

Hon Kris Faafoi
Minister of Justice

Proactive release – Advancing Electoral Law Reform

Date of issue: 15 December 2021

The following documents have been proactively released in accordance with Cabinet Office Circular CO (18) 4.

Some information has been withheld on the basis that it would not, if requested under the Official Information Act 1982 (OIA), be released. Where that is the case, the relevant section of the OIA has been noted and no public interest has been identified that would outweigh the reasons for withholding it.

No.	Document	Comments
1	Advancing Electoral Law Reform <i>Briefing - Key advice</i> Ministry of Justice 14 June 2021	Some information has been withheld in accordance with the following sections of the OIA: <ul style="list-style-type: none">• section 9(2)(a) to protect the privacy of natural persons, and• section 9(2)(f)(iv) to protect the confidentiality of advice tendered by Ministers of the Crown and officials; and• section 9(2)(g)(i) to maintain the effective conduct of public affairs through the free and frank expression of opinions.
2	Advancing Electoral Law Reform <i>Cabinet Paper</i> Office of the Minister of Justice 17 November 2021	Some information has been withheld in accordance with section 9(2)(f)(iv) of the OIA to protect the confidentiality of advice tendered by Ministers of the Crown and officials.
3.	Draft Terms of Reference: Independent electoral law review <i>Attachment to Cabinet Paper</i> Office of the Minister of Justice 17 November 2021	Some information has been withheld in accordance with section 9(2)(f)(iv) of the OIA to protect the confidentiality of advice tendered by Ministers of the Crown and officials.
4.	Advancing Electoral Law Reform <i>Cabinet Minute SWC-21-MIN-0108</i> Cabinet Office 17 November 2021	Some information has been withheld in accordance with section 9(2)(f)(iv) of the OIA to protect the confidentiality of advice tendered by Ministers of the Crown and officials.

Hon Kris Faafoi, Minister of Justice

Advancing Electoral Law Reform

Date	14 June 2021	File reference	ELP-15-02
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Action Sought

Timeframe/Deadline

Provide feedback on the attached draft Cabinet paper and **indicate** whether you would like to meet with officials to discuss further.

By 21 June 2021

Agree to begin agency and Ministerial consultation on the draft Cabinet paper and draft Terms of Reference

Contacts for telephone discussion (if required)

Name	Position	Telephone (work)	Telephone (a/h)	1st contact
Caroline Greaney	General Manager, Civil and Constitutional	Section (9) (2) (a)	Section (9) (2) (a)	✓
Stephanie Henry-Jones	Policy Manager, Electoral and Constitutional	Section (9) (2) (a)	Section (9) (2) (a)	
Carolyn Read	Senior Advisor, Electoral and Constitutional	Section (9) (2) (a)		

Minister's office to complete

- ☐ Noted ☐ Approved ☐ Overtaken by events
☐ Referred to: _____
☐ Seen ☐ Withdrawn ☐ Not seen by Minister

Minister's office comments

Purpose

1. This briefing attaches early drafts of a Cabinet paper *Advancing Electoral Law Reform* and Terms of Reference for your feedback by Tuesday, 21 July 2021. It seeks your agreement to begin consultation on the draft Cabinet paper and draft Terms of Reference (subject to updating them to reflect any feedback you may have).

Approval to consult on the early draft Cabinet paper

2. The paper seeks agreement to progress your priorities for electoral law this term and amends previous Cabinet decisions [CAB-21-MIN-0143], which agreed to undertake public engagement on the length of the parliamentary term.

The paper sets out the Government's plans for electoral law reform

3. The paper recommends electoral work progressing on:
 - Section (9)(2)(f) targeted reforms to electoral law to support the 2023 General Election. These are changes to political donations, Section (9)(2)(f)(iv) and the Māori Electoral Option (MEO) (the MEO was considered by Cabinet today); and
 - an independent review of electoral law by appointing an independent panel to lead the review, undertake broad engagement with the public and political parties and report back to you with recommendations by June 2023.
4. The Cabinet paper attaches early draft Terms of Reference for the panel. The Terms of Reference set out the purpose, objectives and scope of the independent electoral law review. We suggest that the review cover four main areas:
 - the overall design of the legislative framework underpinning the administration of the electoral system
 - maintaining a fit for purpose electoral regime for voters, parties, candidates, and third-party promoters
 - matters raised but not addressed in previous Electoral Commission reports and Justice Committee inquiries, including recommendations from the Electoral Commission's 2012 report on improving some of the policy settings of MMP), and
 - considering the length of the parliamentary term.
5. You may wish to discuss the draft paper and Terms of Reference with relevant Ministerial colleagues before formal Ministerial and agency consultation takes place.

