

23 June 2022

Hon David Parker, Attorney-General

Consistency with the New Zealand Bill of Rights Act 1990: Electoral (Right to Switch Rolls Freely) Amendment Bill

Purpose

1. We have considered whether the Electoral (Right to Switch Rolls Freely) Amendment Bill (the Bill), a member's Bill in the name of Rawiri Waititi MP, is consistent with the rights and freedoms affirmed in the New Zealand Bill of Rights Act 1990 (the Bill of Rights Act).
2. We have concluded that the Bill appears to be consistent with the rights and freedoms affirmed in the Bill of Rights Act. In reaching that conclusion, we have considered the consistency of the Bill with section 12 (electoral rights). Our analysis is set out below.

Māori electoral option

3. Māori voters' ability to choose to enrol on the Māori or general electoral rolls is called the Māori electoral option.
4. A Māori voter must exercise the Māori electoral option when they first register as an elector. Otherwise, the only time they can exercise the Māori option is during a four-month period that occurs every five or six years, after each census is undertaken.
5. The number of Māori enrolled on the Māori electoral roll is used to determine the Māori electoral population. This number is used, amongst other things, in the course of fixing the boundaries of both general and Māori electoral districts and to determine the number of Māori seats for parliamentary elections.

The Bill

6. The Bill amends the Electoral Act 1993 (the principal Act) to:
 - a. enable Māori voters to switch between the Māori and general electoral rolls at any time (clause 7);
 - b. require the Representation Commission to set dates within two years of each general election for the Māori electoral option to be notified, the Māori electoral population to be calculated, and for electoral district boundaries to be redrawn (clause 8, new section 34A);
 - c. insert a new requirement that when a person who is qualified to register as a Māori elector does not choose a roll when first registering to vote, they will automatically be enrolled on the Māori electoral roll (clause 5); and
 - d. replaces the terminology of 'general electoral district' with 'non-Māori electoral district' (Part 3).

Consistency with the Bill of Rights Act

Section 12 – electoral rights

Right to switch rolls at any time

7. We consider that enabling Māori voters to switch between the Māori and general electoral rolls at any time promotes the principle of equal suffrage that is an element of the electoral rights affirmed by section 12(a) of the Bill of Rights Act. The restrictions on the timing and frequency of the exercise of the Māori electoral option that the Bill proposes to remove have operated as barriers to effective Māori political participation.¹

Changing the periodic requirement to redraw electoral district boundaries

8. As noted above, the Bill requires electoral district boundaries to be redrawn within two years of each general election, rather than only after the five-yearly census as currently occurs.
9. This change reflects the fact that, if Māori voters were able to change rolls at any time, continuously updated information about the size of the Māori electoral population would be available to inform the division of New Zealand into representative electoral districts.
10. Notwithstanding the apparent intention to require both general and Māori electoral district boundaries to be redrawn between each election, the Bill does not amend section 45(2)(c) of the principal Act, which provides that the division of New Zealand into Māori electoral districts shall occur only after the periodical census and on no other occasions. Leaving this provision intact while amending the equivalent provision in relation to general electoral districts (section 35(2)(c)) could be interpreted as requiring general electoral district boundaries to be redrawn more frequently than Māori electoral district boundaries.
11. If interpreted this way, the Bill would prima facie limit the principle of equal suffrage affirmed by section 12(a) of the Bill of Rights Act by requiring a general election to be held in which the number and boundaries of Māori electoral districts, unlike those of general electoral districts, were based on out-of-date calculations of the Māori electoral population. We do not consider this limitation on section 12(a) of the Bill of Rights Act could be justified under section 5 of that Act in the absence of any policy justification.
12. The omission to amend section 45(2)(c) of the principal Act appears to be a drafting oversight that is likely to be corrected in the course of the legislative process. Even if not corrected, we consider that the Act as amended would likely be interpreted as requiring all electoral district boundaries to be redrawn between each election, in accordance with the Bill's intention as expressed in its explanatory note, new section 45(9), the reference to new section 34A in new section 45(3A), and section 12(a) of the Bill of Rights Act (as required by section 6 of that Act). On this basis, we have not found it necessary to advise you to draw this issue to the attention of the House of Representatives.

¹ In this respect our advice reflects that of the Crown Law Office on the consistency of the Electoral (Māori Electoral Option) Legislation Bill [PCO 21160/1.14] with the New Zealand Bill of Rights Act 1990 (2 May 2022).

Conclusion

13. We have concluded that the Bill appears to be consistent with the rights and freedoms affirmed in the Bill of Rights Act.



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