

**Hon Kiri Allan**  
Minister of Justice

**Proactive release – Electoral Amendment Bill and Electoral Amendment Regulations 2022**

Date of issue: 21 July 2022

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	<b>Paper One: Electoral Amendment Bill – Policy proposals relating to political donations</b> <i>Cabinet Paper</i> Office of the Minister of Justice 19 April 2022	Some information has been withheld in accordance with section 9(2)(f)(iv) to maintain the confidentiality of advice tendered by Ministers of the Crown and officials.
2	<b>Paper One: Electoral Amendment Bill – Policy proposals relating to political donations</b> <i>Cabinet Minute CBC-22-MIN-0025</i> Cabinet Office 19 April 2022	Some information has been withheld in accordance with section 9(2)(f)(iv) to maintain the confidentiality of advice tendered by Ministers of the Crown and officials.
3	<b>Paper Two: Electoral Amendment Bill – Policy approvals (other electoral matters)</b> <i>Cabinet Paper</i> Office of the Minister of Justice 19 April 2022	Some information has been withheld in accordance with section 9(2)(f)(iv) to maintain 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 by or between or to Ministers of the Crown or members of an organisation or officers and employees of any public service agency or organisation in the course of their duty.

4	<p><b>Paper Two: Electoral Amendment Bill – Policy approvals (other electoral matters)</b></p> <p><i>Cabinet Minute CBC-22-MIN-0026</i></p> <p>Cabinet Office</p> <p>19 April 2022</p>	<p>Some information has been withheld in accordance with section 9(2)(f)(iv) to maintain the confidentiality of advice tendered by Ministers of the Crown and officials.</p>
5	<p><b>Paper Three: Government response to the Justice Committee report <i>Inquiry into the 2020 General Election and Referendums</i></b></p> <p><i>Cabinet Paper</i></p> <p>Office of the Minister of Justice</p> <p>19 April 2022</p>	<p>Released in full</p>
6	<p><b>Paper Three: Government response to the Justice Committee report <i>Inquiry into the 2020 General Election and Referendums</i></b></p> <p><i>Cabinet Minute CBC-22-MIN-0027</i></p> <p>Cabinet Office</p> <p>19 April 2022</p>	<p>Released in full.</p>
7	<p><b>Electoral Amendment Bill 2022: Approval for introduction</b></p> <p><i>Cabinet Minute LEG-22-MIN-0117</i></p> <p>Cabinet Office</p> <p>30 June 2022</p>	<p>Some information has been withheld in accordance with section 9(2)(f)(iv) to maintain the confidentiality of advice tendered by Ministers of the Crown and officials.</p>
8	<p><b>Electoral Amendment Bill 2022: Approval for introduction</b></p> <p><i>Cabinet Paper</i></p> <p>Office of the Minister of Justice</p> <p>30 June 2022</p>	<p>Some information has been withheld in accordance with section 9(2)(f)(iv) to maintain the confidentiality of advice tendered by Ministers of the Crown and officials.</p>

9	<b>Electoral Amendment Regulations 2022</b> <i>Cabinet Paper</i> Office of the Minister of Justice 12 May 2022	Released in full.
10	<b>Electoral Amendment Regulations 2022</b> <i>Cabinet Minute LEG-22-MIN-0060</i> Cabinet Office 12 May 2022	Released in full.

## **Proactive release relating to Electoral Amendment Bill**

This note provides context to the proactive release of papers relating to the Electoral Amendment Bill.

The Electoral Amendment Bill was introduced to the House on 20 July 2022.

This release includes papers that relate to initial policy work on the Electoral Amendment Bill, and the targeted consultation that was undertaken by Ministry of Justice Officials and papers related to the Electoral Amendment Bill itself.

### *Timeframes*

Some of the timeframes for the work referenced in these papers no longer apply as they have been adjusted to fit a changing policy programme. Some earlier timeframes were also affected by outbreaks of COVID-19.

## **In Confidence**

Office of the Minister of Justice

Cabinet Social Wellbeing Committee

## **Paper One: Electoral Amendment Bill - Policy proposals relating to political donations**

### **Proposal**

- 1 This paper seeks agreement to proposed changes to disclosure and reporting rules for political donations and loans.
- 2 This paper is part of a suite of papers relating to electoral reform, which also includes:
  - 2.1 Paper Two: Electoral Amendment Bill - Policy approvals (other electoral matters); and
  - 2.2 Paper Three: Government response to the Justice Committee's Inquiry into the 2020 General Election and Referendums.

### **Relation to government priorities**

- 3 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.<sup>1</sup>

### **Executive Summary**

- 4 Donations to political parties and candidates are a legitimate form of political participation. The rules must promote openness 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.
- 5 The proposals in this paper are targeted changes needed by the 2023 General Election to increase public confidence in the funding of political parties. Longer-term changes to the electoral framework are being considered by the Independent Review of New Zealand's electoral law [CAB-21-MIN-0274 refers].
- 6 This paper seeks agreement to amend the political donations settings by:
  - 6.1 lowering the public disclosure threshold for donations and contributions to political parties from \$15,000 to \$5,000;
  - 6.2 amending the 10-working day reporting requirements to:
    - 6.2.1 reduce the current disclosure threshold from \$30,000 to \$20,000;

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<sup>1</sup> The Manifesto says the Labour Party will continue to protect the integrity of New Zealand elections and voters' access to the polls, including a review of financing rules. The Cooperation Agreement signals an interest in working with 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.

- 6.2.2 require disclosures above this threshold within 10-working days only within a general election year;
    - 6.2.3 calculating the donation reporting threshold from the start of the triennial election year;
  - 6.3 requiring parties to report on the number and total volume of donations under \$1,500 that are not made anonymously;
  - 6.4 requiring parties to report the sum total value of donations separately as monetary and in-kind donations in their annual returns;
  - 6.5 requiring all parties registered with the Electoral Commission (the Commission) to publicly disclose their financial statements each year, via the Commission's website;
  - 6.6 removing the audit requirements for annual donation returns from parties where total donations are less than \$50,000 and there are no loans; and
  - 6.7 requiring candidates to publicly report on loans received to support their campaign.
- 7 The proposals will be progressed in an Electoral Amendment Bill, s9(2)(f)(iv)
- 8 The Ministry of Justice (the Ministry) has consulted publicly on proposed changes to the rules around donations, and has also carried out targeted consultation with party secretaries, academics, accounting and legal bodies, and civil society organisations. Academics and public submitters were generally supportive of the proposals.
- 9 Views among party secretaries varied and the proposal that had the least support was requiring parties to disclose their financial statements. This was due to concerns about divulging sensitive operational information, public perception, and the costs involved in preparing consolidated statements.

## Background

- 10 Donations have long been accepted as a legitimate form of political participation in New Zealand. There is also a clear public interest in understanding the potential financial influences on political parties and candidates. Appropriately regulated political finance forms the foundation for maintaining trust in both the integrity of our electoral system and the key institutions of a democratic government.
- 11 Electoral finance regulation aims to balance public transparency and democratic participation. The Electoral Act 1993 (the Act) aims to achieve this balance by addressing the potential for donations to create improper influence by requiring higher levels of transparency as the amount of the donation amount increases. This "tiered approach" recognises that smaller donations are less likely to be associated with improper influence.
- 12 In July 2021, Cabinet agreed that the Government's electoral work programme will cover targeted changes to support the 2023 General Election, including political donations [CAB-21-MIN-0274 refers].
- 13 In October 2021, I announced a wider independent review of electoral laws ahead of the 2026 General Election, with an independent panel to report back by 2023,

and targeted changes relating to donations to be in place by the 2023 General Election.

### **Amendments to the political donations' settings**

- 14 I am seeking agreement to a package of targeted changes to the political donations' framework ahead of the 2023 General Election.
- 15 There have been incidents over successive electoral cycles involving donations to political parties or candidates that have raised concerns about the level of transparency in, and complexity of, the donations framework as well as parties and candidates' ability to comply. Although each incident has been different in nature, they have attracted significant media coverage, leading to questions about whether public trust and confidence in our donations settings has been affected. For example, a recent research paper from Victoria University noted that 70% of survey respondents were mistrustful of how political parties are funded.<sup>2</sup>
- 16 Public trust and confidence matters because it impacts on political participation across society. Participation is a necessary prerequisite for a healthy democracy. My proposed changes seek to improve the overall transparency and openness of political funding. The proposals are not interdependent, but together they provide a package of changes which will increase the amount of public information about parties' financial support. This greater transparency will help maintain public trust in the integrity of our electoral system, while not preventing donors from continuing to show their support for their preferred parties through financial or non-monetary donations.

### *Consultation on the proposals*

- 17 The Ministry led a public and targeted engagement process on reforms to the donations framework. Overall, the Ministry received 276 public submissions; 262 from individuals and 14 from organisations.
- 18 In general, public submitters were supportive of increased transparency and openness, and more frequent and detailed reporting of political donations. Submitters also generally supported lower thresholds for anonymous donations, more disclosure of in-kind donations, and public access to parties' financial statements.
- 19 A general theme from submissions was that the threshold for disclosing donor identities was set too high. These submitters considered that the law does not go far enough in encouraging transparency and compliance, with the majority being supportive of the increased accountability of parties and the balancing of commercial interests with open and honest democracy.
- 20 Targeted consultation included engagement with interested parties such as party secretaries (of registered parties both in and out of Parliament), academics, accounting and legal bodies, and civil society organisations.

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<sup>2</sup> Simon Chapple, Cristhian Prieto Duran and Kate Prickett, *Political Donations, Party Funding and Trust in New Zealand: 2016 To 2021*, Working Paper 21/14, Wellington: Institute of Governance and Policy Studies, School of Government, Victoria University of Wellington, November 2021, 13, [https://www.wgtn.ac.nz/data/assets/pdf\\_file/0003/1981641/Trust-2021-WP-21-14.pdf](https://www.wgtn.ac.nz/data/assets/pdf_file/0003/1981641/Trust-2021-WP-21-14.pdf).

- 21 Engagement with academics generally focused on openness and transparency. They supported the proposals except the proposal to increase frequency of reporting, where they saw little to be gained.
- 22 Discussions with party secretaries explicitly focused on the administrative feasibility and costs of the proposals. Views among party secretaries varied and the proposal that had the least support was around requiring parties to disclose their financial statements. This was due to concerns about divulging sensitive operational information, public perception, and the costs involved in preparing consolidated statements.

*Proposal 1: Publicly disclosing donations and contributions that exceed \$5,000*

- 23 I am seeking agreement to amend the Act so that donations and contributions that exceed \$5,000 in total per annum must be publicly disclosed. This will increase transparency about the donations received by political parties.
- 24 The current threshold requires disclosure of donations (and contributions to donations) by any given donor that exceed \$15,000 over a calendar year. The name and address of a donor, and the total amount of donations, must be disclosed if this threshold is met.
- 25 Setting a dollar amount for public disclosure of a donor's identity requires a delicate balancing of donor privacy on the one hand and the public interest in knowing who may be influencing a party on the other. Lowering the threshold can act as a deterrent to donors attempting to filter donations through various sources to try and avoid disclosure, as it will increase the time and effort required to circumvent the intended disclosures requirements.
- 26 The Ministry originally consulted on a threshold of \$1,500. Many party secretaries considered this was not feasible as it would have an adverse effect on donation revenue, and increase the compliance burden. Based on this feedback, I am now proposing a threshold of donations and contributions exceeding \$5,000 in total per annum..
- 27 On balance, I consider that lowering the public disclosure threshold to cover all donations and contributions exceeding \$5,000 represents the best balance between transparency and privacy. A \$5,000 threshold would still increase the amount of information that is publicly available about party donations, but would not lead to an overload of information or have too great an impact on donation revenue. The proposed threshold will result in a modest increase in compliance and audit costs for each party relative to the status quo. Lower thresholds would have the potential to significantly increase compliance costs. For consistency, the contributions disclosure threshold (currently for amounts exceeding \$15,000) should also be lowered to amounts exceeding \$5,000.<sup>3</sup>
- 28 Coupled with proposal 3, the consequence of these changes is there will only be two donations reporting bands below the new \$5,000 threshold for public donor disclosure: amounts up to \$1,500, and amounts above \$1,500 but below \$5,000.