The paper will support public announcements, recruitment and cross-party consultation

6. Following Cabinet decisions, public announcements could be made about the Government's electoral work programme. We anticipate that there will be media and public interest in the electoral work programme. We will provide a press statement and Q&As to support any announcements.
7. Public announcements would also allow the Ministry to begin recruitment for the additional people needed to work on the political donations and Section (9)(2)(f)(iv) ,

as well as setting up the panel's secretariat. The ability to go out early for recruitment will be critical to enable the Ministry to meet already tight timeframes for this work.

8. After Cabinet, you will be able to consult on the draft TOR and seek panel member nominations from parliamentary leaders and others such as the Iwi Chairs Forum and academics. Cross-party consultation is necessary to seek broad support for the approach, scope and process of the independent electoral law review. After receiving nominations, the next step will be to take a paper to the Appointment and Honours Cabinet Committee [Section \(9\)\(2\)\(f\)\(iv\)](#)

Funding implications

9. [Section \(9\)\(2\)\(f\)\(iv\)](#)

Timeframes

13. The key milestones for the targeted reforms and independent electoral law review are set out below.

Political donations, [Section \(9\)\(2\)\(f\)\(iv\)](#) and MEO

14. To allow time for changes to be implemented, electoral law reforms need to be in place well ahead of the 2023 General Election. [Section \(9\)\(2\)\(f\)\(iv\)](#), [Section 9 \(2\) \(g\) \(i\)](#)

15. [Section \(9\)\(2\)\(f\)\(iv\)](#)

¹ Political donation reform affects both parties and candidates and they must have sufficient time to prepare for any new rules before the start of the election year.

Section (9)(2)(f)(iv)

:

Action	MEO	Political Donations	Advance voting
Cabinet policy approvals	Section (9)(2)(f)(iv)	Section (9)(2)(f)(iv)	Section (9)(2)(f)(iv)
Bill introduction	Section (9)(2)(f)(iv)	Section (9)(2)(f)(iv)	Section (9)(2)(f)(iv)
Select Committee	Section (9)(2)(f)(iv)	Section (9)(2)(f)(iv)	Section (9)(2)(f)(iv)
Enactment	Section (9)(2)(f)(iv)	Section (9)(2)(f)(iv)	Section (9)(2)(f)(iv)

Independent electoral law review

18. The estimated timeframes for the independent electoral law review are:

Action	Date
Independent panel established (Cabinet approvals)	Section (9)(2)(f)(iv)
Panel report to Minister	Section (9)(2)(f)(iv)
Cabinet policy approvals	Section (9)(2)(f)(iv)
Bill introduced	Section (9)(2)(f)(iv)

Next steps

19. In order to obtain Cabinet decisions before the July recess, the indicative timeframe for the immediate next steps is:

Action	Date
Agency and Ministerial consultation (in parallel)	23-29 June
Cabinet paper lodged	1 July
Cabinet Social Welling Committee consideration	7 July
Cabinet consideration	12 July
Media release	ASAP after Cabinet

20. Once we have received your feedback, we will update the paper and provide it to your office for you to carry out the appropriate Ministerial consultation between 23 and 29 June.

21. There is a very short window for consultation and we propose undertaking Ministerial consultation in parallel with agency consultation. Section (9)(2)(f)(iv)

Section (9)(2)(f)(iv)

Section (9)(2)(f)(iv)

YES / NO

Section (9) (2) (a)

Caroline Greaney
General Manager, Civil and Constitutional

APPROVED / SEEN / NOT AGREED

Hon Kris Faafoi, Minister of Justice

Date: / /

Terms of reference: Independent electoral law review

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. Electoral law must be actively maintained for this to remain so, with any changes based on broad public and cross-party consultation.

Part One: Objectives and Scope

Objective of the review

- 4 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:
 - 4.1 is fair, clear and consistent;
 - 4.2 is practicable and enduring;
 - 4.3 encourages electoral participation;
 - 4.4 upholds Te Tiriti o Waitangi/ the Treaty of Waitangi;
 - 4.5 is open and accountable;
 - 4.6 produces a representative Parliament; and
 - 4.7 produces an effective Parliament and Government.
- 5 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.

Scope of the review

- 6 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 relevant parts of the Constitution Act 1986. The review is to consider, report and make recommendations on four main areas to the Minister.

Area one: the overall design of the legislative framework for the electoral system

- 7 The review should consider the overall design of the legislative framework including:
 - 7.1 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?
 - 7.2 What other improvements could support the review's objectives.

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- 8 Recommendations on these matters should balance the need for electoral legislation to:
- 8.1 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;
 - 8.2 be stable and certain;
 - 8.3 have sufficient flexibility so that unforeseen and emerging issues can be managed; and
 - 8.4 maintain parliamentary and public confidence in the integrity of New Zealand's democracy.

