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# He Arotake Pōtitanga Motuhake Independent Electoral Review

# Consultation document



An invitation to tell us what you think about our  
electoral system



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# Notes for the Large Print Reader

Print page numbers are indicated as:

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Page 1

Main text is in Arial typeface, 18 point.

Headings are indicated as:

## Heading 1

## Heading 2

## Heading 3

## Heading 4

## Omissions and alterations

Some images have been omitted.

The typeface has been enlarged in most of the diagrams.

### Transcriber's Notes

Transcriber's notes are indicated with **[TN]** and are in a separate box where possible.

The transcriber has changed or added some directions (e.g. "See opposite" is changed to "See below.")

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# Message from the Chair

Kia ora koutou katoa

Aotearoa New Zealand is fortunate in having a well-functioning electoral system that forms an essential part of our democracy. It has many positives, but periodically it is wise to review our electoral system—to see what's working and what could be improved. We need to regularly look to the future to safeguard what we have and make improvements for ourselves and future generations. We should never take for granted that our electoral system, or indeed our democracy, will work effectively.

The terms of reference for the Independent Electoral Review provide a very wide mandate to consider, report, and make recommendations on our elections to the Minister of Justice. The Minister will then consider our report for possible changes to our electoral system.

We have much on which to base this review—a robust electoral system as well as reviews and reports already made. But we know that the views of a wide range of New Zealanders will be of great assistance to inform this review.

I urge you to tell us what you think. Tell us your views on any, or all, of the review topics. Tell us the problems you see and how you think they should be fixed. We are eager to hear from you.

Once we have heard what you, and others, have had to say, we will consider it all and write a draft of our recommendations. At that stage, we will ask your views again, before we finalise our report, which is due by the end of November 2023.

Thank you for your consideration. I look forward to hearing from you.

Ngā mihi nui



Deborah Hart

Chair, Independent Electoral Review Panel

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## Have your say



### We want to hear from you

We want to hear your views on current electoral law and your ideas about the future of the electoral system. We will use your views to help us develop recommendations on what needs to change.

We welcome submissions on a single issue, a few issues, or the whole review. You do not need to read this entire document to submit—we encourage you to share what matters most to you.

You can find translated and accessible versions of this consultation document, and our summary document,

including a te reo Māori version, on our website at <https://electoralreview.govt.nz/>.

## How to have your say

This consultation document outlines current electoral law and practice and includes questions throughout to help you provide your views. You can answer as many questions as you like, or just tell us your views without answering the questions.

You can have your say on the review in several ways:

- You can share your views online by completing the submission form available at: <https://consultations.justice.govt.nz/policy/independent-electoral-review/>.
- You can also write your own submission and email it to [secretariat@electoralreview.govt.nz](mailto:secretariat@electoralreview.govt.nz), or post it to:  
Independent Electoral Review  
Free Post 113  
PO Box 180  
Wellington 6140
- If you want to make a video submission, please get in touch with us by mail or email.
- Public events will be listed on our website at <https://electoralreview.govt.nz/>. Get in touch by mail or email if you are interested in speaking to the panel.

## **Closing date to share your views**

The closing date for all submissions is **14 November 2022**. Submissions received after this time may not be able to be considered. If this closing date might affect or prevent your (or your organisation's) participation, please let us know.

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## **Privacy and official information**

The panel intends to release the submissions that it receives. If you do not want your name or any other information that you provide in your submission to be released, please state this clearly when you send it to us and let us know why. For example, you may wish for some information to be kept confidential because it is sensitive personal information.

Your submission could also be subject to a request for information under the Official Information Act 1982 (the Official Information Act). We will take your views into account when responding to requests under the Official Information Act.

The Privacy Act 2020 governs how the Independent Electoral Review collects, holds, uses, and shares personal information about you and the information you provide. You have the right to access and to correct this personal information.

# How to use this document

This consultation document describes our current electoral system and the current rules for each area within the review. It highlights how changes in one area may affect other parts of the electoral system and provides consultation questions.

**Don't have much time?** We have prepared a shorter summary document that you can read. You can see it on our website at <https://electoralreview.govt.nz/>.

This review covers many topics. To make them easier to navigate, this document is structured into the following parts:

<b>[TN]:</b> See table on the following pages.
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<p><b>Part 1: The voting system</b></p>	<p>Aotearoa New Zealand uses a Mixed Member Proportional (<b>MMP</b>) voting system and holds a general election every three years.</p> <p>This part covers how MMP operates, the length of the parliamentary term, how election dates are set, and the process for filling vacancies.</p>
<p><b>Part 2: Voters</b></p>	<p>Eligible voters get to choose who will represent their interests in Parliament when they exercise their right to vote.</p> <p>This part covers voter eligibility and enrolment, how people can vote, emergencies and disruption, and how the vote is counted.</p>
<p><b>Part 3: Parties and candidates</b></p>	<p>Political parties (<b>parties</b>) and candidates contest elections to allow voters to choose their political representatives.</p> <p>This part covers eligibility for candidates and parties, how they are funded and regulated, and rules for election campaigns and advertisements.</p>

<b>Part 4: Electoral administration</b>	<p>A number of agencies and the courts have a role in administering the electoral system to ensure the rules are followed.</p> <p>This part covers setting electorate boundaries, administering the electoral rolls, running elections, enforcement, dispute resolution, disinformation, misinformation, and foreign interference.</p>
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If you are not sure what a particular word or phrase means, we have a Glossary at page 45.

## Overview

### What is the Independent Electoral Review?

The Independent Electoral Review (the **review**) has been established by the Minister of Justice to review our electoral law. This review is an opportunity to make election rules clearer, fairer, and more accessible for current and future voters.

The independent panel appointed to undertake the review is chaired by Deborah Hart. Its members are Associate Professor Maria Bargh (deputy chair), Professor Andrew

Geddis, Dr Lara Greaves, Alice Mander, and Robert Peden.

## **Why do we need this review?**

Modern and accessible electoral law is important for our democracy to function well. As democracy comes increasingly under threat around the world, this review is a chance to take a thorough look at how to strengthen and future-proof our electoral system.

The main piece of legislation, the Electoral Act 1993, has become outdated. Its basic structure was established by the Electoral Act 1956, and substantial portions of it have remained unchanged for over 60 years.

There has not been a comprehensive review of electoral law since the report of the Royal Commission on the Electoral System in 1986, ahead of the introduction of MMP in 1993. In recent years, legislative change has primarily focused on targeted changes rather than broader reform.

## **Why are we engaging?**

The panel has not made any decisions on what changes might be needed to electoral law. We want to hear from you first on what the issues are and your ideas for how to address them.

Once we've heard your views, we will come back to test our initial thoughts on what improvements could be made