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<sup>3</sup> A contribution is money, goods or services that makes up a donation or is included in a donation or has been used to wholly or partly fund a donation, that was given to the donor or a person who was expected to pass the contribution to the donor.

Parties already report donations in the latter band, so there are no additional compliance costs.

*Proposal 2: Amendments to the 10-working days reporting requirements*

29 Currently parties are required to report donations over \$30,000 received from a single donor (cumulative over a rolling twelve-month period). Such donations must be reported within 10 working days.

30 I am proposing three changes to the 10-working days reporting rule:

Reducing the current disclosure threshold to amounts exceeding \$20,000

31 I propose that the current disclosure threshold of \$30,000 be reduced to amounts exceeding \$20,000. This will help maintain relativity with Proposal 1 (to lower the annual donor disclosure threshold from amounts exceeding \$15,000 to amounts exceeding \$5,000). For consistency, a similar change will be required for contributions disclosures.

Making disclosures within 10-working days only within a general election year

32 Party secretaries noted that the 10-working day requirement can be administratively challenging, particularly for smaller parties. Lowering the disclosure threshold will increase the number of donations captured by this requirement, and therefore could increase this administrative burden.

33 To mitigate some of this compliance burden, I propose that party secretaries only be required to make disclosures within 10-working days in a general election year, rather than for all years as is currently required. Restricting the rule to the election year only recognises that the main purpose of the 10-working day rule is to provide the public with timely awareness of large donations. This purpose is more critical in an election year.

34 In non-election years, the identity of donors donating over \$5,000 will be disclosed in the party's annual donations return. These returns must be filed by April of the following year and are made available on the Commission's website.

Calculating the donation period

35 I propose that the donation threshold be calculated from the start of the triennial election year until the close of polls, rather than over a 12-month rolling period. This change will make it easier for parties to track donations received, as rolling periods require more manual tracking.

36 In most cases, the proposed rule would apply from 1 January of a general election year to the close of polls. In the case of an early or 'snap' election, the rule could only be applied from the date the election is announced to the close of polls.

*Proposal 3: Reporting on all donations up to \$1,500*

37 I propose that parties are required to report on the number and total value of donations up to \$1,500 that are not made anonymously.

38 Currently, monetary donations up to \$1,500 that are not anonymous are not required to be disclosed in the party's annual returns at all. This is a gap in the current reporting

requirements. This proposal will provide the full picture of what donations a party receives in total.

- 39 Party secretaries indicated that their parties already hold information about these donors, but there may be some additional work to collate this information centrally to include it on their annual donation return. I do not anticipate significant additional compliance costs.

#### *Proposal 4: Reporting in-kind donations*

- 40 I propose requiring parties to report the sum total value of donations separately as monetary and in-kind donations in their annual donations return. This will provide greater transparency around in-kind donations such as dinners, auctions and the donation of goods and services free-of-charge.
- 41 As is the case now, in-kind donations of \$1,500 or less are excluded from the definition of party donation and would remain exempt from disclosure and therefore would not be included in any totals.
- 42 This proposal would help to identify the extent to which in-kind donations are received by parties, although it would not require parties to separately detail each in-kind donation, or attribute it by donor.<sup>4</sup>
- 43 I am proposing this as an incremental move that is achievable for the 2023 General Election. There are a number of broader issues with in-kind donations, such as defining who is the 'donor' and what the 'donation' is, and the valuation methodology, which are best considered by the Independent Review.

#### *Proposal 5: Disclosure of annual financial statements*

- 44 I propose requiring all registered parties to publicly disclose their financial statements each year, via the Commission's website. This would provide greater transparency about all income sources, including membership fees, merchandising and donations, as well as their key expenditure categories, and their capital/asset base.
- 45 Currently only those parties that are registered as incorporated societies are required to produce financial statements, which are publicly available on the Incorporated Societies Register. Just under half of the parties that contested the 2020 General Election were registered with the Registrar of Incorporated Societies, and therefore have publicly disclosed financial statements. The remaining parties are unincorporated and their obligations in respect of the preparation of financial statements are governed by their constitutions.
- 46 Requiring all parties registered with the Commission to release annual statements has a number of advantages, including:
- 46.1 bringing parties in line with most other publicly recognised organisations, including charities;
  - 46.2 providing parity by ensuring that all registered parties are required to make their financial statements public, regardless of their legal form; and

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<sup>4</sup> For the purposes of assessing whether a donor has met the disclosure thresholds, the value of in-kind and monetary donations would continue to be aggregated.

- 46.3 providing greater transparency about all income sources, including membership fees, merchandising and donations, key expenditure categories, and their capital/asset base.
- 47 The compliance costs of this proposal should be mitigated by the fact that most, if not all, parties are already preparing some form of financial statement.
- 48 Some party secretaries noted concerns about the public perception of parties and the impact on political discourse. I recognise that this proposal is a significant change in the level of information that parties have to provide publicly. However, it is difficult to determine the impact of the concerns raised by party secretaries. I also note that this proposal was generally supported during public consultation and by academics, because it increases the general openness and transparency of parties' financial affairs.
- 49 I am not proposing at this time to specify reporting standards for parties. Instead, I intend that parties will be required to publish the financial statements they are currently required to prepare under any other statute (such as the Incorporated Societies Act), or under their constitution and internal rules, or, if neither of these apply, then in accordance with Generally Accepted Accounting Practice (NZ GAAP).
- 50 This proposal has two implications. First, any parties who are not currently required to prepare a financial statement will be required to do so. Second, the financial statements between parties may not be directly comparable. For example, parties may have adopted different accounting standards, and there may be some differences in the level and categorisation of certain income and expenditure. However, I consider that this proposal represents a significant step towards increasing transparency and building up public understanding and confidence in the party system.
- 51 I have asked my officials to undertake further detailed policy work on this proposal, including how to determine which entities must be reported on and whether any audit requirements should be imposed. I will report back on this issue to Cabinet Legislation Committee.

*Proposal 6: Removing the audit requirements for low value returns*

- 52 I propose removing the audit requirements for annual returns from parties where total donations are less than \$50,000 and there are no loans. This approach is similar to the approach taken with charities.
- 53 The current annual audit requirement is intended to provide independent assurance on the accuracy of the returns. However, in many cases the audit opinion is generally, and necessarily, qualified in respect of completeness of donations and residency status of donors. This means that audit opinions are unlikely to provide the public with the desired level of comfort.
- 54 This proposal will:
- 54.1 significantly reduce the compliance burden on smaller parties; and
  - 54.2 reduce the disproportionate costs of an audit to smaller parties. Such a "tiered" approach is similar to the approach taken with charities, whereby

charities with total operating expenditure below specified amounts are exempt from audit requirements.

*Proposal 7: Require candidates to publicly report on loans received to support their campaign*

- 55 I propose a new requirement for candidates to publicly report on loans received from non-registered lenders to support their campaign in the same way as candidates are currently required to report on donations received. There are currently reporting and disclosure requirements with respect to loans for parties, but not for candidates.
- 56 This proposal would be restricted to non-registered lenders because they are more likely to be lending to show support and could have a greater perceived influence over candidates. This approach should also ensure bank mortgages and personal debt such as credit cards do not need to be disclosed, as this could be an unreasonable intrusion into the personal and financial privacy of candidates.

**Implementation**

- 57 The Commission will be responsible for providing guidance on the new reporting obligations for parties and candidates. Information will need to be communicated prior to the changes coming into effect on 1 January 2023 to ensure, in particular, that registered parties can continue to meet their ongoing reporting obligations.
- 58 This approach will ensure a smooth transition to the rule changes in election year. Election year guidance for parties and candidates and return forms and reporting processes will need to be updated, including how donations and loans information is published on elections.nz. The Commission will also be responsible for managing compliance with the new rules.

**Financial Implications**

- 59 The cost of implementing and administering the changes to the donations and loans framework can be met from the Commission's existing funding.

**Legislative Implications**

*Electoral Amendment Bill*

- 60 **s9(2)(f)(iv)**
- In order to allow the Commission sufficient time to implement changes for the 2023 General Election, the Bill should be:
- introduced in June 2022;
  - reported back from the Justice Committee in early November 2022 (4 months); and
  - enacted by November/early December 2022 at the latest.
- 61 Cabinet Office Circular CO (02) 4: Acts Binding the Crown: Procedures for Cabinet Decision notes that bills that are amending existing Acts will generally follow the position of the principal Act on whether the Act is binding on the Crown. The Electoral Act 1993 does not bind the Crown and it is proposed that the Bill will follow that position. The Bill will therefore not bind the Crown.

### *Power to Act on minor amendments if needed*

- 62 I recommend that Cabinet authorise me to make minor amendments needed to implement these decisions as required during the drafting of the Bill. The Cabinet papers seeking approval for the Bill will identify any such changes.

## **Impact Analysis**

### *Regulatory Impact Statement*

- 63 A Regulatory Impact Statement (RIS) has been completed and is attached as Appendix 1.
- 64 The Ministry of Justice's RIA Panel has reviewed the RIA and considers that considers that the information and analysis summarised in the RIS partially meets the Quality Assurance criteria. The RIS is complete, clear and concise, and reflects a high level of stakeholder consultation. However, the panel considers that the connection between the problem definition and the proposed options is not always clear. In reaching this conclusion, the panel notes that the options are well-supported by analysis of their effect.

### *Climate Implications of Policy Assessment*

- 65 The Climate Implications of Policy Assessment team has been consulted and confirms that the CIPA requirements do not apply to these proposals as there is no direct emissions impact.

## **Population Implications**

- 66 The proposals in this paper have no population impacts.

## **Human Rights**

- 67 The proposals in this paper support the objectives of the Human Rights Act 1993 and the New Zealand Bill of Rights Act 1990.

## **Consultation**

- 68 The Treasury, Statistics New Zealand, Department of Internal Affairs, Ministry of Foreign Affairs and Trade, Department of Prime Minister and Cabinet, Office of Disability Issues, the Electoral Commission, Te Puni Kōkiri and Parliamentary Counsel Office have been consulted.

## **Communications**

- 69 I intend to issue a press release relating to the package of reforms to the electoral framework when the Bill is introduced.

## **Proactive Release**

- 70 To enable Ministers to make decisions on the detail of the Bill, I will proactively release this Cabinet paper following the introduction of the Bill, with any appropriate redactions in accordance with Cabinet Office Circular CO (18) 4. The Bill is expected to be introduced in June 2022.

## Recommendations

71 The Minister of Justice recommends that the Social Wellbeing Committee:

1 **note** that the proposals in this paper are targeted changes needed by the 2023 General Election to increase public confidence in the funding of political parties;

2 **note** that longer-term changes to the electoral framework are being considered by the Independent Review of New Zealand's electoral law;

### *Publicly disclosing donations and contributions that exceed \$5,000*

3 **agree** to lower the public disclosure threshold to amounts exceeding \$5,000, which will still increase the amount of information that is publicly available about party donations, but will not have too great an impact on donation revenue or the compliance burden on parties;

4 **agree** that, for consistency:

4.1 the contributions disclosure threshold (currently also \$15,000) be lowered to amounts exceeding \$5,000; and

4.2 consequential amendments be made to the current disclosure reporting bands, which would now be captured under the new \$5,000 threshold;

### *Amendments to 10-working days reporting requirements*

5 **agree**:

5.1 to reduce the current disclosure threshold to amounts exceeding \$20,000;

5.2 that party secretaries only be required to make disclosures within 10-working days in a general election year;

5.3 to the donation threshold being calculated from the start of the triennial election year until the close of polls to reduce the amount of manual tracking required by parties; and

5.4 agree to make a similar change to contributions disclosures for consistency;

### *Reporting on all donations up to \$1,500*

6 **agree** that parties are required to report on the number and total volume of donations up to \$1,500 that are not made anonymously;

### *Reporting in-kind donations*

7 **agree** that parties be required to report the sum total value of donations separately as monetary and in-kind donations in their annual returns, to provide greater transparency around donations such as dinners, auctions and the donation of goods and services;

### *Disclosure of annual financial statements*

8 **agree** that all registered parties be required to publicly disclose their financial statements each year, via the Electoral Commission's website;

9 **note** that I have asked my officials to undertake further detailed policy work on this proposal, and that I will report back to the Cabinet Legislation Committee;

10 **agree** that the Cabinet Legislation Committee can make any further policy decisions required as a result of this further work;

*Removing the audit requirements for low value returns*

- 11 **agree** to remove the audit requirements for annual returns where total donations are less than \$50,000 and there are no loans;

*Requiring candidates to publicly report on loans received to support their campaign*

- 12 **agree** that candidates be required to report on loans received from non-registered lenders to support their campaign in the same way as they are required to report on donations received, to be consistent with the requirements on parties;

*Legislative drafting*

- 13 **note** that these proposals will be given effect through the Electoral Amendment Bill, s9(2)(f)(iv)
- 14 **invite** the Minister of Justice to issue drafting instructions to give effect to the decisions in these recommendations; and
- 15 **authorise** the Minister of Justice to make minor and consequential policy decisions that may arise during the drafting process.