Area two: maintaining a fit-for-purpose electoral regime for voters, parties and candidates

- 9 The review should assess whether changes to the rules or practice 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 relating to:
- 9.1 the role of the Electoral Commission: including its functions, powers, governance, and protection of its independence;
 - 9.2 the composition and role of the Representation Commission in setting electoral boundaries, and the relationship of the boundary review process to the census;
 - 9.3 voter eligibility, enrolment and disqualification, and the administration of the electoral rolls;
 - 9.4 political party registration, rules, selection and nomination processes, and processes for filling vacancies;
 - 9.5 compliance and enforcement, including the roles of agencies such as the Electoral Commission, New Zealand Police and Serious Fraud Office, and offences and penalties;
 - 9.6 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;
 - 9.7 political financing, including donations and alternatives (such as state funding) and election expenditure;
 - 9.8 election advertising, including the broadcasting allocation, role of third-party promoters, election day rules, and disclosure requirements;
 - 9.9 mechanisms for dispute resolution; and
 - 9.10 the security and resilience of the electoral system, including flexibility to use emergency powers, and managing the risk of electoral manipulation.

Area three: considering previous recommendations

- 10 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.
- 11 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 four: the term of Parliament

- 12 As noted above, the primary focus of electoral amendments has been to make technical fixes to the ageing Act. In part, this reflects that changes to electoral law must be in place with sufficient lead-in time before the next general election. As a result, it is difficult to develop, consult and build consensus on substantive electoral law reform within this window.
- 13 It could also partly reflect that 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 beyond electoral law.
- 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 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 whether the parliamentary term should be fixed in some way).

Out of scope

- 15 The review is not a 'first principles' review of electoral law. It does not cover broader constitutional matters. 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).
- 16 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.
- 17 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

Deliverables and timeframes

- 18 The panel is required to deliver a final written report containing its recommendations to the Minister **Section (9)(2)(f)(iv)**
- 19 The panel should develop an engagement strategy to support two phases of public engagement with Māori, iwi, hapu, political parties, the public, and other interested parties:
- 19.1 Phase one would involve using issues papers to inform people about the purpose of the review, and engaging with them to identify problems, opportunities, and possible solutions; and
- 19.2 Phase two would involve giving people the opportunity to see how their input has been used and to provide feedback on the draft report and recommendations.
- 20 In making recommendations, the panel must have regard to the Government Expectations for Good Regulatory Practice.¹ The panel's recommendations should ensure:
- 20.1 the underlying problem or opportunity is properly identified, and is supported by available evidence;
- 20.2 all practical options to address the problem or opportunity have been considered;
- 20.3 all material impacts and risks of proposed actions have been identified and assessed in a consistent way, including possible unintended consequences; and
- 20.4 it is clear why a particular option has been recommended over others.
- 21 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

Timeframe	Milestone
Section (9)(2)(f)(iv)	Panel reports to the Minister on its intended work programme and engagement strategy
Section (9)(2)(f)(iv)	Panel releases a summary of the issues, potential range of options, and engages broadly
Section (9)(2)(f)(iv)	Panel releases a report with draft recommendations and engages broadly
Section (9)(2)(f)(iv)	Panel delivers its final report to the Minister, for subsequent public release

Accountability

- 22 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.

¹<https://www.treasury.govt.nz/information-and-services/regulation/regulatory-stewardship/good-regulatory-practice>

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- 23 Panel members must conduct this work as individuals, separate from any concurrent employment or business activities.
- 24 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).
- 25 The panel will operate according to principles that include (but are not limited to):
- 25.1 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);
 - 25.2 conducting engagement with political parties and the public (particularly groups with lower participation rates);
 - 25.3 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
 - 25.4 acting with good faith and integrity, and conducting the review in an independent, impartial, and fair way.

Membership

- 26 The panel will consist of four to six members, including the chair.
- 27 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.
- 28 Any panel member may tender their resignation at any time by way of a letter addressed to the Minister.

Meeting arrangements

- 29 If the chair is unavailable to attend a meeting, they must nominate a panel member to act in their place. Members of the panel may not delegate attendance at meetings.
- 30 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

- 31 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

- 32 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 (including drafting the panel's issues paper and report).

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- 33 The secretariat will also provide advice to the panel on project management and planning, and the panel's public engagement strategy.
- 34 The secretariat will be provided by the Ministry of Justice (the Ministry). However, the advice of the secretariat will be independent of the Ministry.
- 35 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 as set out in these terms of reference.

Supporting advice

- 36 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.
- 37 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.
- 38 The expertise of the Electoral Commission will also be available to the panel.

Information requests and confidentiality

- 39 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.
- 40 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.
- 41 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

- 42 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

- 43 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.
- 44 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.