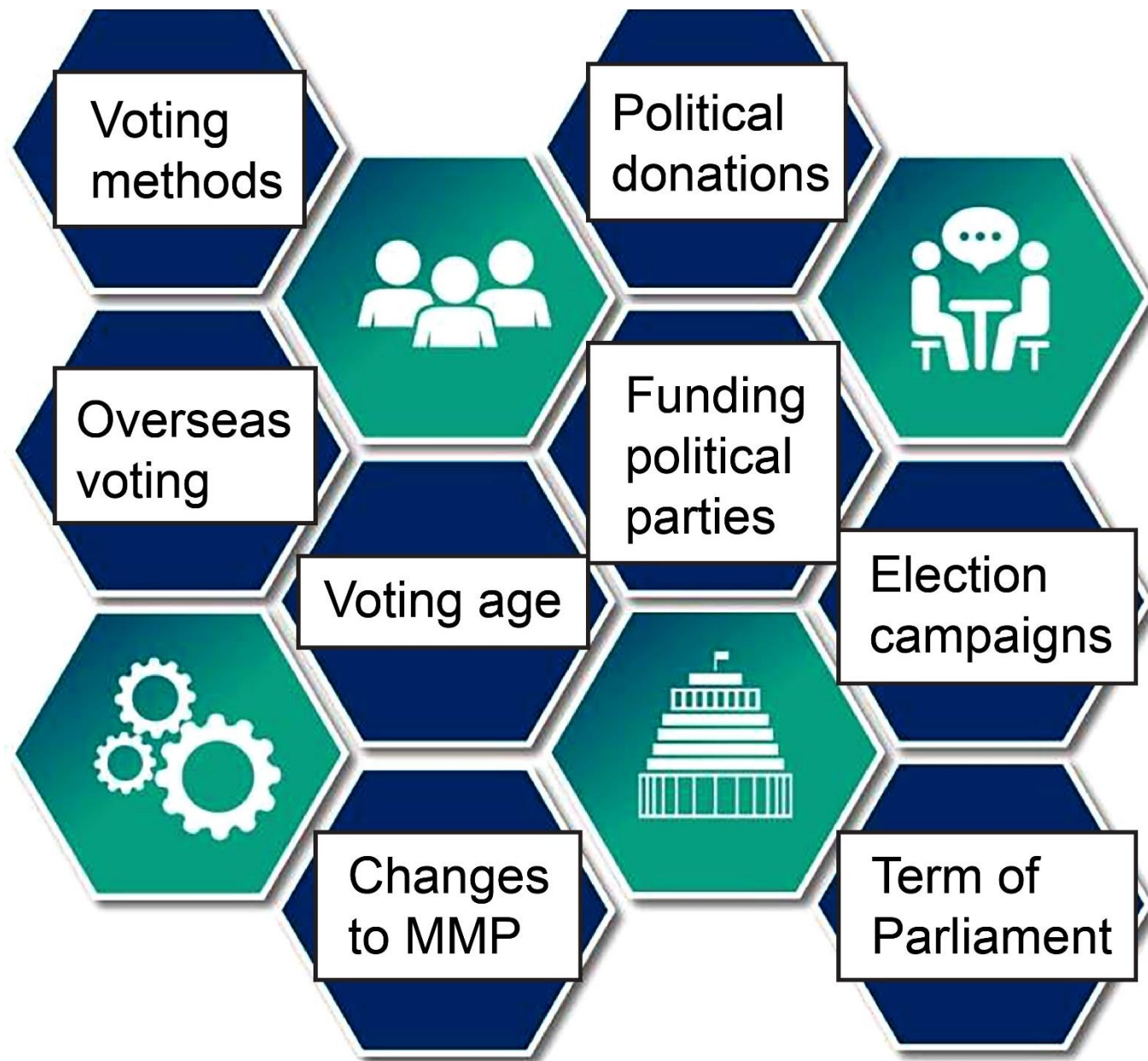


before making our final recommendations to the Minister of Justice.

## What will the review cover?

The review covers almost everything to do with how our elections work. Some of the issues include:

**[TN]:** See diagram on the next page.



The Terms of Reference set the scope of the review.  
They are available at:

<https://electoralreview.govt.nz/about/terms-of-reference.html>.

## **What is the review not able to consider?**

The following issues will not be covered by this review:

- online voting local government electoral broader constitutional
- alternative voting law issues systems to MMP
- local government electoral law
- retention of the Māori electorates
- broader constitutional issues

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## **What is the timeframe for the review?**

The review will have two stages of engagement before the final report is delivered by the end of November 2023.

<b>[TN]:</b> See table on the next page.
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<b>Stage 1 engagement</b>	<b>September–November 2022</b> Understand issues and opportunities
<b>Stage 2 engagement</b>	<b>April–June 2023 (tbc)</b> Invite feedback on draft recommendations
<b>Final report</b>	<b>End of November 2023</b> Final report delivered to the Minister of Justice

## **What happens as a result of the review?**

The panel will deliver its report, including any recommendations, to the Minister of Justice. The Government will determine what happens next. If the panel recommends changes, and the Government accepts those recommendations, there could be changes to legislation and referendums may need to be held. If this does happen, it is important to note that there will be more opportunities for the public to engage on any changes through the parliamentary process.

# What other changes are happening in electoral law?

The Government has proposed some changes to electoral law before the 2023 General Election. These include changes to the Māori Electoral Option, the rules for political donations and loans, and temporary changes to overseas voter eligibility (**Footnote**<sup>1</sup>). The Bills containing these changes will be considered by Parliament while the review is taking place.

The review will consider whether further changes are needed in these areas.

Parliament will also consider two members' bills that propose changes to some of the issues that this review will consider (**Footnote**<sup>2</sup>). Further details on these Bills can be found on Parliament's website.

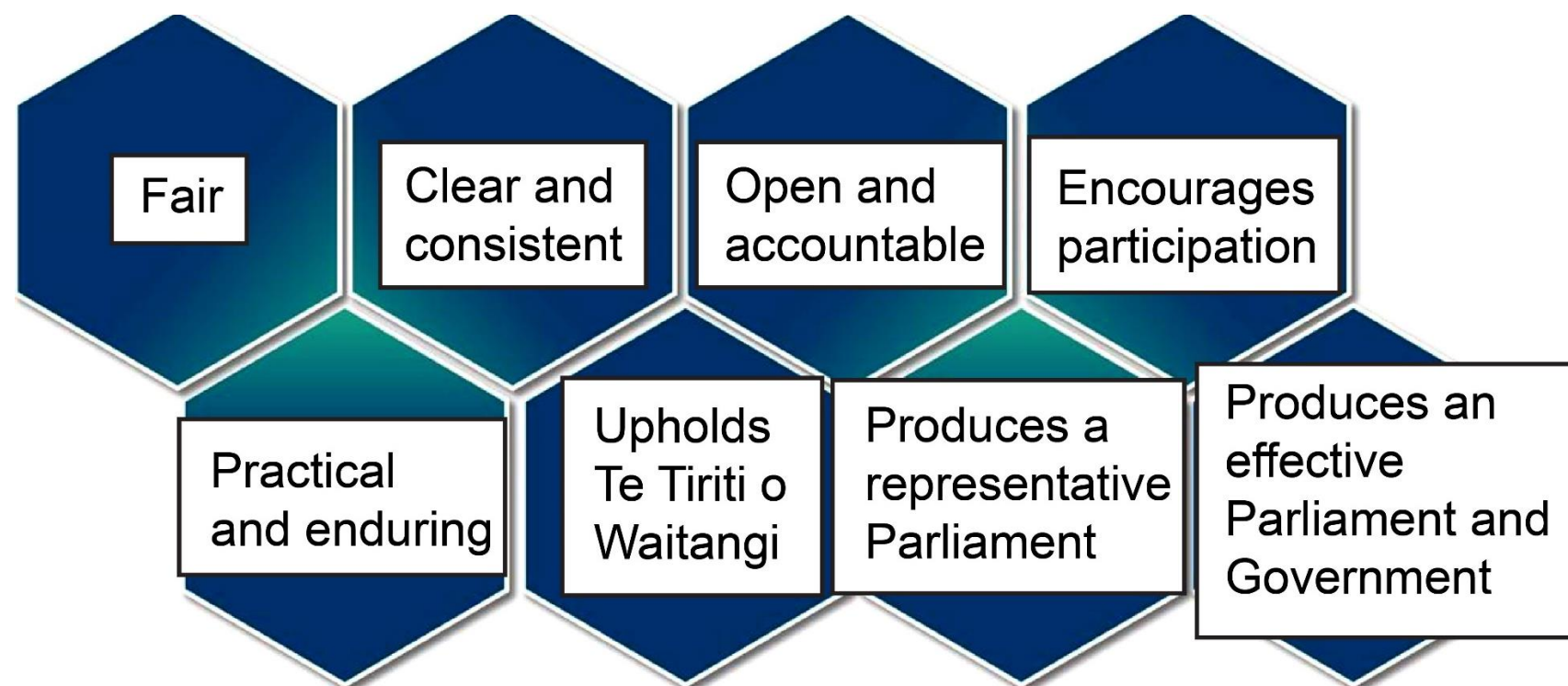
**1:** Electoral (Māori Electoral Option) Legislation Bill;  
Electoral Amendment Bill.

**2:** Electoral (Right to Switch Rolls Freely) Amendment Bill;  
Electoral (Strengthening Democracy) Amendment Bill.

# Approach to the review

## Objectives

The review will provide advice to the Government on how to ensure the electoral system continues to deliver these objectives.



These objectives are set out in the review's Terms of Reference. They are based on criteria used by the 1986 Royal Commission on the Electoral System.

## **Key themes**

The review's Terms of Reference include some issues that will need to be considered across each topic set out in this consultation document.

### **Te Tiriti o Waitangi—The Treaty of Waitangi**

Te Tiriti o Waitangi—the Treaty of Waitangi is an important part of Aotearoa New Zealand's constitution. One of the objectives of the review is to provide advice on how to ensure that the electoral system upholds Te Tiriti o Waitangi—the Treaty of Waitangi.

Electoral law should enable Māori perspectives to be represented in Parliament and support active participation by Māori in the electoral system. The right to participate in elections is guaranteed by Article 3 of Te Tiriti o Waitangi—the Treaty of Waitangi, as full citizenship rights include those of political representation. The Crown has a duty to actively protect these rights.

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The right to political representation was not always guaranteed for all population groups within Aotearoa New Zealand, including for Māori. Māori have, at different times, experienced unequal treatment in electoral law such

as different voting rights, and different enrolment and candidate rules.