Authorised for lodgement

Hon Kris Faafoi

Minister of Justice



# Cabinet Business 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.*

### Paper One: Electoral Amendment Bill - Proposals Relating to Political Donations

Portfolio Justice

On 19 April 2022, the Cabinet Business Committee:

#### Background

- 1 **noted** that the decisions in the paper under CBC-22-SUB-0025 are targeted changes needed by the 2023 General Election to increase public confidence in the funding of political parties;
- 2 **noted** that longer-term changes to the electoral framework are being considered by the Independent Review of New Zealand's electoral law;

#### Publicly disclosing donations and contributions that exceed \$5,000

- 3 **agreed** to lower the public disclosure threshold to amounts exceeding \$5,000, which will still increase the amount of information that is publicly available about party donations, but will not have too great an impact on donation revenue or the compliance burden on parties;
- 4 **agreed** that, for consistency:
  - 4.1 the contributions disclosure threshold (currently also \$15,000) be lowered to amounts exceeding \$5,000; and
  - 4.2 consequential amendments be made to the current disclosure reporting bands, which would now be captured under the new \$5,000 threshold;

#### Amendments to 10-working days reporting requirements

- 5 **agreed:**
  - 5.1 to reduce the current disclosure threshold to amounts exceeding \$20,000;
  - 5.2 that party secretaries only be required to make disclosures within 10-working days in a general election year;
  - 5.3 to the donation threshold being calculated from the start of the triennial election year until the close of polls to reduce the amount of manual tracking required by parties;
  - 5.4 to make a similar change to contributions disclosures for consistency;

**Reporting on all donations up to \$1,500**

- 6 **agreed** that parties are required to report on the number and total volume of donations up to \$1,500 that are not made anonymously;

**Reporting in-kind donations**

- 7 **agreed** that parties be required to report the sum total value of donations separately as monetary and in-kind donations in their annual returns, to provide greater transparency around donations such as dinners, auctions, and the donation of goods and services;

**Disclosure of annual financial statements**

- 8 **agreed** that all registered parties be required to publicly disclose their financial statements each year, via the Electoral Commission's website;
- 9 **noted** that the Minister of Justice has asked officials to undertake further detailed policy work on the decision in paragraph 8, and will report back to the Cabinet Legislation Committee;
- 10 **agreed** that the Cabinet Legislation Committee can make any further policy decisions required as a result of this further work;

**Removing the audit requirements for low value returns**

- 11 **agreed** to remove the audit requirements for annual returns where total donations are less than \$50,000 and there are no loans;

**Requiring candidates to publicly report on loans received to support their campaign**

- 12 **agreed** that candidates be required to report on loans received from non-registered lenders to support their campaign in the same way as they are required to report on donations received, to be consistent with the requirements on parties;

**Legislative drafting**

s9(2)(f)(iv)

- 14 **invited** the Minister of Justice to issue drafting instructions to give effect to the decisions under CBC-22-SUB-0025;
- 15 **authorised** the Minister of Justice to make minor and consequential policy decisions that may arise during the drafting process.

Jenny Vickers  
Committee Secretary

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**Attendance: (see over)**

**Present:**

Hon Grant Robertson (Chair)  
Hon Kelvin Davis  
Hon Dr Megan Woods  
Hon Chris Hipkins  
Hon Carmel Sepuloni  
Hon Andrew Little  
Hon David Parker  
Hon Nanaia Mahuta  
Hon Poto Williams  
Hon Stuart Nash  
Hon Kris Faafoi

**Officials present from:**

Office of the Prime Minister  
Department of the Prime Minister and Cabinet

Proactive Release

## **In Confidence**

Office of the Minister of Justice

Cabinet Social Wellbeing Committee

## **Paper Two: Electoral Amendment Bill - Policy approvals (other electoral matters)**

### **Proposal**

- 1 This paper seeks agreement to a package of amendments to the electoral framework.
- 2 This paper is part of a suite of three papers relating to electoral reform, which includes:
  - 2.1 Paper One: Electoral Amendment Bill – Policy approvals relating to political donations; and
  - 2.2 Paper Three: Government response to the Justice Committee's Inquiry into the 2020 General Election and Referendums.

### **Relation to government priorities**

- 3 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.<sup>1</sup>

### **Executive Summary**

- 4 This paper proposes the following package of amendments to the Electoral Act (the Act) and to the Electoral Regulations 1996 (the Regulations), to be enacted before the 2023 General Election:
  - 4.1 changes in relation to overseas voters;
  - 4.2 amending the regulated period;
  - 4.3 making it easier for voters to vote in isolation or quarantine; and
  - 4.4 minor and technical amendments recommended by the Electoral Commission ('the Commission') and the Justice Committee to support the operational delivery of the 2023 General Election.
- 5 I propose to include these amendments in an Electoral Amendment Bill, or in Electoral Amendment Regulations, as appropriate. An Electoral Amendment Bill is included in the 2022 Legislative Programme with a priority of Category 2 (must be passed this year).
- 6 Appendix Three of this paper provides information about the requirement to include a promoter statement, including a physical street address, on election advertisements.

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<sup>1</sup> The 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 Commission's 2012 recommended changes to MMP, electoral finance law, and the length of the parliamentary term.

This issue has arisen recently in the context of the upcoming local elections (where similar rules apply).

## Background

- 7 In July 2021, Cabinet agreed that the Government's electoral work programme will include targeted changes to support the 2023 General Election [CAB-21-MIN-0274 refers].
- 8 The Government response to the Justice Committee's Inquiry into the 2020 General Election includes recommendations for legislative amendment for the Government to consider prior to the 2023 General Election. Some of these proposals have been included in this paper.
- 9 The Commission's Report on the 2020 General Election was tabled in the House on 18 May 2021. This report made a number of recommendations for legislative change to improve services to voters. The proposals that can be implemented before the 2023 General Election have been included in this paper.
- 10 These proposals are targeted changes to support the 2023 General Election. Broader changes can be included in the Independent Review of electoral law, which is due to report back by the end of 2023.

## Amendments to the Electoral Act or Regulations

- 11 I am seeking agreement to a package of amendments to the Act and to the Regulations to be enacted by the 2023 General Election.

### *Proposal 1: Changes in relation to overseas voters*

- 12 I am proposing two changes in relation to overseas voters.

### Temporarily changing voter eligibility criteria to reflect travel restrictions

- 13 I propose temporarily extending the overseas voter eligibility period for citizens to six years and for permanent residents to four years. This proposal is in response to voters being prevented from returning to New Zealand due to the COVID-19 travel restrictions. Attached as Appendix One are scenarios explaining the effect of this proposal.
- 14 The Act currently provides that eligible voters who are living overseas become ineligible to vote if they are:
  - 14.1 New Zealand citizens who have not been in New Zealand within the last three years; or
  - 14.2 permanent residents who have not been in New Zealand within the last 12 months.<sup>2</sup>
- 15 These rules aim to ensure overseas voters have a connection with New Zealand, and return periodically to New Zealand to retain their eligibility to vote. However, it is not compulsory for New Zealanders living overseas to be enrolled.

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<sup>2</sup> There are certain exceptions for some voters living outside New Zealand, such as those serving with the New Zealand Defence Force or the diplomatic corps.

- 16 The New Zealand Bill of Rights Act 1990 enshrines New Zealand citizens' right to vote. This right has been impacted by COVID-19 travel restrictions, which have affected overseas voters' ability to return to New Zealand. It is difficult to estimate the number of voters who became ineligible to vote in the 2020 General Election after New Zealand closed its borders in March 2020.
- 17 Statistics New Zealand estimates that, as at January 2022, there is an indicative maximum of approximately 460,300 New Zealand citizens out of the country who would be ineligible to enrol to vote in the 2023 General Election, if they have not returned by then.<sup>3</sup>
- 18 This proposal is a temporary measure, applying for the 2023 General Election only. It is a straightforward extension of current eligibility settings to address the impact of the COVID-19 travel restrictions. Any permanent changes to the eligibility criteria may be considered by the Independent Review of electoral law.
- 19 I recognise that the proposal may mean that an unknown number of people will become/remains eligible to enrol who had no intention of returning to New Zealand, even if they could have done so. I consider this is preferable to the risk of disenfranchising large numbers of overseas voters, or the infeasibility of attempting to assess a person's intention to return to New Zealand. I also note that not every voter who becomes eligible to vote under this proposal will choose to do so.
- 20 Due to the uncertainty around election dates, I propose that the overseas voter eligibility criteria will revert to its standard settings the day after the last date for the return of the writ for the 2023 General Election.

#### Allowing overseas voters to use electronic signatures

- 21 I propose amending the Regulations to clarify that overseas voters' marks and signatures can be produced through physical action captured electronically (for example, using technologies such as signature pads, touch pads/track pads, mouse and touch pens). Voters will not be able to type in their name using a keyboard for their signature.
- 22 At the 2020 General Election, 94% of overseas voters used the Commission's 'download/upload service' to vote. This requires voters to print their voting papers, manually mark them and then upload a scan or photograph of the completed papers. The Commission's report into the 2020 General Election highlighted that overseas voters find it increasingly difficult to access a printer. Access issues were exacerbated by the pandemic and more overseas voters were wanting a digital option for marking and signing their voting papers when using the download and upload service.
- 23 This proposal will not impact on the integrity of overseas votes, which are already subject to the following security checks:
- the completion of a special vote declaration that must be witnessed;

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<sup>3</sup> This estimate is based on New Zealand citizens who departed New Zealand after March 2017 but not later than 29 November 2020. Statistics New Zealand does not hold the relevant information for permanent residents so a comparable number cannot be estimated for this group.

- a unique reference number which allows duplicate votes (where voting papers are returned multiple times) and dual votes (where a voter votes multiple times) to be excluded;
- only allowing electronic signatures using physical action, and not typed signatures;
- CAPTCHA tests to determine the user is human; and
- security testing, accreditation of systems, and encryption.

24 Unlike the proposal relating to the eligibility of overseas voters, the changes to allow overseas voters to use electronic signatures will be permanent. .

*Proposal 2: Amendments to the election advertising rules in the event of a change in election date*

25 I propose amending the Act to:

25.1 clarify when the regulated period starts if polling day is changed; and

25.2 provide for a grace period to remove election signage if the election date is changed.

26 The 'regulated period' is defined in the Act as the period immediately before an election where election expenditure limits and disclosure rules apply to election advertisements for parties, candidates, and third-party promoters. The regulated period is (usually) the three months before polling day. The Act does not contemplate a change in polling day once the regulated period has started, as occurred in the lead up to the 2020 General Election.

27 The proposal is to amend the Act to provide that if polling day changes, the new regulated period is the lesser of either:

27.1 from the date of announcement to polling day; or

27.2 from three months before the (new) polling day.