Office of the Minister of Justice
Chair, Cabinet Social Wellbeing Committee

Advancing Electoral Law Reform

Proposal

- 1 This paper seeks agreement to progress:
 - 1.1 targeted electoral changes to support the 2023 General Election; and
 - 1.2 an independent review of electoral law that incorporates work on the length of the parliamentary term.

Relation to government priorities

- 2 This paper directly progresses policy contained in the *Labour Party's 2020 Election Manifesto* and the *New Zealand Labour Party and Green Party of Aotearoa New Zealand Cooperation Agreement*.¹

Executive Summary

- 3 Maintaining public confidence in elections is critical for our democracy. New Zealand has robust electoral laws and our elections are well-run. However, these rules need to be actively maintained. To achieve this, I seek your agreement to advance electoral law reform to:
 - 3.1 make targeted changes to the rules around political donations, *Section (9)(2)(f)(iv)*, electoral timeframes, and the timing of the Māori Electoral Option to be enacted before the 2023 General Election; and
 - 3.2 progress an independent review of electoral law, with a report recommending changes delivered by mid-2023.

Targeted changes to support the 2023 General Election

- 4 The targeted changes will make improvements to enhance the delivery of the 2023 General Election. This includes changes contained in the Labour Manifesto and the Cooperation Agreement, as well as recommendations made by the Electoral Commission. More substantial matters will be included in the review of electoral law.

¹The Manifesto says the Labour Party will continue to protect the integrity of New Zealand elections, voters' access to the polls, including a review of financing rules. The Cooperation Agreement signals an interest in working with political parties from across Parliament (including the opposition) on issues that affect our democracy, including the Electoral Commission's 2012 recommended changes to MMP, electoral finance law, and the length of the parliamentary term.

IN CONFIDENCE

Scope of the independent electoral law review

- 5 There are opportunities to make our election rules more accessible. The law could also better support the Electoral Commission to continuously improve the electoral system to better meet the needs of voters, parties, and others.
- 6 Cabinet has previously agreed to a review of electoral law relating to the administration of parliamentary elections. I propose this review begins in November 2021 and covers:
 - 6.1 the overall design of the legislative framework underpinning the administration of the electoral system;
 - 6.2 maintaining a fit-for-purpose electoral regime for voters, parties, and candidates; and
 - 6.3 matters raised but not addressed in previous Electoral Commission reports and Justice Committee Inquiries, including recommendations from the Electoral Commission's 2012 report on improving some of the policy settings of MMP.
- 7 Cabinet has also previously agreed to progress work on the length of the parliamentary term. I consider this topic should be considered as part of the review.
- 8 In short, the review is about making the rules that support parliamentary elections clear, effective and efficient. It is not a 'first principles' review of electoral law and will not cover broader electoral or constitutional matters.

Process for the independent electoral law review

- 9 It is an important convention that electoral law reform is underpinned by broad public and cross-party support. To build credibility for the review's findings, and a level of independence from the Government, I propose appointing an independent panel to lead the first phase of the review. Appendix One attaches draft Terms of Reference (TOR) for the panel, setting out the scope and approach to the review.

Next steps for the independent electoral law review

- 10 Subject to Cabinet agreement, I will consult parliamentary party leaders and the Justice Committee on the draft TOR and seek nominations for panel members from a range of stakeholders. I will seek Cabinet's agreement to make appointments to the panel by November 2021. The panel will begin its review in late 2021 and make recommendations to me by ^{Section (9)(2)(f)(iv)}, with a Bill considered by Parliament in 2025.

Background and context

- 11 Electoral law is central to the integrity of our democratic system. The rules relating to elections need to be clear, simple, and up to date so New Zealanders 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, both now and into the future.
- 12 Cabinet has given in-principle agreement to a review of parliamentary electoral law and to begin engagement on the length of the parliamentary term [CAB-20-MIN-0094, and CAB-21-MIN-0143]. This paper builds on those decisions by bringing forward the review of electoral law and incorporating consideration of the length of the parliamentary term within the review.
- 13 I also propose targeted changes to the rules around political donations, **Section (9)(2)(f)(iv)**, electoral timeframes, and the timing of the Māori Electoral Option to enhance of the delivery of the 2023 General Election.

Targeted electoral changes to support the 2023 General Election

- 14 I propose that targeted changes to electoral law are enacted to make improvements ahead of the 2023 General Election in several areas. Depending on timing, these targeted changes may require two or more separate Bills.