Some of the topics within the review may affect Māori differently than other population groups. It will be important to identify how any proposed changes may impact on Māori. Māori rights and interests need to be considered in the context of the electoral system's ability to provide fair, equitable, and effective representation for all New Zealanders.

**The Panel would like to hear what issues within the review are most important to Māori.**

## **Legislative design**

The review will consider the effectiveness of the legislative framework for the electoral system.

This will include looking at the structure and organisation of electoral legislation (such as the Electoral Act 1993, the Constitution Act 1986, Part 6 of the Broadcasting Act 1989, the Electoral Regulations 1996, and other regulations) to consider whether the rules for regulating elections:

- are clear, accessible, and easy to understand
- provide an appropriate balance between certainty and the ability for agencies like the Electoral Commission to innovate
- are appropriately set out in an Act of Parliament, regulations, or some other form of legal document.



The review will also look at how fundamental electoral rights are protected through the reserved provisions in the Electoral Act 1993. Some sections of the Electoral Act 1993 and the Constitution Act 1986 can only be changed by majority vote in a referendum or with the support of 75 per cent of the Members of Parliament (**MPs**). These are known as entrenched or reserved provisions. They cover the length of the parliamentary term, the membership of the Representation Commission, the way general electorates are drawn up, the voting age, and the method of voting.

Parliament considered these aspects of the electoral system to be so important as to require special protection in 1956. The review will consider whether they still require this protection today, and whether other aspects of the electoral system require similar protection.

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## **Previous Electoral Commission and Justice Committee recommendations**

After each election, the Electoral Commission and Parliament's Justice Select Committee recommend improvements or changes to how elections are delivered. Some of these changes, often minor or technical fixes, have been made over the years, but many substantive recommendations have not been progressed.

The review will consider these previous recommendations made since 2011. This includes the suggestions made by

the Electoral Commission in the 2012 independent review on how to improve the MMP voting system. This review was required by law following a referendum in 2011 where most New Zealanders voted to keep MMP as the voting system.

### **Keep in mind**



As you prepare your submission, you may want to think about:

**How can the Crown uphold its obligations under Te Tiriti o Waitangi—the Treaty of Waitangi in regard to electoral law?**

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## **1. The voting system**

### **This part covers:**

- representation under MMP (including the Electoral Commission's 2012 recommendations on improvements to MMP)
- the parliamentary term and election timing
- the process for filling vacancies in Parliament.

# Introduction

Aotearoa New Zealand is a representative democracy. Our electoral system has its own unique context and features compared to other nations, including the important role of Te Tiriti o Waitangi—the Treaty of Waitangi as a foundational document.

Members of the House of Representatives—also known as Members of Parliament (**MPs**)—are chosen through regular elections. A representative government is then drawn from members of the House, based on the political party (or group of parties) that can maintain the "confidence" of Parliament. To maintain the confidence of Parliament, the government must win certain votes in Parliament, including on its budget.

For most of its history until 1996, Aotearoa New Zealand used the First Past the Post voting system, where each voter had just one vote that they cast in their local electorate. The candidate with the most votes in each electorate was elected. Parliament was made up entirely of MPs representing electorates, though in practice these MPs were normally elected as representatives of their parties. The party with the most MPs in Parliament formed the government.

Since 1996, Aotearoa New Zealand has used a Mixed Member Proportional (**MMP**) voting system. Aotearoa New Zealand's MMP voting system provides for:

- a mix of MPs elected from electorates (**electorate MPs**) and those elected from party lists (**list MPs**) (**mixed member**), and
- a Parliament in which parties' shares of the seats roughly mirror their share of the nationwide party vote (**proportional**).

Under MMP each voter has two votes—a vote for a party and a vote for their preferred candidate in their electorate. The electorate candidate who wins the most votes will become the MP for that electorate. The party vote is counted on a nationwide basis and each party's share of the party vote determines its overall share of the seats in Parliament.

## Representation under MMP

### Thresholds

Under the current law, parties are eligible for a share of the list seats if:

- the party receives at least five per cent of the nationwide party vote—this was around 146,000 votes in the 2020 election (**party vote threshold**), or
- a party's candidate wins in one or more electorate seats (**one electorate seat threshold**).

Any party that meets either of these thresholds shares in the allocation of list seats to bring its total number of MPs

in Parliament into line with its share of the party vote. These list seats are allocated on top of any electorate seats that a party's candidates may have won.

Nine elections have been held under MMP:

- in each election, between three and six parties received at least five per cent of the nationwide party vote; and
- in six elections, the one electorate seat threshold rule resulted in minor parties gaining list seats in Parliament in addition to the electorate seats they won.

## **The size and composition of Parliament**

Parliament usually has 120 seats. Currently, it has 72 electorate seats (including seven Māori electorate seats) and 48 list seats. The number of electorate seats is determined periodically based on the country's population.

Under the current arrangements for determining electorate boundaries, changes to the relative population of the North and South Islands mean the number of electorates are likely to increase over time, with list seats decreasing. As a result, the point may be reached where it is not always possible to achieve proportionality in Parliament because there are insufficient list seats to compensate for the disproportionate results of electorate contests.

The size of Parliament can temporarily increase above the usual 120 seats when a party wins more electorate seats than it would be entitled to based on its share of the party

vote. When this happens, the party keeps the extra seat or seats, but the number of list seats allocated to other parties is increased until the next election. Four of the nine elections under MMP have required an overhang of either one or two seats.

## **The Electoral Commission's 2012 recommendations**

In 2012, the Electoral Commission was required to review MMP and make recommendations for its improvement. The Electoral Commission recommended that:

- the party vote threshold should be lowered to four per cent, with a review after three general elections
- the one electorate seat threshold should be abolished
- the overhang seats should be abolished if the one electorate seat threshold is abolished
- consideration be given to fixing the ratio of electorate to list seats at 60:40 to maintain representativeness and proportionality in Parliament.

The Electoral Commission considered that a four per cent party vote threshold would appropriately balance the competing objectives of proportionality on the one hand, and effective Parliaments and stable governments on the other. It noted that abolishing the one electorate seat threshold might increase the chances of significant

numbers of overhang seats being generated, so the provision for overhang seats should also be abolished.

## **Considerations**

- Aotearoa New Zealand's form of MMP tries to balance:
  - the principle of proportionality (that a party's share of seats should reflect its share of the nationwide vote)
  - ensuring an effective Parliament and stable government by avoiding having too many small parties
  - the provision of local representation through electorate MPs.
- The party vote threshold and the one electorate seat threshold operate independently of each other, meaning a change to one threshold could be made without affecting the other.

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- A fixed ratio of electorate seats to list seats would mean that, as the number of electorate seats increases in response to changes in population, the number of list seats would increase in line with the fixed ratio. The overall effect would be to gradually increase the size of Parliament in step with changes in growth in the population.

## Questions

- 1.1 What do you think the party vote threshold should be?
- 1.2 What are your views on the one electorate seat threshold?
- 1.3 What are your views on the overhang seats?
- 1.4 Do you think the ratio of electorate to list seats should be fixed? If so, what should the ratio be?

## The parliamentary term and election timing

Under the current law, the parliamentary term can run no longer than three years from the end of the previous election. This sets a maximum time before MPs must face re-election.

The parliamentary term in Aotearoa New Zealand was originally five years, before being reduced to three years in 1879. Referendums on the parliamentary term held in 1967 and 1990 rejected a four-year term.

There is no minimum length for the parliamentary term or fixed date for elections. The Prime Minister can call an election at any time before the end of the three-year term by advising the Governor-General to dissolve Parliament. However, in recent years, a practice has developed where the Prime Minister announces the election date early in the third year of the election cycle.



## Considerations

- Determining the length of the parliamentary term is a balance between ensuring voters can regularly hold the government to account and the time it takes to enact policy.
- The Prime Minister's power to call an election at any time by advising the Governor-General to dissolve Parliament means the length of the parliamentary term is uncertain in principle. The Prime Minister is not prevented from setting the election date for the political gain of the governing party.

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- In practice, Aotearoa New Zealand parliaments have largely completed full three-year terms and early elections have been rare.

### Questions

1.5 What should the term of Parliament be?

1.6 How should the election date be set?

## Vacancies in Parliament

There are rules about when a MP's seat in Parliament becomes vacant, and how the vacancy is filled. The law defines specific circumstances in which an MP will automatically lose their seat.

A seat can also become vacant when an MP is no longer a member of the parliamentary party for which they were

elected. When an MP chooses to leave or is expelled from their party during a parliamentary term, a party leader can issue a notice that the MP should be expelled from their seat. This issue has been subject to recent legislative change. In the past, MPs that left their party could keep their seat as an independent or join a different party.