28 This approach is similar to the approach the Commission took in 2020. There is flexibility to deal with polling day changes and it is consistent with how the Act already calculates the regulated period. It avoids applying the regulated period retrospectively, when parties or candidates would not have been aware that the expenditure rules applied. It also ensures the regulated period does not extend beyond three months (although it may be shorter).

29 I also propose amending the Act to provide a grace period of seven days for candidates and political parties to remove election signage if the election date is changed.

30 The Act provides that during the period beginning nine weeks before polling day and ending with the close of the day before polling day, some election signs and billboards can be erected without needing to comply with certain Transport Authority or Council restrictions relating to when and what size of signage can be displayed. If the election date is changed within this nine-week period, the Act is silent about what happens to any advertising that is already in place.<sup>4</sup>

<sup>4</sup> This was not an issue in the 2020 General Election as there was less than nine weeks between the date of the announcement of the new polling day and the new polling day.

- 31 This proposal allows parties and candidates seven days to remove advertising if the election date changes, so that they do not inadvertently breach any regulations and bylaws.

*Proposal three: Allowing dictation voting for voters in isolation or quarantine*

- 32 I propose to amend the Regulations to allow the Commission to offer dictation voting for the 2023 General Election and any by-elections before then as an option for people impacted by any requirements to isolate or quarantine.
- 33 Dictation voting is usually only available to voters who are blind or visually impaired and for remote voters under Part 4 of the Regulations. In 2020 a temporary amendment was made to the Regulations to facilitate telephone dictation voting for people in Managed Isolation or Quarantine Facilities or on ships at the maritime border. The proposal provides dictation voting as a contactless way of voting for those in isolation or quarantine.
- 34 I also propose to reintroduce an amendment to allow the Commission to waive the requirement for someone to witness the signing of the special vote declaration if the Commission is satisfied that it is not reasonable to have the declaration witnessed. Having someone physically present to supervise the signing of the declaration is problematic for people in isolation, particularly for people who are isolating alone.
- 35 Together these proposals will ensure that voters required to isolate have voting methods available to them and will not be disenfranchised for the 2023 General Election and any by-elections before then. I am planning on introducing these changes in time for the Tauranga by-election, if timing allows.

*Proposal four: Minor and technical amendments*

- 36 I am proposing a number of minor and technical amendments, set out in Appendix Two to this paper, to ensure that the Act and the Regulations are fit for purpose and accommodate changes to operational practices. These changes respond to recommendations made by the Commission and/or the Justice Committee in their respective reports.

**Promoter statements on electoral advertising**

- 37 An issue relating to promoter statements has arisen in the context of upcoming local elections (where similar rules apply).
- 38 Local and parliamentary election advertisements must identify their promoters. This requirement is to increase transparency, and to enable the Commission, local electoral officers, the media, electoral participants and voters to know who is behind any campaign. However, promoter statements where a home address is used can raise privacy and safety concerns. Additional information about promoter statements can be found in Appendix Three.

## Implementation

- 39 The Commission will need to make changes to a number of systems used to support overseas voting, including the enrolment management system, to implement the temporary change to the overseas eligibility rules for the 2023 General Election. The change will require information to be updated, in digital and other formats, to inform overseas electors of the temporary change. The enrolment and special vote declaration forms used by overseas voters will also need to be updated. The Commission recommends the change should come into effect on 31 March 2023 or later to allow sufficient time for system changes, collateral to be updated and communicating the change following enactment.
- 40 To avoid added complexity to implementation and communication on the enrolment changes, it is preferable for the change to come into effect at the same time as any changes to the Māori Electoral Option. Staff will also need to be trained on the temporary changes for the processing of enrolment applications and qualifying overseas voters. After the 2023 election there will be further operational changes required to reverse systems, forms and processes to the current eligibility criteria for overseas voters.
- 41 The Commission will need to update the instructions for overseas voters using the download service to explain the use of marks and signatures produced through physical action captured electronically. Likewise, information and processes for changes to remote voting services under Part 4 of the Regulations will need to be updated.
- 42 Dictation voting for people isolating during an election would be on an exceptional basis only; alternative options for large scale isolation would include postal or takeaway voting. While dictation voting could be an option for people isolating, it is slow, and highly manual and the Commission could not offer it on a large scale. The Commission's planning assumption for 2023 is a maximum of 7,000 dictation votes taken for all types of dictation voting.
- 43 Implementation of the other minor and technical changes in the appendix will require minor process changes for the Commission.

## Financial Implications

- 44 s9(2)(f)(iv)

## Legislative Implications

### *Electoral Amendment Bill*

46 s9(2)(f)(iv)

. In order to allow the Commission sufficient time to implement changes for the 2023 General election, the Bill should be:

- introduced in June 2022;
- reported back from the Justice Committee in early November 2022 (4 months); and
- enacted by November/early December 2022 at the latest.

47 Cabinet Circular (02) 4: Acts Binding the Crown: Procedures for Cabinet Decision notes that bills that are amending existing Acts will generally follow the position of the principal Act on whether the Act is binding on the Crown. The Electoral Act 1993 does not bind the Crown and it is proposed that this Bill will follow that position. The Bill will therefore not bind the Crown.

### *Electoral Amendment Regulations*

48 Electoral Amendment Regulations will be required to amend the Regulations. The proposed changes to the Regulations should preferably be in effect by the Tauranga by-election. In order to ensure these changes are in place for the by-election, I intend to seek Cabinet approval by early May 2022.

### *Power to Act on minor amendments if needed*

49 I seek Cabinet authorisation for me to make minor amendments needed to implement these decisions as required during the drafting of these Bills and Regulations. The Cabinet papers seeking approval for the Bills and Regulations will identify any such changes.

## Impact Analysis

### *Regulatory Impact Statement*

50 Treasury's Regulatory Impact Analysis team has determined that the following proposals are exempt from the Cabinet's impact analysis requirements on the grounds that it has no or only minor impacts on businesses, individuals, and not for profit entities:

- 50.1 regulated period;
- 50.2 voters in quarantine; and
- 50.3 minor and technical amendments.

51 A Regulatory Impact Statement for the temporary amendment to the eligibility criteria for overseas voting has been completed and is attached as Appendix 4.

52 A panel within the Ministry of Justice has reviewed the Regulatory Impact Statement. The panel considers that the information and analysis summarised in the Regulatory Impact Statement partially meets the Quality Assurance criteria. The Statement acknowledges that the Ministry of Justice has not consulted relevant stakeholders about the options. The panel also considers the Statement only partially convincing

because the Statement doesn't clearly address the continuing impact of travel restrictions, and therefore the need for reform. However, the Panel notes that certainty about peoples' rights to vote is preferable, even as New Zealand moves towards lifting restrictions, and the options properly tend towards being rights-expanding, rather than rights limiting.

### *Climate Implications of Policy Assessment*

- 53 The Climate Implications of Policy Assessment team has been consulted and confirms that the CIPA requirements do not apply to these proposals as there is no direct emissions impact.

### **Population Implications**

- 54 Applying the principles of the Treaty of Waitangi, the Crown has an obligation when considering any reform to the electoral system to actively protect the right of Māori to equitably participate in all aspects of the electoral process, and to exercise tino rangatiratanga individually and collectively. Barriers that prevent Māori from returning to New Zealand to become eligible to vote from overseas directly impact on these rights, although not disproportionately to the rest of the population.
- 55 The main proposals in this paper have no population impacts. The minor and technical amendments will benefit disabled people, by facilitating dictation voting for overseas voters who are blind, vision impaired or other disabled people who require assistance to vote.

### **Human Rights**

- 56 The proposals in this paper support the objectives of the Human Rights Act 1993 and give meaningful effect to the right to vote in section 12 of the New Zealand Bill of Rights Act 1990, particularly for overseas voters.

### **Consultation**

- 57 The Treasury, Statistics New Zealand, Department of Internal Affairs, Ministry of Foreign Affairs, Department of Prime Minister and Cabinet, Office of Disability Issues, the Electoral Commission, Te Puni Kōkiri and Parliamentary Council Office have been consulted.

### **Communications**

- 58 I intend to issue a press release relating to the package of reforms covered in this paper when the Bill is introduced.

### **Proactive Release**

- 59 To enable Ministers to make decisions on the detail of the Bill, I will proactively release this Cabinet paper following the introduction of the Bill, with any appropriate redactions in accordance with Cabinet Office Circular CO (18) 4. The Bill is expected to be introduced in June 2022.

### **Recommendations**

- 60 The Minister of Justice recommends that the Social and Wellbeing Committee:

1 **note** that in July 2021 Cabinet agreed that the Government's electoral work programme will include targeted changes to support the 2023 General Election [CAB-21-MIN-0274 refers], which includes recommendations from:

1.1 the Government response to the Justice Committee's Inquiry into the 2022 General Election; and

1.2 the Electoral Commission's Report on the 2020 General Election;

*Changes in relation to overseas voters*

2 **agree** to temporarily extend the overseas voter eligibility period for citizens to six years and for permanent residents to four years for the 2023 General Election only, where voters are prevented from returning to New Zealand due to the COVID-19 travel restrictions;

3 **agree** to amend the Electoral Regulations 1996 (the Regulations) to allow overseas voters' marks and signatures to be produced through physical action captured electronically (for example, using signature pads, touch pads/track pads, mouse and touch pens);

*Amending the election advertising rules in the event of a change in election date*

4 **agree** to amend the Electoral Act 1993 (the Act) so that that if polling day changes, the new regulated period is the lesser of either:

4.1 from the day after the date of announcement to polling day; or

4.2 from three months before the (new) polling day.

5 **agree** to amend the Act to provide a grace period of seven days for candidates and political parties to remove election signage if the election date is changed, so that they do not inadvertently breach any regulations and bylaws;

*Voters in isolation or quarantine*

6 **agree** to amend the Regulations to:

6.1 allow the Electoral Commission to offer dictation voting for the 2023 General Election, and any by-elections before then, as an option for people impacted by any requirements to isolate or quarantine; and

6.2 reintroduce the temporary amendment to allow the requirement for someone to witness the signing of the special vote declaration to be waived if the Electoral Commission is satisfied that it not reasonable for the voter to have a witness present;

*Minor and technical amendments*

7 **agree** to the minor and technical amendments set out in Appendix Two to this paper, to ensure that the Act and the Regulations are fit for purpose and accommodate changes to operational practices;

*Promoter statements on electoral advertising*

8 **note** that local and general election advertisements must identify their promoters to increase transparency, but this can raise privacy and safety concerns where a home address is used;

9 **note** the supplementary information in appendix three;

*Legislative drafting*

- 10 **note** that these proposals will be given effect through the Electoral Amendment Bill,  
**s9(2)(f)(iv)**
- 11 **invite** the Minister of Justice to issue drafting instructions to give effect to the decisions in these recommendations; and
- 12 **authorise** the Minister of Justice to make minor and consequential policy decisions that may arise during the drafting process.