Political donations

- 15 Donations to political parties and candidates are a legitimate form of political participation. The rules must promote fairness and transparency to support ongoing trust in the electoral system. There is a clear public interest in understanding the potential influences on participants in the electoral system. The Justice Committee's Inquiry into the 2017 Election, as part of its consideration of the risks of foreign interference, looked at the issue of donations, and the structuring of donations through trusts, corporates and similar entities to avoid public disclosures. Its report and recommendations will help inform any proposals.
- 16 I have asked officials to consider whether changes are needed before the 2023 General Election, to increase transparency and openness of donations to political parties and candidates. Any changes to the party donation rules will need to align with the timeframes for annual donation returns, which are based on a calendar year. To ensure that party secretaries (and candidates) have enough time to implement any new reporting requirements, any changes should be in place four to six months before the start of 2023.
- 17 Should changes be proposed, I will aim to seek Cabinet policy approvals in November 2021, with a Bill introduced in March 2022 and enacted in July 2022.

Section (9)(2)(f)(iv)

Electoral timeframes

- 20 The preparations for delivering the election in a COVID-19 environment in 2020 highlighted two timing related issues. The first issue concerns the definition of the regulated period, and when that period starts in the event the election date is changed. The second concerns the 28-day statutory time limit for Ministers remaining in office after an election in the event the return of the Writ is delayed (for example due to the need to adjourn polling).
- 21 The circumstances that might lead to these issues arising are likely to be rare, but they could cause significant problems if they did occur. I consider it prudent to clarify these points ahead of the 2023 General Election, to mitigate any future risks. The timing of this work is yet to be confirmed but any changes must be enacted by March 2023 at the latest.

Māori Electoral Option

- 22 The timing of the Māori Electoral Option potentially creates a barrier to the participation of Māori voters in the electoral system and could be an unjustifiable limit on their electoral rights. It is timely to consider this now as Māori voters were last able to move rolls in 2018, two years before the 2020 General Election. If changes are not made now, they will not have an opportunity to move rolls before the 2023 General Election.
- 23 Cabinet has recently agreed that officials will begin engagement on this issue, with a report back in October 2021 [CAB-21-MIN-0222]. Section (9)(2)(f)(iv)

Justice Committee's Inquiry

- 24 There is also the potential for the Justice Committee's Inquiry into the 2020 General Election and Referendums to recommend other changes be made before the 2023 General Election. My officials will work with the Committee to

manage any potential overlap or duplication with my proposed targeted changes.

- 25 Legislative change will be limited to only that necessary to support the delivery of the 2023 General Election. It is my intention that more substantial matters be included in the review of electoral law.

An independent review of electoral law will maintain the integrity of elections

Actively maintaining electoral law is important

- 26 New Zealand has robust electoral laws and our elections are well-run. However, for this to remain so, our electoral law must be actively maintained. Otherwise there will be a slow erosion of the quality and relevance of our electoral rules and weakening public trust and confidence in New Zealand's democracy.
- 27 The review provides an opportunity to:
- 27.1 make our electoral law clearer and more accessible so people better understand the rules and how our electoral system works. For example, the Electoral Act 1993 (the Act) is complex and difficult to navigate. Some parts of the Act were carried over from 1956 law and are now over 60 years old. As a result, the Act has been amended repeatedly (and over 60 sections have been entirely repealed). The Act has become increasingly complex and fragmented as a result. Further, there are some areas where the Act has been largely silent (for example how advance voting should operate);
 - 27.2 ensure our electoral law better supports the administration of elections to improve the electoral experience of voters now and into the future. The Electoral Commission has very little flexibility to make even minor administrative improvements to modernise its services because the law can be highly prescriptive. For example, the rules around electoral rolls assume they are paper based rather than electronic, and the advertising and broadcasting provisions largely pre-date social media; and
 - 27.3 adopt a holistic approach to the consideration of previous recommendations. In the past, recommendations have been made (in some cases, repeatedly) by Justice Committee inquiries and the Electoral Commission. Many of these substantive recommendations have not been progressed. Instead, work has generally been on minor and technical fixes needed to be in force in advance of the next general election. There has not for some time been a focus on a fuller set of interconnected policy changes.

Objective of the review

- 28 The objective of the review is to ensure that New Zealand continues to have an electoral system that:
- 28.1 is fair, clear and consistent;
 - 28.2 is practicable and enduring;
 - 28.3 encourages electoral participation;
 - 28.4 upholds Te Tiriti o Waitangi/ the Treaty of Waitangi;
 - 28.5 is open and accountable;
 - 28.6 produces a representative Parliament; and
 - 28.7 produces an effective Parliament and Government.
- 29 These objectives (based on criteria used by the 1986 Royal Commission on the Electoral System) will ensure electoral law is enduring and promotes the legitimacy and integrity of New Zealand's democratic system.