Usually, when an electorate MP's seat becomes vacant, this will trigger a by-election. If the electorate seat becomes vacant within 6 months of the end of the parliamentary term, or a general election, a 75 per cent majority of the House of Representatives can agree not to have a by-election. When a list MP's seat becomes vacant, the next candidate on the party list will take the seat and become an MP.

### **Questions**

1.7 What changes, if any, should be made to the current rules around vacancies in Parliament?

Is there anything else you would like to tell us about the topics in Part 1: The voting system?

## 2. Voters

### **This part covers:**

- enrolling to vote
- voting in elections
- emergencies and disruptions
- counting the vote and releasing results.

### **Introduction**

Voting is an important way that people participate in Aotearoa New Zealand's democracy. By voting, people choose who will represent their interests in Parliament. Regular elections are a way of holding governments to account and ensuring they act for the people they represent.

The rules for who can vote, and how they can vote, are an important feature of any electoral system. Higher voter participation strengthens the authority and legitimacy of elected governments because it means that election outcomes reflect a broader cross-section of society.

Before anyone can vote in a parliamentary election in Aotearoa New Zealand, they must enrol in an electorate. To be able to enrol, someone must first be eligible to vote. Voter eligibility sets the rules for who can and cannot vote.

The lists of the people who have enrolled to vote in each electorate are called electoral rolls. There is an electoral roll for each general electorate and each Māori electorate (Footnote <sup>3</sup>).

## Enrolling to vote

### Voter eligibility

A person is eligible to register to vote in Aotearoa New Zealand if they meet three criteria:

- **They are 18 years or older.** The voting age was originally set at 21. It was reduced to 20 in 1969 and to 18 in 1974.

**3:** For ease of reference, we will be referring to them as "general roll(s)" or "Māori roll(s)" throughout.

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- **They are a New Zealand citizen or permanent resident.** New Zealand citizens and permanent residents can enrol to vote. For electoral purposes, a permanent resident is defined as someone who resides in Aotearoa New Zealand and can stay in Aotearoa New Zealand indefinitely.
- **They have lived in Aotearoa New Zealand continuously for at least one year** at some time in their life.

Some people who would otherwise be eligible to register are disqualified if they:

- are a citizen living overseas who has not visited Aotearoa New Zealand within the last three years
- are a permanent resident living overseas who has not visited Aotearoa New Zealand within the last 12 months
- are in prison serving a life sentence, preventive detention, or a sentence of three years or more
- have committed a criminal offence and are detained in a hospital due to a mental or intellectual disability for three years or more
- are on the Corrupt Practices List, meaning they have been found guilty of a serious electoral offence.

The Government has recently introduced the **Electoral Amendment Bill**, which proposes to temporarily change the disqualification criteria by extending the period citizens may remain overseas from three to six years, and one to four years for permanent residents. This temporary change is in response to voters being prevented from returning to New Zealand due to COVID-19 travel restrictions.

### **Considerations**

- A key question for all voter eligibility restrictions is whether they are a reasonable limit on the right to vote. The right to vote for citizens over 18 is protected by the New Zealand Bill of Rights Act 1990. The New Zealand Bill of Rights Act 1990 also protects the right of people aged 16 or older to be free from unjustified age discrimination.

- Any changes to voter eligibility could affect the rules for candidate eligibility.

- The eligibility rules for citizenship, residency, time spent in Aotearoa New Zealand, and time spent overseas are related. Taken together, they define what kind of connection a person must have to Aotearoa New Zealand to be eligible to vote.

### Questions

2.1 What do you think the voting age should be?

2.2 What changes, if any, should be made to voter eligibility rules?

## The enrolment process

Enrolment is compulsory for everyone who is qualified to vote and living in Aotearoa New Zealand. Enrolment is not automatic—a person must submit a form in writing or online to enrol or to update their details. The Electoral Commission can access some data held by other government agencies, such as vehicle registration information, to encourage people who are eligible to enrol or update their details. However, it cannot automatically make these changes on their behalf.

People can only be enrolled in one electorate at a time and must enrol in the electorate that they have most recently lived in for at least a month. Someone can enrol and vote on the same day, including on election day. This ensures

that even if someone has not enrolled in advance, they are not prevented from voting.

## Considerations

- Changes to the enrolment process could impact how electoral rolls are maintained and accessed, which is discussed in **Part 4**. Some changes that have been previously suggested by the Electoral Commission, such as broader use of data matching and digital enrolment services, have implications for privacy, data use, and verification measures.

## Questions

2.3 What changes, if any, should be made to improve the enrolment process?

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## Māori Electoral Option

Every place in Aotearoa New Zealand is covered by both a general electorate and a Māori electorate. The electoral roll a person is on determines which electorate they can vote in, for both general elections and by-elections. It also affects who Māori can vote for in local elections, if their local area has a Māori ward or constituency.

The Māori Electoral Option allows people of Māori descent to choose whether to enrol on the general roll or the Māori roll. The number of Māori that enrol on either electoral roll affects the number of Māori electorates.

The Māori Electoral Option is currently only exercisable when a person first enrolls to vote, and then during a four-month option period following the census every five to six years. Outside of this period, Māori voters must remain on the type of electoral roll (Māori or general) they previously chose.

The Government has recently introduced a bill to remove the four-month option period and allow Māori voters to switch electoral rolls at almost any time, including on election day (there is an exception preventing voters from switching electoral rolls immediately before a by-election).

### **Considerations**

- The Māori Electoral Option helps to determine the number of Māori seats in Parliament, as well as the boundaries of the Māori electorates.

### **Questions**

2.4 What changes, if any, are needed to the Māori Electoral Option?

## **Voting in elections**

Voting in Aotearoa New Zealand usually occurs over a two-week period, finishing on election day. The election day is chosen by the Prime Minister and must be on a Saturday. Aotearoa New Zealand does not have online voting, which is out of scope of this review. While enrolment is compulsory, voting is not.



Changes to voter preferences and accessible voting options have required adjustments to the rules for when and how voters are able to vote. More people are now choosing to vote before election day, known as advance voting. In the 2020 election, for example, about 68 per cent of voters used advance voting in the two weeks before election day.

The voting process is administered by the Electoral Commission who appoint and train electoral officials to conduct the election under its direction. The roles and functions of the Electoral Commission are discussed in **Part 4**.

## **Removing barriers to participation**

Simple and accessible voting methods encourage people to participate in elections. However, voting methods must also preserve the integrity of the voting process.

Along with provisions for special voting, improvements in voting methods have sought to remove barriers to participation:

- Advance voting allows people more flexibility to vote when it suits them. There are currently very few provisions for advance voting in the Electoral Act 1993, which mainly sets out rules for election day voting. For example, there is no defined period for when advance voting must be offered. This timeframe

instead is determined by the Electoral Commission on an election-by-election basis.

- The Electoral Commission makes voting information available in many languages and accessible formats and can make interpreters available at polling places.
- Postal and takeaway voting is available for people who cannot attend a polling place but can mark their ballots by themselves. Telephone dictation is also available.
- Changes were made recently to allow people to vote when they are in quarantine or isolating due to COVID-19.

## **Voting in person**

In-person voting takes place at polling places. The Electoral Commission is responsible for deciding on the location of polling places. While in practice the Electoral Commission tries to place polling locations in a range of easily accessible locations, the only legal requirement is to have at least 12 polling places in each electorate that must be accessible for physically disabled people.

At the voting place, once a voter's name has been located and marked off on the relevant printed electoral roll (to record who has voted), they are issued a ballot paper (**Footnote**<sup>4</sup>). The form of the ballot is set by law. The voter then goes behind a voting screen, marks their ballot

in secret by ticking a circle for their party and electorate votes, folds it in half, and places it in the ballot box.

**4:** People whose names are not on the electoral rolls are issued a special vote.

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Ballot boxes must remain closed and sealed while voting is underway. Each ballot paper is marked in a way that preserves its secrecy but allows it to be traced back to the individual voter, if there are any voting irregularities.

## **Integrity of the voting process**

Polling place officials are appointed by the Electoral Commission. They have an important role in safeguarding the security and integrity of the voting process and maintaining order at the polling place. Electoral law includes a range of rules and offences to protect people from voter interference and to prevent tampering with ballot papers and boxes. There are careful procedures for the handling and disposing of ballot papers.

Electorate candidates, and in some cases party secretaries, can appoint scrutineers at each polling place to observe the various stages of the voting process. They are not allowed to communicate directly with voters.

Election advertising and campaigning rules (discussed in **Part 3**) also affect the voter experience. To protect voters from undue influence while voting, no advertising or campaigning about parties, candidates, or referendum

issues is permitted on election day. Advertising is allowed during advance voting with certain restrictions.