Authorised for lodgement

Hon Kris Faafoi

Minister of Justice

Proactive Release

## Appendix Two: List of Minor and technical amendments

Subject	Proposal
<b>Vote issuing, processing, and counting</b>	
Enable voters in New Zealand to apply for a special vote by phone, and by any other method approved by the Commission	<p>This amendment will allow voters to apply for special voting in any manner approved by the Commission. Currently applications for special voting must be made in writing unless they can demonstrate that it is not practicable for them to do so. A written application process is cumbersome for both the voter and the Commission, especially with the potential increase in applications because of the pandemic.</p> <p>This amendment would make permanent the temporary (COVID-19) amendment put in place for the 2020 General Election</p>
Allow votes to be received on or before polling day if there is no post mark	<p>This amendment will allow votes received on or before polling day, if there is no post mark. The post mark is used to ensure that the vote was posted before the close of polls. If a vote is received before the close of polls it is clear such votes were posted 'in time' and so these should be allowed. This will update regulations to account for operational changes by NZ Post where not all items are necessarily postmarked. Votes received by the Commission after polling day that are not postmarked will continue to be disallowed.</p> <p>This amendment would make permanent the temporary (COVID-19) amendment put in place for the 2020 General Election</p>
Remove the requirement for the use of gummed paper on ballot papers and envelope compartments.	<p>This will allow for the automated production of the issue of special voting papers, without the need to manually add the gummed paper to the special ballot paper where the consecutive number can only be read with the aid of technology. This is essential if, for example, in an emergency there could be a significant uptake of postal or takeaway voting and more automated processes need to be used to scale the service up. It brings the Regulation in line with the Act.</p>
Extend the number of days required to receive special votes from 10 to 13 days (general elections only)	<p>After election day special votes must be repatriated to the 'home' electorate i.e., the electorate for the special vote, where the vote is counted. If public holidays fall within the current 10-day timeframe then a day is lost and can result in challenging timeframes for special votes being transferred towards the end of the period with no deliveries on the public holiday.</p>
Extend the reasons for a returning officer to open a voting paper	<p>Currently the voting paper can only be opened if the Returning Officer believes it contains the special vote declaration. A minor change is proposed that will expand the reasons a Returning Officer can open the ballot paper compartment where they have reason to believe:</p> <ul style="list-style-type: none"> <li>• The ballot paper compartment includes another person's voting paper, or</li> <li>• Voting papers need to be added to the compartment (For example, a referendum paper has been put in the declaration compartment).</li> </ul> <p>Provisions to preserve the secrecy of the ballot will still be applied.</p>
<b>Special voters, overseas and remote voters</b>	
Facilitate dictation voting for overseas voters who are blind, vision impaired or due to their disability are unable to mark a ballot paper	<p>Currently, dictation voting is only available for voters in New Zealand who are blind, vision impaired or have a physical disability and require assistance to mark the ballot paper. The Commission could only provide this service for disabled people accessing the telephone service within New Zealand Business hours (during the same time it is offered to voters in New Zealand).</p>

Amend the eligibility in regulation 53 for remote voters	This amendment will allow anyone in the existing categories to use remote voting services if they satisfy the Commission that, because of their remote location at any time in the lead-up to the close of voting, they will otherwise not have reasonable access to other voting services.
Application deadline for remote voting	The application deadline for remote voting special votes is no later than 4pm NZT on the Thursday before polling day. However, the votes can be cast until 7pm on election day. The application deadline should only be moved to noon on election days for remote voting applications for electronic and dictation voting.
Add Pitt Island to the list of remote locations	Currently voting places are not set up on Pitt Island, so voters rely on takeaway voting (transported by air) or must travel to the Chatham Islands, these methods are both weather dependent. This change will provide the Commission with the option where it is not possible to get votes over to the island, or for voters who live there to travel to Chatham Island.
<b>Miscellaneous issues</b>	
Amend section 165 to refer to electoral officials	Voting places now have several roles that interface with voters in addition to Issuing Officers. Section 165 only permits the Issuing Officer to interact with the voter in the voting place. This provision does not reflect the range of roles that can interact with voters at a voting place.
Update provisions to remove references to cheques and bank drafts (for party registration and nomination provisions) and require protected disclosure donations to be paid electronically.	Cheques and bank drafts have been phased out. This makes references in the Act to these payment methods no longer appropriate and relevant.  The use of cheques and bank drafts are obsolete and payments with cash are also problematic due to the physical handling of payments and anti-money laundering provisions banks must comply with. These payments should be done electronically.
Remove references to facsimile	Faxes are increasingly becoming obsolete as providers remove the enabling infrastructure from their networks and modernisation has provided alternative methods to using faxes. The numbers of special voters sending votes by fax is continuing to decline.
Technical amendment to section 128(1)(d)	Amend section 128(1)(d) to reference section 127(2). Currently this section refers to section 127(3A) which is repealed

## **Appendix Three: Additional Information relating to promoter statements on electoral advertising**

### ***Local and general election advertisements must identify their promoters, to increase transparency***

1. The Local Electoral Act 2001 requires every advertisement that promotes or procures the election of a candidate to include an **authorisation statement** that sets out the name of the person/s who directed it to be published, and the address of his or her place of residence or business. This can include the name and address of someone else as the promoter of the advertisement, such as a campaign manager.
2. Authorisation statements are required on print and broadcast advertisements, such as newspapers, billboards, radio and TV.
3. The Electoral Act 1993 requires every election advertisement must contain a **promoter statement** that sets out the name and street address of the place where the promoter usually lives, or street address of any other place where the promoter can usually be contacted between the hours of 9 am and 5 pm on any working day. Promoters do not have to be physically at the address, but it must be an address from where the promoter can be contacted within a reasonable time. A post office box or website address is insufficient.
4. Promoter statements are required on election advertisements in any medium, such as digital, online, print and radio. Statements must be included on election advertisements throughout the electoral cycle.
5. The policy rationale for requiring an authorisation or promoter statement to identify a named person and a physical address is to ensure openness and transparency. It enables the Electoral Commission, local electoral officers, the media, election participants and voters to know who is behind any campaign and to question any statements made.
6. The current requirements in the Electoral Act were introduced following controversy during the 2005 election campaign when thousands of anonymous leaflets were delivered to homes in Auckland, Wellington and Christchurch by “seven concerned citizens” later linked to the Exclusive Brethren Church. The leaflets did not contain the names of the promoters, and the contact addresses used were designed to shield identity, for example, using abandoned premises.

### ***The requirement to include promoter statements can raise privacy and safety concerns***

7. Requiring the inclusion of a name and address on election advertising may raise privacy and safety concerns for both local and parliamentary candidates. This may have a chilling effect on the willingness of candidates to put their name forward for election (although there is little researched evidence of this, aside from anecdotal comments by some individuals).

8. For parliamentary elections, MPs often use their parliamentary or electorate office address on their advertisements. Party secretaries of larger parties tend to use their party headquarters address. However, smaller parties may not have office premises which leaves the party secretary in the position of having to use their home or work address.
9. Candidates in local government elections and their promoters may face more heightened privacy and security concerns than parliamentary candidates. They usually live and work closer to their constituencies and are not supported by party machinery in the same way that most parliamentary candidates are.
10. The impact of these privacy and safety concerns is also greater for local government candidates simply because there are more candidates nationwide. For example, for the 2019 Local Authority elections there were 3,241 candidates for 1,596 positions. This compares to 601 electorate candidates for 72 electorate seats in the 2020 General Election (of which only 58 candidates stood as independents or represented unregistered parties).

***Removing promoter statements will require urgent legislative change***

11. This issue has been raised as a concern by independent candidates and candidates of smaller parties and was considered by the Justice Committee in its Inquiry into the 2017 General Election. The Committee sought advice at that time from the Electoral Commission on options for addressing this concern. The Commission suggested including a general discretion for it to provide prior approval, on an 'exceptions basis' for a promoter to use an 'alternative' street address where an individual was concerned about putting their residential address for personal safety reasons. However, the Justice Committee's final Inquiry report recommended no changes to the rule, stating that "*on balance, we consider that the need for transparency outweighs the privacy issue in election advertising.*"
12. Changes to the rules for local elections would require amendments to the Local Electoral Act. The Department of Internal Affairs has noted that, should an urgent amendment Bill be progressed to address this issue in time for the 2022 local elections, it will need to be enacted before 8 July 2022. s9(2)(f)(iv)
13. Any amendments to the Electoral Act to change the promoter statement rules would need to balance the need for transparency and openness with privacy, and within the context of mitigating concerns with disinformation and misinformation (where being able to identify the person responsible for the information is an important tool in mitigating its spread). Further policy work would be required. If urgent changes were considered necessary before the next General Election the Electoral Amendment Bill could be a potential vehicle, but the policy development timeframes would be tight, and there would be no opportunity for consultation.
14. Alternatively, the Independent Review of Electoral Law will be considering the rules for election advertising and would provide an opportunity for the broader

issues of election advertising, transparency and accountability to be considered more holistically.

DRAFT



# Cabinet Business 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.*

### Paper Two: Electoral Amendment Bill - Other Electoral Matters

Portfolio Justice

On 19 April 2022, the Cabinet Business Committee:

#### Background

- 1 note that in July 2021, the Cabinet Social Wellbeing Committee agreed that the government's electoral work programme will include targeted changes to support the 2023 General Election [SWC-21-MIN-0108], which includes recommendations from:
  - 1.1 the Government response to the Justice Committee's Inquiry into the 2022 General Election; and
  - 1.2 the Electoral Commission's Report on the 2020 General Election;

#### Changes in relation to overseas voters

- 2 agree to temporarily extend the overseas voter eligibility period for citizens to six years and for permanent residents to four years for the 2023 General Election only, where voters are prevented from returning to New Zealand due to the COVID-19 travel restrictions;
- 3 agree to amend the Electoral Regulations 1996 (the Regulations) to allow overseas voters' marks and signatures to be produced through physical action captured electronically (for example, using signature pads, touch pads/track pads, mouse and touch pens);

#### Amending the election advertising rules in the event of a change in election date

- 4 agree to amend the Electoral Act 1993 (the Act) so that that if polling day changes, the new regulated period is the lesser of either:
  - 4.1 from the date of announcement to polling day; or
  - 4.2 from three months before the (new) polling day.
- 5 agree to amend the Act to provide a grace period of seven days for candidates and political parties to remove election signage if the election date is changed, so that they do not inadvertently breach any regulations and bylaws;

**Voters in isolation or quarantine**

- 6 agree to amend the Regulations to:
- 6.1 allow the Electoral Commission to offer dictation voting for the 2023 General Election, and any by-elections before then, as an option for people impacted by any requirements to isolate or quarantine; and
  - 6.2 reintroduce the temporary amendment to allow the requirement for someone to witness the signing of the special vote declaration to be waived if the Electoral Commission is satisfied that it is not reasonable for the voter to have a witness present;

**Minor and technical amendments**

- 7 agree to the minor and technical amendments set out in Appendix Two to the paper under CBC-22-SUB-0026, to ensure that the Act and the Regulations are fit for purpose and accommodate changes to operational practices;

**Promoter statements on electoral advertising**

- 8 note that local and general election advertisements must identify their promoters to increase transparency, but this can raise privacy and safety concerns where a home address is used;
- 9 note the supplementary information in appendix three, attached to the submission under CBC-22-SUB-0026, about this provision;

**Legislative drafting**

- 10 note that these decisions will be given effect through the Electoral Amendment Bill, <sup>s9(2)</sup>  
(f)(iv)
- 11 invite the Minister of Justice to issue drafting instructions to give effect to the decisions under CBC-22-SUB-0026;
- 12 authorise the Minister of Justice to make minor and consequential policy decisions that may arise during the drafting process.

Jenny Vickers  
Committee Secretary

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**Present:**

Hon Grant Robertson (Chair)  
Hon Kelvin Davis  
Hon Dr Megan Woods  
Hon Chris Hipkins  
Hon Carmel Sepuloni  
Hon Andrew Little  
Hon David Parker  
Hon Nanaia Mahuta  
Hon Poto Williams  
Hon Stuart Nash  
Hon Kris Faafoi

**Officials present from:**

Office of the Prime Minister  
Department of the Prime Minister and Cabinet

## **In Confidence**

Office of the Minister of Justice

Cabinet Social Wellbeing Committee

### **Government response to the Justice Committee report *Inquiry into the 2020 General Election and Referendums***

#### **Purpose**

1. This paper is part of a suite of three papers relating to electoral reform, which includes:
  - 1.1. Paper One: Electoral Amendment Bill – Policy approvals relating to political donations; and
  - 1.2. Paper Two: Electoral Amendment Bill - Policy approvals (other electoral matters).
2. This paper seeks approval to table the attached Government response to the Justice Committee's *Inquiry into the 2020 General Election and Referendums*.

#### **Executive Summary**

3. The Justice Committee's report on its inquiry into the 2020 General Election and Referendums (the Report) made nine recommendations. The attached proposed Government response states that:
  - 3.1. three recommendations will be considered in the Independent Review of Electoral Law;
  - 3.2. the Government will consider amending the overseas voter eligibility rules before 2023; and
  - 3.3. the Government will aim to progress the remaining five recommendations before the 2023 General Election.
4. The proposed response is deliberately high level, to allow for further work to occur on the detail of the recommendations during the drafting of amendments and regulations to progress some of the recommendations.