Proposed scope of the review

- 30 To ensure the above opportunities can be fully explored and tested, I propose the review cover three main issues related to parliamentary elections:
- 30.1 the overall design of the legislative framework for the electoral system (for example, whether the law strikes the right balance between certainty and flexibility in its use of primary legislation, secondary legislation, and other instruments);
 - 30.2 maintaining a fit-for-purpose electoral regime for voters, parties, candidates, and third-party promoters by reviewing rules relating to electoral administration,² the role and functions of the Electoral Commission (such as its monitoring and enforcement powers), and the Representation Commission; and
 - 30.3 matters raised but not addressed in previous Electoral Commission reports and Justice Committee inquires since 2011, including recommendations from the Electoral Commission's 2012 Review of MMP (i.e. changes to the party vote threshold, one seat electorate rule, the ratio of electorate seats to list seats, and overhang rules).
- 31 I also propose that the review incorporate work on the length of the parliamentary term, which Cabinet has agreed to progress [CAB-21-MIN-0143]. This work was previously going to be led by the Ministry of Justice. As the length of the parliamentary term is connected to the electoral system and

² Including the rules relating to voter eligibility, enrolment and voting processes; political finance and advertising; the regulation of candidates and parties; the resilience and security of the electoral system, and dispute resolution.

voters' ability to elect their representatives, I consider that these issues should be considered in tandem.

- 32 Given the fundamental policy settings of our electoral system are generally sound, the review will not be a 'first principles' review of our electoral system. The review's focused scope means it can concentrate on developing a suite of integrated improvements that will support New Zealand's electoral law to uphold the legitimacy and integrity of New Zealand's democracy.
- 33 As such, matters such as online voting, alternatives to the MMP voting system, and the retention of Māori electorate seats will not be covered. Neither will the review cover broader constitutional matters such as 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).
- 34 Finally, the review will 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.

An open and transparent process for the review is critical

- 35 Electoral law is fundamental to our democracy. As such, the way in which a review of electoral law is undertaken is just as important as any resulting changes. It is a recognised convention that electoral law reform should be underpinned by broad public and cross-party support.
- 36 I therefore propose appointing an independent panel of between four to six members to lead the first phase of the review and make recommendations on the matters set out above. This will help to ensure that the work is (and is seen to be) developed independently from the preferences of Government. . An independent panel will help support cross-party participation and broad public support for the review and its findings.
- 37 The panel will undertake research and analysis as well as engage with Māori, iwi, hapu, the public, political parties, and other interested stakeholders (particularly representing those with lower participation rates) to identify the types of changes needed and to inform its advice. A secretariat will provide advisory and other support to the panel.
- 38 Draft Terms of Reference (TOR) are attached as Appendix One. These set out the scope and approach to the panel's work.

Proposed timing of the review

- 39 The panel will report to me with recommendations for change by the

40 **Section (9)(2)(f)(iv)**

Section (9)(2)(f)(iv)

Section (9)(2)(f)(iv)

Next steps for the review of electoral law

41 Subject to Cabinet agreement, I will:

41.1 provide the draft TOR to parliamentary party leaders and the Justice Committee for comment; and

41.2 seek nominations for panel members.

Panel members would need a range of attributes

42 It is critical to appoint a panel with the right type and level of ability, knowledge, and experience given the complexity and constitutional importance of the review.

43 I propose nominations for panel members are sought from sources such as: caucus colleagues, parliamentary party leaders, the Justice Committee, Māori organisations, the New Zealand Law Society, youth organisations, government agencies, and universities. My officials will also identify potential candidates and seek nominations from the Ministry for Women, Te Puni Kōkiri, the Ministry for Pacific Peoples, the Ministry of Ethnic Communities, and the Office for Disability Issues.

44 I propose suggesting that when making a nomination, people consider the following attributes:

44.1 understanding and/or expertise in electoral law, the electoral system and wider constitutional and legal principles;

44.2 public credibility and the ability to engage with a broad range of people;

44.3 familiarity with te ao Māori and ability to credibly engage with Māori communities and stakeholders; and

44.4 leadership and expertise in steering a project of this significance, including working with a secretariat.

45 Ideally, the panel will be representative of the diversity and demographic make-up of New Zealand, including gender, ethnicity, age, and geographic location. I intend the members would be remunerated for their time in line with the Cabinet Fees Framework. However, I may need to seek an exception to attract suitable candidates, given the expertise needed and the time commitment required.