## Special voting

Special voting enables voters who are not enrolled, whose names do not appear on the printed electoral roll, or who cannot vote in person in their electorate, to still cast a ballot. These voters must complete and sign a declaration form alongside their ballot paper. The number of special votes has grown in recent years as more people are enrolling closer to election day.

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Different voting methods are available for different kinds of special voters. Some of these are shown in the table below.

<b>Type of special voter</b>	<b>Voting methods available</b>
Overseas voters	In person at an overseas post, downloading voting papers and then uploading them to the Electoral Commission website, postal, fax, telephone dictation
Remote voters ( <b>Footnote <sup>5</sup></b> )	Downloading voting papers and then uploading them to the Electoral Commission website, postal, fax, telephone dictation

Type of special voter	Voting methods available
Disabled voters	Postal, takeaway ( <b>Footnote 6</b> ), telephone dictation ( <b>Footnote 7</b> ), mobile voting at hospitals and rest homes, assisted voting at polling places
Same-day enrolment	Anyone who enrolls and votes at the same time is issued a special vote and declaration, so their declaration and enrolment details can be verified before their special votes are counted
Unpublished voters	Voters whose names are not on the published roll are issued a special vote and declaration, so their details can be verified before their special votes are counted

### Considerations

- Voting methods must be able to meet different voter needs while protecting the secrecy, security, and transparency of the vote.
- Voting methods and voter participation trends, such as the rise in advance voting, affect the administration of

the voting process. This can also impact vote counting and how quickly election results can be determined (for example, the process to verify special votes).

**5:** Includes people voting from Tokelau, Campbell Island, Raoul Island, Ross Dependency, vessels, offshore installations, remote islands administered by the Department of Conservation and remote locations overseas.

**6:** For voters who are unable to attend a voting place but can mark the ballot paper without assistance, a trusted person can collect and deliver voting papers to them.

**7:** For voters who are blind, or partially blind, or have another physical disability, and are unable to mark the ballot paper without assistance.

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- Aotearoa New Zealand does not require voters to present identification. Instead, a special voter's declaration and enrolment is verified before their vote is admitted to the official count, and each ballot is individually numbered. This means that invalid votes can be traced and removed from the final count.

## Questions

- 2.5 Do the current ways of voting, including special voting, meet voter needs? If not, what changes should be made?
- 2.6 What changes, if any, should be made to make voting more accessible?
- 2.7 Are the safeguards protecting the integrity of the voting process strong enough? If not, what changes should be made?

## Emergencies and disruption

Unforeseen and unavoidable events can prevent election processes from going ahead as planned. In these situations, the Chief Electoral Officer has the power to pause voting at certain polling places (**Footnote 8**) or make other voting methods or processes available to affected voters.

Certain steps must be taken before this decision can be made. For example, the Chief Electoral Officer must consult the Prime Minister, Leader of the Opposition, and relevant experts on the cause of the disruption before adjourning voting for more than three days. Factors that must be considered include the safety of voters and electoral officials, the integrity of the election process, and concluding the election in a timely manner.

The current provisions were introduced in 2020 to better respond to the risk that an election may be disrupted by

unforeseen events. The current rules cover both local events, such as earthquakes, and national events, such as a pandemic like COVID-19.

**8:** Initially for three days, and then subsequently for seven-day periods at a time for as long as necessary. This statutory power is one of the only ones that is granted to the Chief Electoral Officer specifically, rather than to the Electoral Commission more generally.

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The election date chosen by the Prime Minister can be delayed before Parliament has been dissolved, as happened in 2020. However, once Parliament has been dissolved, the writ setting the election date must be issued by the Governor-General within seven days and after that the election date cannot be changed. In a worst-case scenario, if voting had to be paused by the Chief Electoral Officer to deal with an unforeseen event, the election process may not be able to be completed before Ministers lost their lawful right to office, putting into question the continuity of the government.

The Government has proposed some changes in the **Electoral Amendment Bill** to respond to issues that arose during the 2020 election, such as clarifying when the regulated period starts if the election date is changed.



## Considerations

- The Electoral Commission and the Justice Committee have recommended that the emergency provisions for elections be reviewed.
- Emergencies and disruptions call into question how much scope and power electoral officers have to adapt normal voting processes and methods in response.
- Polling disruptions can have constitutional and political implications for the election timetable, the election of MPs, and the formation of government.

### Questions

- 2.8 What changes, if any, are needed to deal with emergencies and disruptions?
- 2.9 In what situations should an election be postponed or voting adjourned?
- 2.10 Who should have the power to decide to postpone an election or adjourn voting?

## Counting the vote and releasing results

The vote count determines how seats in Parliament are allocated. This process needs to be robust so that election results are accurate, trusted, and can be made available quickly.

All votes for Parliamentary seats are counted by hand. Only scrutineers and electoral officials can be present at each stage of the count, and there are strict rules around the security of the ballots during counting.

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Electoral officials at each polling place do a preliminary count of the votes received by each party and candidate on election night after voting has closed (**Footnote**<sup>9</sup>). The Electoral Commission publishes these preliminary results on election night.

Special votes are counted later because they can arrive up to ten days after election day. Special votes require extra scrutiny and administration to check each person's special declaration form is properly completed and they are eligible and enrolled to vote. They also must be returned to the relevant electorate for counting.

After the preliminary count, electoral officials inspect the marked copies of the electoral rolls (which show who has voted in each electorate), the special votes, and people whose names have been deleted from the electoral rolls since they were printed. This process is called "scrutinising the roll", is undertaken electronically, and identifies people who may have voted more than once. If this has occurred, the ballot papers issued are identified and removed from the final vote count.

The official count is done in the presence of a Justice of the Peace and scrutineers. In some circumstances, ballot

papers can be rejected—for example, if a person was not eligible to enrol.

When the official count is complete, the Electoral Commission declares the results and notifies the House of Representatives which candidates have been elected.

This normally happens 3 weeks after voting closes.

Electorate candidates and party secretaries can request a recount by a District Court Judge within three working days from the declaration of the official results. A recount is also automatically required if there is a tie for an electorate seat.

Once any recounts are complete, the election process formally ends once the Electoral Commission notifies the Clerk of the House of Representatives which electorate and list candidates have been successful. The election of these MPs can then only be challenged through an election petition lodged in the High Court.

### **Considerations**

- Having an accurate and transparent process to count votes is essential to maintaining the integrity of election outcomes so results are widely accepted.

**9:** Advance votes can be counted from 9am on election day, before the polls have closed, at a secure location with restricted access.

- Special votes must be verified before they can be counted. The time and resource this process requires can put pressure on the official count.

### Questions

2.11 How could vote counting processes be improved?

2.12 Are the safeguards for the integrity of the vote count adequate? If not, what changes should be made?

Is there anything else you want to tell us about the topics in Part 2: Voters?

## 3. Parties and candidates

### This part covers:

- standing for election as a candidate or political party
- political financing
- election advertising and campaigning.

### Introduction

Parties and candidates can put themselves forward for election. Most electorate candidates represent registered parties, but independent candidates and candidates representing unregistered parties can also stand as electorate candidates.

Having a fair, impartial, and transparent process for registering parties and selecting candidates supports public confidence in the electoral system. Similarly, appropriately regulating political financing, advertising, and campaigning helps to maintain trust in the electoral system.

## **Standing for election**

### **Party registration and regulation**

Parties play an important role in the MMP electoral system by establishing policy platforms and selecting candidates to contest general elections and by-elections.

Parties can either be registered with the Electoral Commission or unregistered. However, only registered parties can contest the party vote and receive funding to broadcast election advertising (discussed **below**).

Unregistered parties can still promote the election of their electorate candidates.

The Electoral Commission must register a party if it meets statutory criteria, such as the payment of a fee and proof of 500 financial members eligible to enrol as voters. There is a public advertisement and consultation process to establish if the registration should be refused, such as because the name is indecent, offensive, or likely to cause confusion.

If a party's registration is approved, the Electoral Commission will update the Register of Political Parties. A party must be registered by writ day for the general election to contest the party vote and submit a party list. Parties must be registered by the date Parliament is dissolved to get a share of the money available under the broadcasting allocation.

Once registered, a party must comply with various obligations in the Electoral Act 1993. In particular, it must retain records of donations and file financial returns with the Electoral Commission (discussed **below**). It also must use democratic procedures when selecting candidates for election. To remain registered, a party must continue to have at least 500 financial members eligible to enrol as electors.

If parties want to challenge a decision of the Electoral Commission, or if a candidate or member wants to challenge a party's decision, they will need to seek a judicial review (discussed in **Part 4**).

