people of the land”.
Taonga	Treasured possession.
Te ao Māori	The Māori world.
Te reo Māori	The Māori language.

Third-party promoter	An individual or group who is not contesting the election directly but wishes to influence the outcome through advertising about a candidate, party, election issue, or referendum.
Tikanga Māori	Māori law and practice.
Tino rangatiratanga	Self-determination / chiefly authority.
Whakapapa	Genealogy, lineage, descent.
Whānau	Extended family.
Writ	<p>The formal direction issued by the governor-general instructing the Electoral Commission to hold an election. The writ will specify the dates of nomination day, election day, and the latest day for the return of the writ.</p> <p>Writ day is the day on which the governor-general issues a writ.</p> <p>Return of the writ is the day on which a writ, containing the full name of every constituency candidate elected, is returned to the Clerk of the House of Representatives.</p>



He Arotake Pōtitanga Motuhake
Independent Electoral Review

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