- 46 After receiving nominations, I will consult with my Cabinet colleagues before reporting back by November 2021 with nominations and a finalised TOR Section (9)(2)

Te Tiriti o Waitangi/ the Treaty of Waitangi Implications

- 47 The Crown has an obligation to actively protect the right of Māori to equitably participate in all aspects of the electoral process, extending to participation in the review of electoral law.
- 48 In its 1994 report on the Māori Electoral Option, the Waitangi Tribunal found that the Crown is obliged by the Treaty to actively protect Māori citizenship rights and in particular existing Māori rights to political representation conferred under the Electoral Act 1993. This duty of protection arises from the Treaty generally and in particular from Article 3. Article 3 established the Crown's obligation to ensure Māori have equal rights to participate in electoral processes.
- 49 Currently, participation rates of voters at general elections who identify as Māori are lower than those who identify as non-Māori, and lower for those enrolled in Māori electorates than for those Māori enrolled in general electorates. Aspects of the electoral system have been inequitable. For example, Māori were significantly disproportionately impacted by the ban on prisoner voting. It is therefore important to consider any changes that can be made to the electoral system to improve the meaningfulness, relevance and convenience of participation by Māori voters.
- 50 To meet its obligations under the Treaty, the Crown should ensure electoral law is fit for purpose and works for Māori, through direct engagement with Māori.

Financial Implications

- 51 This electoral work programme has financial implications that cannot be met
Section (9)(2)(f)(iv)

54 Section (9)(2)(f)(iv)

Legislative Implications

55 Legislation is not required to implement the proposals in this paper. However, legislation will be required as a result of subsequent Cabinet decisions.

56 Section (9)(2)(f)(iv)

Regulatory Impact Statement

57 There are no regulatory proposals in this paper, and therefore Cabinet's impact analysis requirements do not apply. Regulatory Impact Statements will be completed when substantive policy decisions are sought from Cabinet later in the year. A climate impact statement is not required under CO (20) 3.

Population Implications

58 There are no immediate population impacts arising from this paper. However, some communities, in particular Māori, Pacific peoples, young people, and people with disabilities have lower electoral participation rates compared to the overall voter turnout. One of the key objectives of electoral reform is to encourage electoral participation by all eligible voters (but particularly those with lower participation rates).

Human Rights

59 Improvements to the electoral system will help support and maintain the electoral rights guaranteed under section 12 of the New Zealand Bill of Rights Act 1990. The review could also help to ensure the electoral system is free from discrimination on various grounds, including ethnicity, disability and age, by promoting more accessible voting.

Consultation

60 This paper has been circulated for Ministerial and caucus consultation.

61 The following agencies have been consulted on this paper: the Department of the Prime Minister and Cabinet (including Cabinet Office and National Security Group), the Treasury, Te Kawa Mataaho, the Department of Internal Affairs, Te Puni Kōkiri, Te Arawhiti, the Ministry for Pacific Peoples, the Office of Ethnic Communities, the Office for Disability Issues, Statistics NZ, Toitū Te Whenua Land Information New Zealand, the Ministry for Culture and Heritage, New Zealand Police, Serious Fraud Office, and the Ministry for Women.

62 The Electoral Commission has also been consulted.

Communications and proactive release

- 63 I intend to issue a media release about the Government's electoral work programme following Cabinet decisions. This will provide an opportunity to publicly signal the progress on both our Manifesto and Cooperation Agreement commitments. It will also enable me to seek nominations for the panel.
- 64 I will proactively release this Cabinet paper, with appropriate redactions, in accordance with the Government's proactive release policy alongside or shortly after the media release.

Recommendations

The Minister of Justice recommends that the Committee:

- 1 **note** that in March 2020 and in May 2021, Cabinet agreed, in-principle, to a review of electoral law and for the Ministry of Justice to lead a public engagement process on the length of the parliamentary term [CAB-20-MIN-0094] and [CAB-21-MIN-0143];
- 2 **agree** that the Government's electoral work programme covers:
- 2.1 targeted changes to support the 2023 General Election; and
- 2.2 an independent review of electoral law, that incorporates work on the length of the parliamentary term;

Targeted changes to support the 2023 General Election

- 3 **note** that the targeted changes will cover:
- 3.1 political donations and the timing of the Māori Electoral Option, which will (subject to Cabinet policy approval) require legislation ^{Section (9)(2)(f)} and
- 3.2 ^{Section (9)(2)(f)(iv)} and electoral timeframes, which will (subject to Cabinet policy approval) require legislation **Section (9)(2)(f)(iv)**

Independent review of the electoral law

- 4 **agree** that:
- 4.1 the independent review be undertaken by a four-to-six-member panel which will report to the Minister of Justice with **Section (9)(2)(f)(iv)**; and
- 4.2 following the public release of the panel's recommendations, Cabinet policy approvals would be sought ^{Section (9)(2)(f)(iv)}, with a Bill introduced in ^{Section (9)(2)(f)(iv)}