### **Considerations**

- Any changes to the rules for registration and regulation of parties would need to be weighed up against issues of transparency, fairness, and barriers to participation.

## Questions

3.1 What changes, if any, are needed to the system for a party to become and remain registered?

## Candidacy

Any New Zealand citizen who is registered to vote is eligible to be a candidate for election, unless disqualified. Permanent residents, while eligible to vote, are not eligible to stand as candidates.

Certain public officials are disqualified from being candidates: Electoral and Deputy Electoral Commissioners, Returning Officers, and Registrars and Deputy Registrars of Electors. Public servants who want to become a candidate will be put on leave from their job during the candidacy.

A person can become an electorate candidate if they are nominated by two registered voters from the electorate in question, consent to the nomination, and pay a \$300 deposit.

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Registered parties can also make a bulk nomination of all their electoral candidates, by notifying the Electoral Commission and paying a deposit. Parties rank candidates in order of preference for their party list and the list is lodged with the Electoral Commission. As noted above, while each party has its own particular rules for selecting

candidates, registered parties must follow a democratic procedure when doing so.

Parties wanting to contest the party vote must supply their party lists to the Electoral Commission by noon on the day before nomination date.

The Electoral Commission can refuse to accept the nomination of a candidate in limited circumstances, such as if the person is disqualified from voting (discussed in **Part 2**) or is not a New Zealand citizen. If a prospective candidate wanted to challenge an Electoral Commission decision, they would need to apply for a judicial review.

### **Considerations**

- The New Zealand Bill of Rights Act 1990 says that every New Zealand citizen who is 18 or over is qualified for membership of the House of Representatives. Any disqualifications must be a reasonable limitation on that right.

### **Questions**

3.2 What changes, if any, are needed to candidate eligibility rules?

3.3 What changes, if any, are needed to the requirements parties must follow when selecting their party lists?

3.4 What changes, if any, should be made to improve the candidate nomination process?



# Financing of parties and candidates

Parties and candidates rely on private funding for their day-to-day activities and election campaigns. This funding includes membership subscriptions, donations, loans, investments, and fundraising. The only source of public funding for election activities is the broadcasting allocation (discussed **below**) (**Footnote 10**).

**10:** In addition, an Election Access Fund is being implemented ahead of the next general election. Disabled candidates will be able to apply to the fund to cover costs that non-disabled candidates do not face. It intends to remove a barrier to participation.

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## Political donations

Under the current law, there is no limit on the total amount that a party or candidate can receive in donations. There is also no limit on the total amount an individual donor can donate (unless the donor is an "overseas person", as defined in the Electoral Act 1993).

Parties and candidates can receive donations in the form of money, the equivalent of money, or goods and services. Donations can be made by individuals or non-individuals such as corporations, trade unions, and trusts. Parties and candidates can keep anonymous donations up to a limit of \$1,500 per donation (**Footnote 11**). Donations by an

overseas person are only allowed up to a limit of \$50 per donor.

## **Reporting requirements**

While there is no limit on the total amount that a party or candidate can receive in donations, donations and loans over certain amounts must be reported to the Electoral Commission within specified timeframes. There are different reporting rules for parties and candidates (see **Appendix 1**).

After each election, candidates must file returns detailing candidate expenses and donations over certain amounts with the Electoral Commission. Registered political parties are required to file audited annual returns that record the details of donations and loans over certain amounts. After each election, parties must also report their election and broadcasting allocation expenses. Parties also have an ongoing obligation to disclose donations and loans exceeding \$30,000 within 10 working days. Third party promoters also have an obligation to report on election expenses after each election if they spend over a certain amount.

The Government has recently introduced the **Electoral Amendment Bill**, which proposes several changes to donation and loan disclosure thresholds—including lowering the disclosure and reporting thresholds for party donations and requiring candidates to disclose loans.

**11:** Any donation larger than this limit must be passed on to the Electoral Commission. Larger anonymous donations can be made to a party through the "protected disclosure" scheme, Electoral Act 1993, ss 208A—208G.

## **Considerations**

- Political financing rules can try to balance several issues, including:
  - increased transparency, which helps people understand the sources of funding for parties and candidates
  - personal privacy, particularly in relation to a person's political views
  - the rights of freedom of expression and association
  - preventing political donations having an improper influence on electoral outcomes
  - ensuring parties and candidates can access financial support to participate in the electoral system
  - the need for rules to be efficient and practical for participants and the electoral system.

Stricter political financing rules could impact on compliance costs of parties and candidates.

## **Questions**

3.5 What changes, if any, should be made to political financing rules?

3.6 How should parties and candidates be funded?

## **Election advertising and campaigning**

Restrictions on advertising, broadcasting, and campaign expenditure can limit the ability of parties and candidates to use some forms of media for their campaigns. These restrictions are intended to create a level playing field for election participants and prevent any one voice disproportionately influencing elections through higher levels of spending.

### **Restrictions on election advertising and spending**

Some restrictions on election advertising apply at all times. For example, election advertisements must always clearly display the name and address of the person promoting the advertisement. Any election advertisement promoting a candidate, or a party, must also be authorised by them in writing.

During the regulated period, candidates, parties, or third-party promoters who publish election advertisements are subject to spending limits (see **Appendix 2**). Only expenses related to preparing and publishing election advertisements are counted towards these limits.

No advertising or campaigning about parties, candidates, or referendum issues is permitted on election day.

Advertising and campaigning is allowed during advance voting, except for inside advance voting places or within 10 metres of their entrances. It is an offence to publish a statement on election day that is likely to influence how another voter might vote. There is no exception to this rule for people (including the general public) who express personal political views online, for example by posting who they voted for on social media.

## **Broadcasting of election programmes**

The Electoral Commission allocates money set aside by Parliament to eligible parties to broadcast party and candidate election programmes on radio and television during the period before an election. These funds—known as the broadcasting allocation—do not count towards a party's election spending limit. The broadcasting allocation is the only form of state funding parties receive to aid them in their election campaigns.

Different rules apply to broadcasting election programmes, including advertisements, on television and radio. Parties

can only use funds from the broadcasting allocation for television and radio to broadcast election programmes during the period before an election. Parties cannot advertise on television and radio using their own funds at any time (including in the period before an election). Parties who do not qualify for an allocation are entirely excluded from advertising on these mediums

(**Footnote 12**). Candidates can use their own funds to promote their election within candidate expense limits on radio and television, but they cannot promote the party vote. Third party promoters, however, can campaign in any medium (including on radio and television) at any time apart from election day itself.

**12:** A party will only qualify for the allocation if it is a registered political party at the time of dissolution or expiry of Parliament, and it has given notice to the Electoral Commission by the required date that it considers it will be qualified for an allocation.

## **New media**

The current rules for the broadcasting of election programmes pre-date the emergence of "new media" like the internet and social media. The use of social media for advertising and campaigning has increased in recent years. As a result of changes made in 2017, parties can now use the broadcasting allocation to advertise on the internet during the election period. Advertisements on

these platforms still need to comply with the general restrictions on election advertising, but they are not regulated in the same way that broadcasting is.

### **Considerations**

- Election advertising and political campaigning rules try to avoid unfairness caused by parties with more money buying significantly more advertising than parties with less money.
- The right to freedom of expression is guaranteed in the New Zealand Bill of Rights Act 1990. Election advertising and political campaigning rules must be a reasonable limitation on that right to the extent that they limit the ways in which parties, candidates, and third parties can express their views in media.

### **Questions**

3.7 What changes, if any, should be made to election advertising and political campaigning rules?

3.8 What restrictions, if any, should apply to election advertising and campaign spending? Who should the restrictions apply to?

Is there anything else you want to tell us about the topics in Part 3: Parties and candidates?

## 4. Electoral administration

### **This part covers:**

- roles and functions of the Electoral Commission
- maintaining and accessing the electoral rolls
- boundary reviews and the Representation Commission
- enforcement and dispute resolution
- disinformation, misinformation, and foreign interference.

### **Introduction**

A number of agencies have a role in administering Aotearoa New Zealand's electoral system to ensure the rules are followed. These agencies include the Electoral Commission, the Representation Commission, and enforcement agencies. The courts also play an important role interpreting the law and resolving disputes.

### **Roles and functions of the Electoral Commission**

The Electoral Commission is an Independent Crown Entity with overarching responsibility for electoral administration. It is made up of a full-time Chief Electoral Officer, who is also the chief executive, a part-time chair, and a part-time deputy chair. Each is appointed by the Governor-General on the recommendation of the House of Representatives.



The Electoral Commission's statutory objective is to administer the electoral system impartially, efficiently, and effectively, in a way that facilitates participation in parliamentary democracy, promotes understanding of the electoral system, and maintains confidence in the electoral system.

