

Office of the Minister of Justice  
Chair, Cabinet Committee

## **Electoral (Integrity) Amendment Bill**

- 1 This paper seeks Cabinet policy decisions to enable drafting of an Electoral (Integrity) Amendment Bill. It would allow a Member of Parliament's (MP's) seat to be declared vacant where they cease to be a member of their political party.
- 2 Electoral integrity legislation seeks to help maintain the proportionality of political party representation in Parliament as determined by electors at the last election. It also seeks to enhance public confidence in the integrity of the electoral system, Parliament and government.

### **Executive Summary**

- 3 The coalition agreement between the New Zealand Labour Party and New Zealand First includes a commitment to introduce and pass new electoral integrity legislation. The purpose of the legislation is to help maintain the proportionality of Parliament and stable government.
- 4 I propose the Bill be largely modelled on the previous legislation that was in effect from 2001 to 2005. I intend to seek Cabinet approval of this Bill in December, so that it can be introduced by the end of this year.

### **Background**

- 5 Between 2001 and 2005, the Electoral Act 1993 contained a mechanism enabling an MP's seat to be declared vacant where they ceased to be a member of a political party. These provisions were subject to a termination ('sunset') clause and expired on 18 September 2005. A 2005 Bill to continue the provisions did not proceed past the select committee stage.

#### *The Electoral (Integrity) Amendment Act 2001*

- 6 Following the first MMP election, a number of list and electorate MPs left their parties, but remained as MPs. These actions, known colloquially as "waka-jumping" or "party-hopping", were seen as undermining the proportionality of party representation as determined by voters in that election. In response, the Electoral (Integrity) Amendment Act 2001 ('the 2001 Act') was enacted.
- 7 The 2001 Act provided for a Member of Parliament's seat to be declared vacant where either:
  - 7.1 that member provided notice to the Speaker of the House that they have resigned membership of the party for which they were elected, or that they wish to be recognised for parliamentary purposes as an Independent or a member of another political party; or
  - 7.2 the parliamentary leader of the party for which the member was elected provided a written notice to the Speaker stating that:
    - 7.2.1 the leader reasonably believes the member has acted in way which distorts, and is likely to continue to distort, the proportionality

of party representation in Parliament as determined at the last general election, and

7.2.2 the leader has given the member written notice of this view, and has given the member 21 working days to respond to the leader in writing, and

7.2.3 at least two thirds of the relevant party's caucus agree that the leader should give the written notice to the Speaker.

8 Where a seat is declared vacant, a list vacancy is filled by the next person on that party's list. An electorate seat vacancy is filled at a by-election. The former electorate member can stand again in that by-election.

#### *Awatere Huata v Prebble*

9 The 2001 Act was tested by the Courts when Donna Awatere Huata became an Independent MP following expulsion from the ACT Party caucus in 2003. The Supreme Court upheld the decision to declare the member's seat vacant.<sup>1</sup>

#### **Comment**

##### *Changes in a new Electoral (Integrity) Amendment Bill*

10 I propose to introduce legislation modelled on, and with largely the same effect as, the Electoral (Integrity) Amendment Act 2001. Unlike the 2001 Act, however, I propose there be no termination clause in this legislation.

11 I propose a further minor clarification to help ensure the ongoing workability of this legislation. The 2001 Act defined 'political party for which the member was elected' as:

11.1 the party on whose list they appeared at the election, or

11.2 the party for which they were nominated as a constituency candidate.

12 Umbrella/component party relationships enable a member to be on one party's list but stand as a constituency candidate for another party. The 2001 Act was not clear as to which party a member needs to leave to trigger the electoral integrity provisions.

13 To ensure the legislation is future-proofed, I propose that:

13.1 *for a list member*, the relevant party is the party whose list on which the member appeared;

13.2 *for an electorate member*, the relevant party is the party for which they were nominated in that electorate.

#### **Consultation**

14 I have consulted with the New Zealand First and Green parties. The Department of the Prime Minister and Cabinet was informed.

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<sup>1</sup> (*Awatere Huata v Prebble* [2005] 1 NZLR 289).

- 15 The proposal would affect the powers and functions of the Speaker of the House. I propose to consult the Speaker on the draft Bill and report back when the Bill is considered by Cabinet's Legislation Committee.

### **Financial Implications**

- 16 There are no financial implications arising from the proposals in this paper.

### **Human Rights**

- 17 The proposals raise issues with the New Zealand Bill of Rights Act 1990 (NZBORA), in particular section 14 which protects freedom of expression, and section 17 which protects freedom of association.

- 18 Limitations on rights and freedoms may still be consistent with NZBORA if they can be considered reasonable limits that are demonstrably justified under section 5 of that Act. Crown Law advised the 2005 Bill was consistent with NZBORA, but this was finely balanced. The final assessment of the consistency of the proposals with the NZBORA will be undertaken by Crown Law when a Bill is drafted.

### **Legislative Implications**

- 19 A bill is required to implement this policy initiative. I seek priority for this bill on the Government's legislative programme.

### **Regulatory Impact Analysis**

- 20 A Regulatory Impact Analysis is not required, as the analysis would substantially replicate the analysis by the Crown Law Office as to the Bill's consistency with the New Zealand Bill of Rights Act 1990.

### **Publicity**

- 21 Publicity will be managed by my office, in conjunction with the Prime Minister's office. The Bill will proceed through the normal select committee process, and members of the public will have the opportunity to make submissions.

## Recommendations

22 The Minister of Justice recommends that Cabinet:

- 1 **note** that the coalition agreement includes a commitment to introduce and pass new electoral integrity legislation;
- 2 **note** that in 2001 the Electoral (Integrity) Amendment Act was enacted following public concern about MPs leaving their parliamentary parties;
- 3 **note** that the 2001 Act was enacted in order to help maintain the proportionality of party representation in Parliament as determined by electors, and to enhance public confidence in the integrity of the electoral system;
- 4 **note** that the 2001 Act was successfully applied by the Supreme Court in *Awatere Huata v Prebble* [2005] to declare vacant the seat of a member who had departed from her party;
- 5 **note** that the 2001 Act contained a termination clause and expired in 2005;
- 6 **agree** that a new Electoral (Integrity) Amendment Bill should be developed, and modelled closely on the Electoral (Integrity) Amendment Act 2001;
- 7 **agree** that this Bill not include a termination clause;
- 8 **agree** that the Bill should clarify that vacancies are created where a list member departs from the party on whose list they appeared at the election, and where an electorate member departs the party for which they were nominated in that electorate;
- 9 **authorise** the Parliamentary Counsel Office to draft an Electoral (Integrity) Amendment Bill, modelled closely on the Electoral (Integrity) Amendment Act 2001;
- 10 **authorise** the Minister of Justice to make minor and/or technical policy decisions necessary to enable drafting of the Bill;
- 11 **authorise** the Minister of Justice to consult the Speaker of the House of Representatives on the drafting of the Bill;
- 12 **invite** the Minister of Justice to bring the Electoral (Integrity) Amendment Bill to Cabinet by 11 December to enable the Bill to be introduced into the House by the end of 2017.

Authorised for lodgement

Hon Andrew Little  
Minister of Justice