IN CONFIDENCE

- 5 **agree** panel members should ideally reflect the diversity of New Zealand and collectively have the following attributes:
- 5.1 understanding and/or expertise in electoral law, the electoral system and wider constitutional and legal principles;
 - 5.2 public credibility and the ability to engage with a broad range of people;
 - 5.3 familiarity with te ao Māori and ability to credibly engage with Māori communities and stakeholders; and
 - 5.4 leadership and expertise in steering a project of this significance, including working with a secretariat;
- 6 **agree** that the Minister of Justice publicly announce the electoral work programme before:
- 6.1 consulting parliamentary party leaders and the Justice Committee on the draft Terms of Reference, attached as Appendix One; and
 - 6.2 seeking nominations for panel members from sources such as: caucus colleagues, parliamentary party leaders, the Justice Committee, Māori organisations, the New Zealand Law Society, youth organisations, government agencies, and universities;
- 7 **invite** the Minister of Justice to report back with potential nominations for panel members and a finalised Terms of Reference by November 2021;

Financial implications

- 8 **Section (9)(2)(f)(iv)**

11 Section (9)(2)(f)(iv)

Authorised for lodgement

Hon Kris Faafoi

Minister of Justice

Proactive Release



Cabinet Social Wellbeing Committee

Minute of Decision

This document contains information for the New Zealand Cabinet. It must be treated in confidence and handled in accordance with any security classification, or other endorsement. The information can only be released, including under the Official Information Act 1982, by persons with the appropriate authority.

Advancing Electoral Law Reform

Portfolio Justice

On 7 July 2021, the Cabinet Social Wellbeing Committee:

- 1 **noted** that in March 2020 and May 2021, Cabinet agreed in-principle to a review of electoral law and for the Ministry of Justice to lead a public engagement process on the length of the parliamentary term [CAB-20-MIN-0094 and CAB-21-MIN-0143];
- 2 **agreed** that the government's electoral work programme covers:
 - 2.1 targeted changes to support the 2023 General Election;
 - 2.2 an independent review of electoral law, that incorporates work on the length of the parliamentary term;

Targeted changes to support the 2023 General Election

- 3 **noted** that the targeted changes in paragraph 2.1 above will cover:
 - 3.1 political donations and the timing of the Māori Electoral Option, which will require legislation **Section (9)(2)(f)(iv)** ;
 - 3.2 **Section (9)(2)(f)(iv)** electoral timeframes, which will require legislation **Section (9)(2)(f)(iv)**

Independent review of electoral law

- 4 **agreed** that:
 - 4.1 the independent review in paragraph 2.2 above be undertaken by a four-to-six-member panel which will report to the Minister of Justice with recommendations **Section**
 - 4.2 following the public release of the panel's recommendations, Cabinet policy approvals would be sought **Section (9)(2)(f)(iv)** , with a Bill introduced in **Section (9)(2)(f)(iv)** ;

- 5 **agreed** that panel members should ideally reflect the diversity of New Zealand and collectively have the following attributes:
- 5.1 understanding and/or expertise in electoral law, the electoral system and wider constitutional and legal principles;
 - 5.2 public credibility and the ability to engage with a broad range of people;
 - 5.3 familiarity with te ao Māori and ability to credibly engage with Māori communities and stakeholders;
 - 5.4 leadership and expertise in steering a project of this significance, including working with a secretariat;
- 6 **agreed** that the Minister of Justice publicly announce the electoral work programme before:
- 6.1 consulting parliamentary party leaders and the Justice Committee on the draft Terms of Reference attached under SWC-21-SUB-0108;
 - 6.2 seeking nominations for panel members from sources such as: caucus colleagues, parliamentary party leaders, the Justice Committee, Māori organisations, the New Zealand Law Society, youth organisations, government agencies, and universities;
- 7 **invited** the Minister of Justice to report back to the Cabinet Appointments and Honours Committee by **Section (9)(2)(f)(iv)** with proposed panel members and a finalised Terms of Reference;

Financial Implications

- 8 **Section (9)(2)(f)(iv)**

- 12 **noted** that the Electoral Commission will be called upon to provide operational and technical expertise to inform the review **Section (9)(2)(f)(iv)**

Jenny Vickers
Committee Secretary

Present:

Rt Hon Jacinda Ardern
Hon Grant Robertson
Hon Kelvin Davis
Hon Dr Megan Woods
Hon Chris Hipkins
Hon Carmel Sepuloni (Chair)
Hon Andrew Little
Hon David Parker
Hon Poto Williams
Hon Damien O'Connor
Hon Kris Faafoi
Hon Peeni Henare
Hon Jan Tinetti
Hon Dr Ayesha Verrall
Hon Aupito William Sio
Hon Meka Whaitiri
Hon Priyanca Radhakrishnan

Officials present from:

Office of the Prime Minister
Officials Committee for SWC

Proactive Release