Its primary responsibility is to ensure the smooth delivery of parliamentary elections (general elections, by-elections, and referendums). Some of its activities include:

- registering parties
- helping the public understand how to enrol and vote
- allocating funding to parties for election broadcasting
- providing guidance to parties and candidates on their obligations
- running voting places

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- supporting voters' rights and protecting their privacy
- counting and processing the votes
- publishing timely and accurate election results
- undertaking a post-election review and reporting.

Every five years, the Electoral Commission conducts the Māori Electoral Option period and supports the Representation Commission (discussed **below**), which re-evaluates and sets new electoral boundaries.

Between parliamentary elections, the Electoral Commission has an important role in supporting public understanding and education about the electoral system, supporting local body elections by providing electoral rolls, and maintaining the electoral rolls. The Electoral Commission may also initiate or carry out research.

### **Considerations**

- Any changes to other areas of electoral law will likely impact the roles and functions of the Electoral Commission.

### **Questions**

4.1 What are your views on the roles and functions of the Electoral Commission?

## **Maintaining and accessing the electoral rolls**

The Electoral Commission is responsible for maintaining and providing access to the electoral rolls.

People can check or update their information on the electoral rolls through the Electoral Commission, which undertakes regular updates of the electoral rolls, and asks people to check their details are correct. The Electoral Commission will amend or remove entries on the electoral rolls in specific circumstances, such as after a person becomes ineligible to be enrolled.

Currently, under the Electoral Act 1993, certain information from the electoral rolls can be supplied under specific circumstances:

- Printed copies of electoral rolls are available at public libraries, as well as at Electoral Commission offices (there are nine regional offices). Anyone can look at these, and people can pay to get a printed copy from the Electoral Commission. The public electoral rolls include people's full names and home addresses, as well as their occupation (if provided).

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- The Electoral Commission has an obligation to share electoral roll information with certain organisations and groups, such as local councils, the Ministry of Justice (for jury service), parties, candidates and MPs, and state sector science and health researchers. This information may include people's age range and whether they are of Māori descent, which is not on the public electoral roll.
- With consent, the Electoral Commission provides the electoral information of people of Māori descent to the Tūhono iwi affiliation service (a body designated under the Electoral Act 1993 by the Ministers of Justice and Māori Affairs). This is done for the purpose of maintaining a register of iwi affiliations that can be accessed by iwi organisations and other Māori organisations.

- At each election, the Electoral Commission produces a master electoral roll for each electorate which shows whether a person voted. A registered voter can inspect the master electoral roll for their electorate. In practice, parties and electoral participation researchers may also access the information via registered voters acting on their behalf. Parties may wish to do this to target future voter turnout.

If people have concerns about their or their family's personal safety, they can request to go on the unpublished electoral roll. The Electoral Commission does not release the information on the unpublished electoral roll to anyone.

### **Considerations**

- The information collected and recorded on the electoral rolls creates a national record of who is enrolled to vote. Making this information open and publicly accessible seeks to protect against electoral fraud and increase transparency. However, access to the electoral rolls must be balanced against voters' privacy rights.

### **Questions**

4.2 What are your views on how electoral rolls, including the unpublished electoral rolls, are maintained and accessed?

## **Boundary reviews and the Representation Commission**

An independent body called the Representation Commission is responsible for dividing Aotearoa New Zealand into electorates and naming them. The Representation Commission adjusts electorate boundaries after each five-yearly census. Depending on the timing of the census and subsequent elections, one or two elections will take place based on the Representation Commission's latest review.

When placing the boundaries, the Representation Commission must make sure every electorate contains close to the same number of people. It must also take certain factors into account, such as where the existing boundaries are placed, communities of interest, and topographical features.

The Representation Commission consists of:

- the Chairperson, who by convention has normally been a current or retired judge
- two members representing the government and the opposition parties in Parliament, and
- four government officials (the Surveyor-General, Government Statistician, Chief Electoral Officer, and Chairperson of the Local Government Commission).

When determining the boundaries for the Māori electorates, membership also includes the Chief Executive of Te Puni Kōkiri, and two people of Māori descent who represent the government and the opposition parties in Parliament.

## **Considerations**

- Electorate boundaries can affect who gets elected in particular electorates. It is therefore important to ensure boundaries are set in as fair a way as possible and that boundary decisions are accepted by everyone involved in elections.
- Boundaries are currently reviewed every five years because reviews are required to follow the five-yearly Aotearoa New Zealand wide population census.

## **Questions**

4.3 What changes, if any, are needed to the Representation Commission and the way electorate boundaries are set and named?

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## **Enforcement and dispute resolution**

An effective and accessible enforcement and dispute resolution system is critical to the integrity of Aotearoa New Zealand's electoral laws. If electoral rules are not enforced or not seen to be enforced, there is a risk that electoral participants may come to believe they can breach

rules without consequence, and the public may lose confidence in the integrity of the electoral system.

## **Enforcement**

The Electoral Act 1993 contains over 100 offences. The Electoral Commission has noted that many have not been reviewed since they first appeared in electoral legislation in the 19th century.

The Electoral Act 1993 declares certain campaign-related actions to be either corrupt practices or illegal practices.

- **Corrupt practices** are serious offences that pose a threat to the overall integrity of the election process—for example, intentionally voting more than once, or bribing a person to vote for a candidate. Corrupt practice offences are punishable by up to two years imprisonment and/or fines of up to \$100,000. When a person is found to have committed a corrupt practice their name is entered onto the Corrupt Practices List. This disqualifies the person from enrolling to vote or standing as a candidate for Parliament for a period of three years. If a sitting MP is entered on the Corrupt Practices List, they automatically lose their seat.
- **Illegal practices** are less serious breaches of the electoral rules—for example, failing to include the name and address of the person authorising an electoral advertisement. These offences are punished by fines up to a maximum of \$40,000.

The Electoral Act 1993 also includes many administrative offences that are punished by fines.

The Electoral Commission is seen as the first line of enforcement for electoral offences. It receives complaints from the public, candidates, and parties. Although it can enquire into complaints and warn people if it believes they are breaking the rules, it has no powers to investigate or prosecute in the way the Police can.

The Electoral Commission may refer a complaint to the Police if it considers that a breach has occurred that warrants Police investigation. Individual members of the public may also make a complaint to the Police if they believe an offence has been committed. The Police then decide whether to investigate and to prosecute. In some cases, the Police will refer a complaint to the Serious Fraud Office to investigate.



## Considerations

- Both the Electoral Commission and Justice Select Committee have recommended the government reviews the offences, penalties, and current enforcement arrangements to assess whether they remain fit for purpose.
- The Broadcasting Standards Authority and the Advertising Standards Authority have an important role in regulating election broadcasts and advertising. The Broadcasting Standards Authority deals with complaints about election programmes broadcast by parties and candidates on TV and radio. The Advertising Standards Authority oversees election advertising in all media (other than election programmes broadcast by parties and candidates on TV and radio).

### Questions

4.4 What changes, if any, should be made to the current offences, penalties, and mechanisms for enforcement?

## Dispute resolution

The courts play an important oversight role in the electoral system and resolve disputes on the meaning of rules and the outcome of elections.

Electoral dispute resolution processes take four main forms:

- recounts of the votes
- electoral petitions challenging the outcome of an election or by-election
- judicial reviews of the decisions and actions taken by electoral officials (such as those made by the Electoral Commission when allocating broadcasting funding)
- judicial reviews of the decisions and actions taken by parties (such as when choosing candidates at election time).

The Electoral Commission may also take a case to the High Court seeking its definitive interpretation of any rule. Other electoral participants may seek a declaratory judgment from the Court confirming they are legally able to do something before they do it.

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## **Considerations**

- Any changes to electoral rules may lead to more litigation as those changes are interpreted, applied, and tested.

## **Questions**

4.5 What changes, if any, should be made to ways disputes over electoral rules or election outcomes are settled?

# **Disinformation, misinformation, and foreign interference**

The spread of disinformation, misinformation, and foreign interference all have the potential to affect the integrity and stability of Aotearoa New Zealand's electoral system.

## **Disinformation and misinformation**

The spread of disinformation and misinformation is a growing issue affecting voters in elections around the world. Generally, disinformation is defined as false or misleading content designed to influence people's perceptions, opinions, or behaviour. Misinformation is also generally understood to be false or misleading, but usually comes from individuals, with no underlying strategic purpose.

Disinformation and misinformation can be spread through traditional media and social media channels. This is a difficult and nuanced issue, with challenges for regulation. Currently, the Electoral Act 1993 makes it an offence to knowingly publish a false statement intended to influence the election, either on election day, or the preceding two days.