#### **The Justice Committee has released its report into the 2020 General Election and Referendums**

5. In February 2021, the Justice Committee initiated an inquiry into the 2020 General Election and Referendums. An inquiry is routinely conducted after each General election. The Committee identified four main themes for investigation with regard to the 2020 General Election:
  - 5.1. resilience of our electoral system in the face of civil emergencies, with a particular focus on lessons learned from the COVID-19 pandemic;

- 5.2. integrity and security of our electoral system in light of emerging challenges, with a particular focus on technology and social media;
  - 5.3. rise of advance voting, with a particular focus on whether any rules governing the regulated period should change in light of the increase in advance voting; and
  - 5.4. accessibility of the voting system for disabled people and New Zealand's growing ethnic communities whose first language may not be English.
6. The Committee published the Report on 22 December 2021. The Committee noted that this is an interim report, and said the production of this interim report was to assist the Government in its consideration of changes before the 2023 General Election. The Report states that the Justice Committee intends to continue considering the themes discussed in the Report in greater depth in 2022. The Report contains nine recommendations under three categories:
- 6.1. the resilience of the electoral system;
  - 6.2. advance voting; and
  - 6.3. electoral participation.
7. The Government response to the Report was due to be tabled in Parliament by 8 April 2022 in accordance with Standing Order 256.

### **The proposed Government response**

8. I am seeking approval to table the attached Government response. The proposed response notes the following:

*Three recommendations will be considered in the Independent Review of Electoral Law*

9. On 5 October 2021, the Government announced an Independent Review of Electoral Law (the Independent Review (SWC-21-MIN-0108)). This review is being undertaken ahead of the 2026 General Election, with an independent panel to report back in late 2023. It is expected that further significant changes to the Electoral Act 1993 ('the Act') will be made following that review (in the next parliamentary term).
10. I consider that the Independent Review, considering its scope is best positioned to look at three of the Committee's recommendations, namely:
- 10.1. reviewing the legislative framework for elections, to ensure there is adequate resilience to emergencies;
  - 10.2. reviewing the rules for election day advertising at section 197 of the Act and their alignment with the rules that apply during the advance voting period; and
  - 10.3. supporting further public and political debate on strengthening civic education in the school curriculum and whether 18 remains the best age to enfranchise voters.

*The Government will consider amending the overseas voter eligibility rules before 2023*

11. I propose that the Government agree with the Committee's recommendation to consider the overseas voter eligibility rules, in order to uphold the voting participation rights of New Zealanders for the 2023 General Election.
12. In the Report, the Committee recognises the unique challenges that the Covid-19 travel restrictions and mandatory isolation requirements have created for New Zealanders wishing to travel back to New Zealand over the last two years.
13. The Committee recommended, by majority, amendments to the Act to change the overseas voter eligibility criteria to address situations where voters have been prevented from returning to New Zealand by circumstances out of their control, such as a pandemic. The National Party recommended a temporary change for the 2023 General Election only, to address the current difficulties with international travel due to the Covid-19 pandemic.
14. The Electoral Amendment Bill - Policy approvals (other electoral matters) Cabinet paper, which is the second of the suite of papers relating to electoral reform that I am putting forward today, proposes the Government introduce an amendment ahead of the 2023 General Election to extend the period of time in which overseas voters may be outside New Zealand while retaining their voting eligibility. It is envisaged that any such amendment would only apply to the 2023 General Election.

*The Government will aim to progress the remaining five recommendations before the 2023 General Election*

15. I consider the remaining five recommendations only require minor changes to the Act or the Electoral Regulations 1996 (the Regulations). These include amendments to:
  - 15.1. allow overseas voters' marks and signatures produced through physical action to be captured electronically;
  - 15.2. allow all overseas voters who are blind, vision impaired, or have a physical disability and are unable to mark the ballot paper without assistance to be able to access the telephone dictation service;
  - 15.3. enable people in New Zealand to apply for a special vote by phone, and by any other method approved by the Electoral Commission;
  - 15.4. amend legislation to provide that a special vote returned by post in an envelope that is not postmarked or date-stamped is valid if it is received by a Returning Officer or an Issuing Officer on or before election day; and
  - 15.5. review the rules for how the regulated period is determined for any election.
16. These minor changes are included in a package of amendments to the Act and to the Regulations, to be enacted before the 2023 General Election, proposed in the Electoral Amendment Bill - Policy approvals (other electoral matters) Cabinet paper.

## Consultation

17. The Treasury, Statistics New Zealand, Department of Internal Affairs, Ministry of Foreign Affairs, Department of Prime Minister and Cabinet, Office of Disability Issues, Te Puni Kōkiri and the Electoral Commission have been consulted.

## Communications

18. I intend to issue a press release when the Government response is tabled. This release will outline the Cabinet's proposed changes to the overseas voters eligibility rules, which will help reassure overseas voters about their voting rights for the next General Election.

## Financial Implications

19. There are no financial implications from tabling the Government Response.

## Legislative implications

20. The Electoral Amendment Bill - Policy approvals (other electoral matters) Cabinet paper seeks agreement for the recommendations that require legislative amendment to be progressed in the Electoral Amendment Bill (the Bill), amendments to the Electoral Regulations 1996 (the Regulations), and approval to issue drafting instructions.

## Impact Analysis

21. The Impact Analysis requirements in respect of the proposed changes to the overseas voting rules have been covered in the Electoral Amendment Bill - Policy approvals (other electoral matters) Cabinet paper.

## Human Rights

22. All of the proposals appear to be consistent with the rights and freedoms affirmed in the New Zealand Bill of Rights Act 1990 and the Human Rights Act 1993. A final determination as to the consistency of these proposals with the New Zealand Bill of Rights will only be possible when the Bill discussed in the Electoral Amendment Bill - Policy approvals (other electoral matters) Cabinet paper, has been drafted.

## Proactive release

23. I intend to proactively release this Cabinet paper, with any appropriate redactions in accordance with Cabinet Office Circular CO (18) 4, as soon as practicable after the Government response is tabled.

## Recommendations

24. The Minister of Justice recommends that the Committee:

- 1 **note** that the Justice Committee initiated an inquiry into the 2020 General Election and Referendums in February 2021;
- 2 **note** that the Committee released its interim report on its inquiry into the 2020 General Election and Referendums on 22 December 2021;

- 3 **note** the Government's response to the Report was due to be tabled in Parliament by 8 April 2022 in accordance with Standing Order 256;
- 4 **note** the proposed Government response to the Report, attached to this paper as Appendix 1, which assumes Cabinet approval to the proposals contained in my accompanying Cabinet paper *Electoral Amendment Bill - Policy approvals (other electoral matters)*

**EITHER**

- 5 **approve** the content of the proposed Government response to the Report, attached to this paper as Attachment 1;

**OR**

- 6 **invite** the Minister of Justice to amend the attached proposed government response, to reflect Cabinet decisions on my Cabinet paper *Electoral Amendment Bill - Policy approvals (other electoral matters)*;
- 7 **authorise** the Minister of Justice to table the appropriate Government response in Parliament.

Authorised for lodgement

Hon Kris Faafoi  
Minister of Justice



# Cabinet Business 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.*

### Paper Three: Government Response to the Justice Committee Report Inquiry into the 2020 General Election and Referendums

Portfolio Justice

On 19 April 2022, the Cabinet Business Committee:

- 1 **noted** that the Justice Committee (the Committee) initiated an inquiry into the 2020 General Election and Referendums in February 2021;
- 2 **noted** that the Committee released its interim report on its inquiry into the 2020 General Election and Referendums on 22 December 2021;
- 3 **noted** that the Government's response to the Report was due to be tabled in Parliament by 8 April 2022 in accordance with Standing Order 256;
- 4 **noted** the Government response to the Report, attached to the paper under CBC-22-SUB-0027 as Appendix 1;
- 5 **invited** the Minister of Justice to amend the Government response if necessary to reflect Cabinet decisions on the paper Electoral Amendment Bill - Other Electoral Matters [CBC-22-SUB-0026];
- 6 **authorised** the Minister of Justice to table the Government response in Parliament.

Jenny Vickers  
Committee Secretary

**Present:**

Hon Grant Robertson (Chair)  
Hon Kelvin Davis  
Hon Dr Megan Woods  
Hon Chris Hipkins  
Hon Carmel Sepuloni  
Hon Andrew Little  
Hon David Parker  
Hon Nanaia Mahuta  
Hon Poto Williams  
Hon Stuart Nash  
Hon Kris Faafoi

**Officials present from:**

Office of the Prime Minister  
Department of the Prime Minister and Cabinet



# Cabinet Legislation Committee

## Minute of Decision

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### Electoral Amendment Bill: Approval for Introduction

**Portfolio**                      **Justice**

On 30 June 2022, the Cabinet Legislation Committee:

s9(2)(f)(iv)

- 2        **noted** that the Bill amends the Electoral Act 1993 in relation to the political donations and loans framework, overseas voting eligibility, the regulated period, and other minor and technical matters;

*Additional policy decisions*

#### **Financial statements**

- 3        **agreed** that:
- 3.1        each registered party must return only one set of financial statements that sets out a true and accurate picture of the financial affairs of the party;
  - 3.2        registered parties that are required to produce audited financial statements under either their constitution or another statute must provide the Electoral Commission with their audited financial statements;
  - 3.3        registered parties that are not required to produce audited financial statements must provide the Electoral Commission with financial statements prepared in accordance with either the requirements of their constitution, or with generally accepted accounting practice if their constitution does not specify the preparation of financial statements;
  - 3.4        party secretaries must provide their party's financial statements to the Electoral Commission:
    - 3.4.1        for registered parties that are incorporated societies, on the same date as the date on which the party's annual financial statement is given to the Registrar of Incorporated Societies, but not later than six months after their balance date;
    - 3.4.2        for registered parties that are not incorporated societies but have a constitution requiring them to produce financial statements, within six months of their balance date;

- 3.4.3 for registered parties that are not incorporated societies and do not have a constitution requiring them to produce financial statements, within six months of the most recent default balance date (being 31 March);

**Offences and penalties (financial statements)**

4 **agreed** that a party secretary will be:

- 4.1 liable upon conviction to a fine not exceeding \$40,000 if they, without reasonable excuse, file financial statements during the late period (15 working days after it is due);
- 4.2 guilty of a corrupt practice if they, without reasonable excuse, file financial statements after the late period or fail to file financial statements;

**Offences and penalties (candidate loans)**

5 **agreed** that a candidate will be:

- 5.1 liable upon conviction to a fine not exceeding \$40,000 for failing to keep proper records of all loan arrangements they enter into, without reasonable excuse;
- 5.2 liable upon conviction to a fine not exceeding \$40,000 if they, without reasonable excuse, file a loan return during the late period (15 working days after it is due);
- 5.3 guilty of a corrupt practice if they, without reasonable excuse, file a return after the late period or fail to file a return;
- 5.4 guilty of a corrupt practice if they knowingly file a false return, or of an illegal practice if there was no intention to mislead, or reasonable steps were taken to ensure the information was accurate;

*Financial Implications*

- 6 **noted** that the Electoral Commission has advised that it can reprioritise expenditure to fund changes to overseas voting eligibility from within the funding it received in Budget 2022, and no additional funding is being sought;

*Approval to introduce*

- 7 **approved** the Electoral Amendment Bill [PCO 24488/10.0] for introduction, subject to the final approval of the government caucus and sufficient support in the House of Representatives;
- 8 **agreed** that the Electoral Amendment Bill be introduced in the week of 20 July 2022, and passed by 15 December 2022;
- 9 **agreed** that the government propose the Bill be:
- 9.1 referred to the Justice Committee for consideration for a truncated period of three months;
- 9.2 come into force the day after Royal assent, except for:
- 9.2.1 clauses 6 and 38 and the Schedule which come into force on 1 January 2023;

- 9.2.2 clause 19 which comes into force on 31 March 2023;
- 9.2.3 clause 20 which comes into force one month after the day appointed as the latest day for the return of the writ for the 2023 General Election.