## **Foreign interference**

Many countries and organisations use diplomacy and open lobbying to seek to shape perceptions and decisions in other countries. Foreign interference, by contrast, can be defined as acts by a foreign country, or its agents, that are

intended to influence, disrupt, or subvert a national interest by covert, deceptive, corruptive, or threatening means.

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Foreign interference in the electoral system could be through a range of mechanisms, including:

- spreading disinformation in traditional or social media
- building covert influence and leverage over parties or candidates, including through donations
- exerting pressure on, or control of, communities with ethnic or kinship ties to a foreign state, including through foreign language media.

Aotearoa New Zealand has several measures in place to limit the risk of foreign interference in the electoral system, including:

- banning donations made by an overseas person over \$50 to parties and candidates
- requiring that party secretaries live in Aotearoa New Zealand
- requiring that election advertisements (including those on social media) include details of the promoter of the advertisement.

In addition, the Electoral Commission has systems to detect and resist cyber threats, and these systems have been strengthened in recent years. Aotearoa New Zealand's intelligence agencies can provide advice for politicians on foreign interference.

## Considerations

- The New Zealand Bill of Rights Act 1990 protects the rights of freedom of expression and association. Limits on these rights must be justifiable.
- Recently, other Western democracies have experienced actual and alleged foreign interference in their electoral systems.
- If voters are exposed to disinformation and misinformation, this could negatively impact perceptions of the electoral system. This could result in unfair outcomes, by giving disproportionate attention—whether positive or negative—to a party or candidate.
- Concerns about foreign interference could also undermine confidence in the legitimacy and integrity of elections.

## Questions

4.6 What, if anything, do you think should be done to reduce the risk of disinformation and misinformation influencing New Zealand's elections?

4.7 What, if anything, should be done to reduce the risk of foreign interference influencing New Zealand's elections?

Is there anything else you want to tell us about the topics in Part 4: Electoral administration?

**Is there anything else you want to tell us about the review?**



We want to hear your views—let us know if there is anything else you would like us to know.

## Glossary

<b>Advance vote</b>	A vote cast in a parliamentary election before election day. The advance voting period is set by the Electoral Commission and typically starts two weeks before election day.
<b>Ballot paper</b>	The voting paper on which a voter indicates their preferred candidate and political party. Ballot papers are also referred to as "ballots".
<b>By-election</b>	An election held in a specific electorate to replace a Member of Parliament, when the electorate seat becomes vacant.
<b>Candidate</b>	A person who puts their name forward for election to Parliament. Candidates can contest an electorate, be on a party list, or both.
<b>Census</b>	The census is a nationwide population and household survey conducted every five years. It collects data on a range of topics about Aotearoa New Zealand, mainly its population.

<b>Chief Electoral Officer</b>	The person responsible, under the Electoral Act 1993, for exercising the powers, duties, and functions of running elections as one member of the three-person Electoral Commission.
<b>Disabled person</b>	Persons with disabilities include those who have long-term physical, mental, intellectual, or sensory impairment(s) which in interaction with various barriers may hinder their full and effective participation in society on an equal basis with others.
<b>Dissolution of Parliament</b>	The ending of a Parliament by proclamation from the Governor-General resulting in a general election.
<b>Electoral roll</b>	The list of names of people who are registered voters for an electorate. There is a roll for each general and Māori electorate. Only voters of Māori descent can choose a Māori electorate roll.
<b>Electorate</b>	A geographical area that is represented by an electorate Member of Parliament. Aotearoa New Zealand currently has 65 general electorates and 7 Māori electorates.



<b>Government</b>	Those Members of Parliament who govern the country with the support of the majority of the members of the House of Representatives.
<b>House of Representatives</b>	The assembled body of elected Members of Parliament.
<b>Māori Electoral Option</b>	People of Māori descent have the option to register either as a voter in a Māori electorate or as a voter in a general electorate.

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<b>Māori Electoral Option period</b>	A four-month period during which already-enrolled Māori voters can elect to exercise their option to move between general or Māori electoral rolls. This takes place every five to six years after a census.
<b>Member of Parliament (MP)</b>	A person elected to sit in the House of Representatives either by winning an electorate or through a political party's list (see the description of Mixed Member Proportional voting system).

<p><b>Mixed Member Proportional (MMP) voting</b></p>	<p>Aotearoa New Zealand's current voting system. It provides for a mix of Members of Parliament elected from electorates and those elected from a party list, and a Parliament in which parties' shares of the seats roughly system mirror their share of the nationwide vote.</p> <p>Each voter has two votes—a vote for a party (the party vote) and a vote for a candidate in their electorate (the electorate vote).</p> <p>Each electorate elects one Member of Parliament. The candidate with the most votes determines the local representative for that electorate in Parliament. The party vote is counted on a nationwide basis.</p> <p>A party may be eligible for a share of the list seats if it gains five per cent or more of the nationwide party vote or wins one or more electorate seats.</p>
<p><b>Overhang</b></p>	<p>The additional list seats in Parliament that are created if a party wins more electorate seats than it would be entitled to based on its share of the party vote.</p>

<b>Parliament</b>	The collective term for members of the House of Representatives <b>and</b> the Governor-General.
<b>Referendum.</b>	Where voters are given the opportunity to vote on an issue directly
<b>Regulated period</b>	The three-month period before election day where there is a spending limit on election advertising for candidates, parties, and registered third party promoters (described below).
<b>Third-party promoter</b>	An individual or group who is not contesting the election directly but promoter wishes to influence the outcome through advertising about a candidate, party, election issue, or referendum.
<b>Writ</b>	<p>The formal direction issued by the Governor-General instructing the Electoral Commission to hold the general election. The writ will specify the dates of nomination day, election day, and the latest day for the return of the writ.</p> <p>Writ day is the day on which the Governor-General issues a writ. Return of the writ is the day on which a writ, containing the full name of every constituency candidate elected, is returned to the Clerk of the House of Representatives</p>

## Appendices

### Appendix 1: Key financing and reporting requirements in the Electoral Act 1993

[TN]: See table on the following pages.

**Footnote 13:** This table sets out the requirements at the time this document was drafted. The **Electoral Amendment Bill**, currently before Parliament, proposes several changes to these requirements.

<b>Threshold or limit <sup>(13)</sup></b>	<b>Registered parties</b>	<b>Candidates</b>
<b>Disclosure period</b>	Audited disclosure returns for Returns of donations and donations required on an annual expenses required for each basis. Annual financial statements electoral campaign cycle. are not required to be disclosed or published. Returns of expenses are required after each election.	Returns of donations and expenses required for each electoral campaign cycle.
<b>Anonymous donations</b>	Limit of \$1,500 per donation	Limit of \$1,500 per donation
<b>Overseas donations</b>	Limit of \$50 per donor	Limit of \$50 per donor

Threshold or limit <sup>(13)</sup>	Registered parties	Candidates
<b>Donations under \$1,500</b>	Not required to be disclosed (unless the donor is anonymous— the volume and total number of anonymous donations must be reported)	Not required to be disclosed
<b>Donations and loans above \$1,500</b>	Total amount and number of loans above \$1,500 but not exceeding \$15,000 must be disclosed annually via the Electoral Commission.	Identity of donors and amounts donated must be publicly disclosed via the Electoral Commission. Candidates are not required to disclose loans.

Threshold or limit <sup>(13)</sup>	Registered parties	Candidates
<b>Donations and loans exceeding \$15,000</b>	Identity of donor/lender and amount must be publicly disclosed annually, via the Electoral Commission.	Identity of donors and amounts donated must be publicly disclosed via the Electoral Commission. Candidates are not required to disclose loans.

Threshold or limit <sup>(13)</sup>	Registered parties	Candidates
<b>Donations and loans exceeding \$30,000</b>	Identity of donor/lender and amount must be publicly disclosed, via the Electoral Commission, within 10 days of receipt. If multiple donations and loans have been made by the same donor/lender, these are aggregated over a rolling 12-month period.	Identity of donors and amounts donated must be publicly disclosed via the Electoral Commission. Candidates are not required to disclose loans.



## Appendix 2: Spending limits for election advertising

Type of promoter	Spending limit (Footnote <sup>14</sup> )
<b>Candidates</b>	\$30,600 for a general election \$61,100 for a by-election
<b>Registered political parties</b>	\$1,301,000 for registered parties contesting the party vote An additional \$30,600 for each electorate contested by a candidate for a party (whether the party is contesting the party vote or not).
<b>Registered third party promoters</b>	\$367,000
<b>Unregistered third party promoters</b>	\$14,700

**14:** These are the spending limits from 1 July 2022.  
The spending limits are adjusted each year for inflation.

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