Vivien Meek  
Committee Secretary

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**Present:**

Hon Chris Hipkins (Chair)  
Hon Andrew Little  
Hon Michael Wood  
Hon Kiri Allan  
Hon Kieran McAnulty  
Dr Duncan Webb

**Officials present from:**

Office of the Prime Minister  
Officials Committee for LEG

## **In Confidence**

Office of the Minister of Justice

Cabinet Legislation Committee

### **Electoral Amendment Bill 2022: Approval for introduction**

#### **Proposal**

- 1 This paper seeks approval for the introduction of the Electoral Amendment Bill 2022 (the Bill).

#### **Current policy approvals**

- 2 On 2 May 2022, Cabinet agreed to various amendments to the Electoral Act 1993 (the Act) [CBC-22-MIN-0025, CBC-22-MIN-0026 and CAB-22-MIN-0150 refers] relating to:
  - 2.1 increasing the disclosure and reporting requirements for political donations and loans, and requiring the disclosure of financial statements, to improve transparency and openness;
  - 2.2 a temporary expansion of overseas voters' eligibility, to mitigate Covid-related travel disruptions;
  - 2.3 amendments to the definition of the regulated period, in the event of a change of election date; and
  - 2.4 making minor and technical amendments recommended by the Electoral Commission (the Commission) and the Justice Committee to support the operational delivery of the 2023 General Election.
- 3 These policy decisions are being progressed in the Bill. These amendments will increase public trust and confidence in New Zealand's electoral system and uphold the voting participation rights of New Zealand citizens and permanent residents.

#### **Approvals sought for further policy changes**

- 4 Cabinet agreed the previous Minister of Justice would report back to Cabinet Legislation Committee on the requirement for registered political parties to prepare and publish annual financial statements.
- 5 Cabinet also agreed that Cabinet Legislation Committee can make any further policy decisions required. I am seeking agreement to further policy decisions as outlined below.

#### *Preparation and publication of annual financial statements for registered political parties*

- 6 Cabinet asked the previous Minister of Justice to report back to Cabinet Legislation Committee on the outcome of further detailed policy work, including how to determine which entities must be reported on and whether any audit requirements should be imposed.
- 7 Following this policy work, I am seeking approval for the following policy decisions in addition to the original decision requiring registered parties to prepare and publish annual financial statements:

- 7.1 each party must return only one set of financial statements that sets out a true and accurate picture of the financial affairs of the party registered under the Act (rather than multiple returns covering different branches of the party which must then be amalgamated, for example);
- 7.2 parties that are required to produce audited financial statements under either their constitution or another statute must provide the Commission with their audited financial statements;
- 7.3 parties that are not required to produce audited financial statements must provide the Commission with financial statements prepared in accordance with either the requirements of their constitution, or with generally accepted accounting practice if their constitution does not require the preparation of financial statements;
- 7.4 parties that are incorporated societies must provide their financial statements to the Commission on the same date as the date on which the party's annual financial statement is given to the Registrar of Incorporated Societies, but not later than six months after their balance date;
- 7.5 parties that are not incorporated societies but have a constitution requiring them to produce financial statements must provide those statements to the Commission within six months of their balance date; and
- 7.6 parties that are not incorporated societies and do not have a constitution requiring them to produce financial statements must produce and provide financial statements to the Commission within six months of the most recent default balance date, being 31 March.
- 8 Additionally, I am seeking approval for the creation of offences relating to financial statements, which align with the existing offence and penalty regime in the Act. Specifically, I propose a party secretary will be:
- 8.1 liable upon conviction to a fine not exceeding \$40,000 if they, without reasonable excuse, file financial statements during the late period (15 working days after it is due); and
- 8.2 guilty of a corrupt practice if they, without reasonable excuse, file financial statements after the late period or fail to file financial statements.
- 9 I consider the proposals above represent the best balance between providing additional transparency for the general public, minimising compliance burden on registered parties, and aligning with existing provisions in the Act.
- 10 I note that the offence referred to in paragraph 8.2 above is a strict liability offence that is punishable with a term of imprisonment, which is rare. However, the proposed offence is consistent with similar offences in the Act, which reflects the nature of the offending and its impact on voter trust and electoral integrity.

*Creating an offence for candidates who fail to provide a loan return*

- 11 Cabinet agreed to amend the Act to require candidates to publicly report on loans received to support their campaign [CBC-22-MIN-0025 and CAB-22-MIN-0150 refers]. Cabinet did not consider whether there should be an offence of failing to provide a candidate loan return.
- 12 I therefore seek approval for the creation of relevant offences, again consistent with the existing offence and penalty regime in the Act. Specifically, I propose a candidate will be:
  - 12.1 liable upon conviction to a fine not exceeding \$40,000 for failing to keep proper records of all loan arrangements they enter into, without reasonable excuse;
  - 12.2 liable upon conviction to a fine not exceeding \$40,000 if they, without reasonable excuse, file a loan return during the late period (15 working days after it is due);
  - 12.3 guilty of a corrupt practice if they, without reasonable excuse, file a return after the late period or fail to file a return; and
  - 12.4 guilty of a corrupt practice if they knowingly file a false return, or of an illegal practice if there was no intention to mislead, or reasonable steps were taken to ensure the information was accurate.
- 13 I note that the offence referred to in paragraph 12.2 above is, like the offence in paragraph 8.2, a strict liability offence that is punishable with a term of imprisonment. However, as I noted at paragraph 10 above, the proposed offence is consistent with similar offences in the Act, which reflects the nature of the offending and its impact on voter trust and electoral integrity.

*The Independent Review of Electoral Law will consider which entities should be reported on*

- 14 Cabinet also agreed that the previous Minister of Justice would report back to Cabinet Legislation Committee on the outcome of further detailed policy work on the requirement for registered parties to prepare and publish annual financial statements, including which entities must be reported on.
- 15 The proposals outlined above relating to registered parties' annual financial statements focus on parties as currently constituted. Depending on how they are constituted, other entities, such as companies, foundations, and trusts, that are loosely associated with parties, but which have their own separate legal identity, may fall outside these arrangements. At this time, I am not requiring these entities to disclose their financial statements under the Act, as they are not presently required to register their activities under the Act.
- 16 At present, there is very little public information about the existing structures adopted by parties. Which entities must be reported on is a complex area, that has the potential to change the way registered parties structure themselves and their financial affairs. The changes outlined above are an interim step to improve

transparency, but I consider that it is more appropriate for the Independent Review of Electoral Law to consider this matter further and carry out further public consultation.

## **Financial Implications**

- 17 Cabinet asked the previous Minister of Justice to report back to the Cabinet Legislation Committee on the financial implications of the changes to overseas voting eligibility for the 2023 General Election.
- 18 The Commission costed the changes to the overseas voting eligibility criteria at \$482,000 for temporary IT changes, ensuring enrolment forms are updated, and communicating with overseas voters.
- 19 The Electoral Commission received \$139.548m in Budget 2022 over the forecast period (until the 2025/26 financial year), but the bid did not seek funding in relation to overseas voter eligibility. The Commission has advised that it can reprioritise expenditure to cover the cost of this policy change without significantly impacting on General Election 2023. No additional funding is being sought.

## **Impact Analysis**

- 20 In accordance with Cabinet requirements, Regulatory Impact Statements were prepared and submitted on 7 April 2022 along with the papers seeking policy approvals for the proposed:
  - 20.1 changes to the political donations and loans framework; and
  - 20.2 temporary amendments to overseas voting eligibility.
- 21 The proposals relating to the regulated period and minor and technical amendments were exempt from Cabinet's regulatory impact analysis requirements on the ground they had no or only minor impacts on businesses, individuals, and not for profit entities.

## **Compliance**

- 22 The Bill complies with:
  - 22.1 the principles of the Treaty of Waitangi;
  - 22.2 the rights and freedoms contained in the New Zealand Bill of Rights Act 1990 and the Human Rights Act 1993;
  - 22.3 the disclosure statement requirements (a disclosure statement prepared by the Ministry of Justice is attached);
  - 22.4 the principles and guidelines set out in the Privacy Act 2020;
  - 22.5 relevant international standards and obligations; and
  - 22.6 the Legislation Guidelines (2021 edition), which are maintained by the Legislation Design and Advisory Committee.

## **Consultation**

- 23 The following agencies were consulted: Treasury, Department of Internal Affairs, Department of Prime Minister and Cabinet, Ministry of Foreign Affairs, Te Puni Kōkiri, Office of Disability Issues, Statistics New Zealand, the Ministry of Business, Innovation and Employment, the Electoral Commission, the Office of the Privacy Commissioner, the External Reporting Board, and the Parliamentary Counsel Office.
- 24 Officials carried out public consultation on amendments to the political donations and loans framework and the proposal to publish parties' financial statements, as well as targeted consultation with academics, registered party secretaries, professional bodies and subject matter experts.
- 25 Other parties represented in Parliament have been consulted on the proposals relating to donations, loans and annual financial statements.
- 26 The government caucus will be consulted prior to the Bill being introduced.

## **Binding on the Crown**

- 27 Cabinet Circular (02) 4: Acts Binding the Crown: Procedures for Cabinet Decision notes that bills that are amending existing Acts will generally follow the position of the principal Act on whether the Act is binding on the Crown. The Electoral Act 1993 does not bind the Crown and Cabinet agreed this Bill will follow that position [CBC-22-MIN-0025, CBC-22-MIN-0026 and CAB-22-MIN-0150 refers].
- 28 The Bill does not bind the Crown.

## **Creating new agencies or amending law relating to existing agencies**

- 29 The Bill does not create any new agencies.

## **Allocation of decision-making powers**

- 30 The Bill does not allocate decision making powers between the executive and judiciary.

## **Associated regulations**

- 31 The Bill makes an amendment to the Electoral (Advertisements of a Specified Kind) Regulations 2005, consequential to the amendment to the sections relating to advertisements of a specified kind in the Act.

## **Other instruments**

- 32 The Bill does not include any provision empowering the making of other instruments deemed to be legislative instruments or disallowable instruments.

## **Definition of Minister/department**

- 33 The Bill does not contain a definition of Minister, department or Chief Executive of a department.

## Commencement of legislation

34 The Bill will come into force on the day after the date of Royal assent, except for the provisions:

- 34.1 amending the 10-working day reporting requirements for party donations, which will come into force on 1 January 2023;
- 34.2 temporarily extending overseas voting eligibility, which will come into force on 31 March 2023;
- 34.3 reversing the temporary extension of overseas voting eligibility, which will come into force one month after the day appointed as the latest day for the return of the writ for the 2023 General Election.

## Parliamentary stages

35 The Bill should be introduced by 20 July 2022 and passed by 15 December 2022.

36 I propose that the Bill be referred to the Justice Committee for consideration, and that the Committee be asked to report back by Monday 26 November 2022.

## Publicity

37 I intend to issue a media release relating to this package of electoral reforms when the Bill is introduced.

## Proactive Release

38 I propose to proactively release this Cabinet paper, and any relevant related materials following the introduction of the Bill, with any appropriate redactions in accordance with Cabinet Office Circular CO (18) 4.

## Recommendations

39 The Minister of Justice recommends that the Committee:

s9(2)(f)(iv)

2 **note** that the Bill amends the Electoral Act 1993 in relation to the political donations and loans framework, overseas voting eligibility, the regulated period, and other minor and technical matters;

## *Additional policy decisions*

### Financial statements

3 **agree** that:

- 3.1 each registered party must return only one set of financial statements that sets out a true and accurate picture of the financial affairs of the party;
- 3.2 registered parties that are required to produce audited financial statements under either their constitution or another statute must provide the Electoral Commission with their audited financial statements;

- 3.3 registered parties that are not required to produce audited financial statements must provide the Electoral Commission with financial statements prepared in accordance with either the requirements of their constitution, or with generally accepted accounting practice if their constitution does not specify the preparation of financial statements;
- 3.4 party secretaries must provide their party's financial statements to the Electoral Commission:
  - 3.4.1 for registered parties that are incorporated societies, on the same date as the date on which the party's annual financial statement is given to the Registrar of Incorporated Societies, but not later than six months after their balance date;
  - 3.4.2 for registered parties that are not incorporated societies but have a constitution requiring them to produce financial statements, within six months of their balance date; and
  - 3.4.3 for registered parties that are not incorporated societies and do not have a constitution requiring them to produce financial statements, within six months of the most recent default balance date (being 31 March);

#### Offences and penalties (financial statements)

- 4 **agree** a party secretary will be:
  - 4.1 liable upon conviction to a fine not exceeding \$40,000 if they, without reasonable excuse, file financial statements during the late period (15 working days after it is due);
  - 4.2 guilty of a corrupt practice if they, without reasonable excuse, file financial statements after the late period or fail to file financial statements;

#### Offences and penalties (candidate loans)

- 5 **agree** a candidate will be:
  - 5.1 liable upon conviction to a fine not exceeding \$40,000 for failing to keep proper records of all loan arrangements they enter into, without reasonable excuse;
  - 5.2 liable upon conviction to a fine not exceeding \$40,000 if they, without reasonable excuse, file a loan return during the late period (15 working days after it is due);
  - 5.3 guilty of a corrupt practice if they, without reasonable excuse, file a return after the late period or fail to file a return; and
  - 5.4 guilty of a corrupt practice if they knowingly file a false return, or of an illegal practice if there was no intention to mislead, or reasonable steps were taken to ensure the information was accurate;

*Financial implications*

- 6 **note** that the Electoral Commission has advised that it can reprioritise expenditure to fund changes to overseas voting eligibility from within the funding it received in Budget 2022, and no additional funding is being sought;

*Approval to introduce*

- 7 **approve** the introduction of the Electoral Amendment Bill, subject to the final approval of the government caucus and sufficient support in the House of Representatives;
- 8 **agree** that the Bill be introduced in the week of 20 July 2022, and passed by 15 December 2022;
- 9 **agree** that the government propose the Bill be:
- 9.1 referred to the Justice Committee for consideration for a truncated period of three months; and
  - 9.2 come into force the day after Royal assent, except for:
    - 9.2.1 clauses 6 and 38 and the Schedule which come into force on 1 January 2023;
    - 9.2.2 clause 19 which comes into force on 31 March 2023; and
    - 9.2.3 clause 20 which comes into force one month after the day appointed as the latest day for the return of the writ for the 2023 General Election.

Authorised for lodgement

Hon Kiri Allan

Minister of Justice

Office of the Minister of Justice  
Cabinet Legislation Committee

## **Electoral Amendment Regulations 2022**

### **Proposal**

- 1 This paper seeks authorisation for submission to the Executive Council of the Electoral Amendment Regulations 2022 (the Regulations).

### **Policy**

- 2 On 2 May 2022 Cabinet agreed to amend the Electoral Regulations 1996 to support the delivery of elections [CBC-22-MIN-0026 and CAB-22-MIN-0150 refers]. These Regulations implement four of the approved amendments, to make it easier for people to vote in the upcoming Tauranga by-election on 18 June 2022 (with early voting starting on 1 June 2022). The remaining amendments will be progressed on a longer timeframe, but will be in place by the 2023 General Election.
- 3 The proposed amendments in this paper respond to recommendations made by the Electoral Commission (the Commission) and/or the Justice Committee in their respective reports into the 2020 General Election. All of the changes re-introduce temporary amendments which were put in place for the 2020 General Election, to support safe delivery of that election in a Covid-19 environment.

### ***Changes in relation to voters in isolation or quarantine***

- 4 The Regulations make two changes that together will ensure that voters required to isolate have voting methods available to them and will not be disenfranchised for the 2023 General Election and any by-elections before then (including the Tauranga by-election).

### ***Dictation voting***

- 5 The Commission will be able to offer dictation voting as an option for people who are isolating or in quarantine.
- 6 Dictation voting is usually only available to voters who are blind or visually impaired and for remote voters. This change provides dictation voting as a contactless way of voting for those in isolation or quarantine, where the Commission is satisfied that it will not be practicable for the person to vote at a polling place.
- 7 Cabinet agreed that dictation voting would be an option for people who are impacted by any requirements to isolate or quarantine [CBC-22-MIN-0026 and CAB-22-MIN-0150 refers]. On 14 April 2022 the COVID-19 Public Health Response (Self-isolation Requirements and Permitted Work) Order

2022 was amended to provide for persons to stay voluntarily in a Managed Isolation and Quarantine Facility (MIQF), if authorised by the chief executive of the Ministry of Business, Innovation and Employment. The COVID-19 Public Health Response (Air Border) Order 2021 also provides for persons to voluntarily stay in a MIQF.

- 8 Therefore, in accordance with the authority provided to me by Cabinet to make minor and consequential policy decisions that may arise during the drafting process [CBC-22-MIN-0026 and CAB-22-MIN-0150 refers], I have decided that the Commission may also offer dictation voting to people who are authorised to voluntarily stay in a MIQF, as well as being required to stay under a COVID order.

*Waiving the requirement to have the special vote declaration witnessed*

- 9 The Regulations waive the requirement for someone to witness the signing of the special vote declaration if the Commission is satisfied that it is not reasonable to have the declaration witnessed. Having someone physically present to supervise the signing of the declaration is problematic for people in isolation, particularly for people who are isolating alone.

***Applying for a special vote by telephone***

- 10 The Regulations allow voters in New Zealand to apply for a special vote by phone, and by any other method approved by the Electoral Commission.
- 11 Currently, applications for special voting must be made in writing unless the voter can demonstrate that it is not practicable for them to do so. Written applications are administratively cumbersome, for both the voter and the Commission. The ability to call the Commission's contact centre number will make voting more accessible for voters.

***Allowing votes to be received without postmarks***

- 12 The Regulations allow votes received on or before polling day to be counted if there is no postmark. If a vote is received before the close of the polls, it is clear such votes were posted in time and should be allowed.
- 13 This amendment reflects NZ Post's operational changes where not all items are necessarily postmarked. Votes received by the Commission after polling day that are not postmarked will continue to be discounted.

***Timing and 28-day rule***

- 14 The Tauranga by-election is scheduled for 18 June 2022. I am seeking a waiver of the 28-day rule so the changes can take effect before early voting starts on 1 June 2022. The Regulations will provide additional voting methods to voters, which will benefit the public.
- 15 I will be seeking agreement to progress the remaining proposals to amend the Electoral Regulations 1996 in time for the 2023 General Election. No waiver of the 28-day rule will be sought for the second tranche of amendments.

## **Compliance**

- 16 The Regulations comply with each of the following:
- 16.1 the principles of the Treaty of Waitangi;
  - 16.2 the rights and freedoms contained in the New Zealand Bill of Rights Act 1990 and the Human Rights Act 1993;
  - 16.3 the principles and guidelines set out in the Privacy Act 2020;
  - 16.4 relevant international standards and obligations;
  - 16.5 the Legislation Guidelines (2018 edition), which are maintained by the Legislation Design and Advisory Committee.

## **Regulations Review Committee**

- 17 There are no grounds for the Regulations Review Committee to draw the Regulations to the attention of the House of Representatives under Standing Order 327.

## **Certification by Parliamentary Counsel**

- 18 The Regulations have been certified by the Parliamentary Counsel Office as being in order for submission to Cabinet.

## **Impact Analysis**

- 19 The amendments included in the Regulations were exempt from the regulatory impact analysis requirements on the grounds that they had no or only minor impacts on businesses, individuals, and not for profit entities.

## **Publicity**

- 20 The Commission will publicise these changes as part of their standard communications to voters.

## **Proactive release**

- 21 These Regulations form part of the package of electoral reforms, along with the proposals in the Electoral Amendment Bill. Therefore, I will proactively release this Cabinet paper following introduction of the Electoral Amendment Bill, with any appropriate redactions in accordance with Cabinet Office Circular CO (18) 4.

## **Consultation**

- 22 The Treasury, the Department of Internal Affairs, and the Electoral Commission have been consulted on these Regulations. The Department of Prime Minister and Cabinet has been informed.

## Recommendations

- 23 The Minister of Justice recommends that the Cabinet Legislation Committee:
- 1 note that on 2 May 2022 Cabinet agreed to amend the Electoral Regulations 1996 to allow the Commission to offer dictation voting as an option for people impacted by any requirements to isolate or quarantine [CBC-22-MIN-0026 and CAB-22-MIN-0150 refers];
  - 2 note that, in accordance with the authority provided to me by Cabinet to make minor and consequential policy decisions [CBC-22-MIN-0026 and CAB-22-MIN-0150 refers], I have decided that the Electoral Commission may also offer dictation voting to people who are authorised to voluntarily stay in a Managed Isolation and Quarantine Facility, as well as being required to stay under a COVID order;
  - 3 note that Cabinet also agreed to amend the Electoral Regulations to:
    - 3.1 waive the requirement for someone to witness the signing of the special vote declaration if the Commission is satisfied that it is not reasonable to have the declaration witnessed;
    - 3.2 allow voters in New Zealand to apply for a special vote by phone, and any other method approved by the Commission;
    - 3.3 allow votes received on or before polling day to be counted if there is no postmark [CBC-22-MIN-0026 and CAB-22-MIN-0150 refers];
  - 4 note that the Electoral Amendment Regulations 2022 (the Regulations) will give effect to the decisions referred to in paragraphs 1 to 3 above;
  - 5 authorise the submission to the Executive Council of the Regulations;
  - 6 note that a waiver of the 28-day rule is sought:
    - 6.1 so that the Regulations can come into force as soon as possible so they can apply for the Tauranga by-election on 18 June 2022;
    - 6.2 on the grounds that the Regulations will enable more people to vote, and therefore benefits the public; and
  - 7 agree to waive the 28-day rule so that the Regulations can come into force on the day after they are Gazetted.

Authorised for lodgement

Hon Kris Faafoi

Minister of Justice



# Cabinet Legislation 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.*

### Electoral Amendment Regulations 2022

**Portfolio**                      **Justice**

On 12 May 2022, the Cabinet Legislation Committee:

- 1        **noted** that on 2 May 2022, the Cabinet Business Committee (CBC) agreed to amend the Electoral Regulations 1996 to allow the Commission to offer dictation voting as an option for people impacted by any requirements to isolate or quarantine [CBC-22-MIN-0026];
- 2        **noted** that, in accordance with the authority provided by CBC to make minor and consequential policy decisions [CBC-22-MIN-0026], the Minister of Justice has decided that the Electoral Commission may also offer dictation voting to people who are authorised to voluntarily stay in a Managed Isolation and Quarantine Facility, as well as being required to stay under a COVID order;
- 3        **noted** that CBC also agreed to amend the Electoral Regulations to:
  - 3.1        waive the requirement for someone to witness the signing of the special vote declaration if the Commission is satisfied that it is not reasonable to have the declaration witnessed;
  - 3.2        allow voters in New Zealand to apply for a special vote by phone, and any other method approved by the Commission;
  - 3.3        allow votes received on or before polling day to be counted if there is no postmark; [CBC-22-MIN-0026];
- 4        **noted** that the Electoral Amendment Regulations 2022 (the Regulations) will give effect to the decisions referred to in paragraphs 1 to 3 above;
- 5        **authorised** the submission to the Executive Council of the Electoral Amendment Regulations 2022 [PCO 24729/8.0];
- 6        **noted** that a waiver of the 28-day rule is sought:
  - 6.1        so that the Regulations can come into force as soon as possible so they can apply for the Tauranga by-election on 18 June 2022;
  - 6.2        on the grounds that the Regulations will enable more people to vote, and therefore benefits the public;

- 7 **agreed** to a waiver of the 28-day rule so that the Regulations can come into force on the day after they are Gazetted.

Rebecca Davies  
Committee Secretary

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**Present:**

Hon Andrew Little (Chair)  
Hon Kris Faafoi  
Hon Michael Wood  
Hon Kiri Allan  
Hon Meka Whaitiri

**Officials present from:**

Office of the Prime Minister  
Officials Committee for LEG