



Report of the

ATTORNEY-GENERAL

under the New Zealand Bill of Rights Act 1990 on
the Electoral Matters Legislation Amendment Bill
[PCO 26217/7.2]

*Presented to the House of Representatives pursuant to
Section 7 of the New Zealand Bill of Rights Act 1990 and
Standing Order 269 of the Standing Orders of the House of
Representatives*

1. I have considered this Bill for consistency with the New Zealand Bill of Rights Act 1990 (**NZBORA**). I have concluded that the Bill appears to be inconsistent with the right to vote (s 12); the right to freedom of expression (s 14); and the right, if convicted of an offence in respect of which the penalty has been varied between the commission of the offence and sentencing, to the benefit of the lesser penalty (s 25(g)).
2. As required by s 7 of NZBORA and Standing Order 269, I draw this to the attention of the House of Representatives.

The Bill

3. The Bill is an omnibus Bill that principally amends the Electoral Act 1993, but also the Constitution Act 1986, Juries Act 1981 and Electoral Regulations 1996. It addresses aspects of the electoral system. The Explanatory Note says: “[The Bill] makes a range of systems improvements to support the timeliness, efficiency, integrity, and resilience of the electoral system”.
4. In summary, key changes proposed by the Bill include:
 - 4.1 Registration deadline (Part 1 Subpart 1): A new deadline would be introduced for close of registration as an elector. Whereas eligible persons can currently register as electors and vote up to and on polling day, the Bill proposes that in order to be able to vote, eligible persons must register no later than 13 days before polling day. Similarly, electors who wish to register in a new electoral district, and vote in that electoral district, must register in their new district no later than 13 days before polling day. Various consequential amendments are proposed.
 - 4.2 Prisoner voting (Part 1 Subpart 2): Those detained in prison serving a term of imprisonment would be disqualified from electoral registration. The Bill also addresses the position of those detained in hospital or a secure facility, and provides for transitional arrangements.
 - 4.3 Electoral registration details (Part 1 Subpart 3): Various proposals to streamline collection of electors’ details.
 - 4.4 Electoral Commission updating of electors’ addresses on Electoral Roll (Part 1 Subpart 4): Introduction of a capacity for the Electoral Commission to update an elector’s address when satisfied their address has changed, based on information received from other agencies.
 - 4.5 Electronic delivery of registration processes: (Part 1 Subpart 5): Proposals to provide the Electoral Commission flexibility to deliver certain notices electronically, whereas the Commission is presently required to deliver notices personally or by post to electors.
 - 4.6 Advance voting (Part 1 Subpart 6): Fixing an advance voting period of 12 consecutive days before polling day.
 - 4.7 Offences (Part 1 Subpart 7): Proposals to amend existing electoral offences, including bribery, treating and undue influence, and to

introduce new offences relating to (i) improperly influencing a person's electoral choices, and (ii) supply, free of charge, of food, drink (except water) or entertainment within 50 metres of polling places.

- 4.8 Adjustment of expenditure limits (Part 1 Subpart 8): Changes to the mechanism for updating maximum expenditure amounts for candidates, parties and promoters, including that amounts will be adjusted by the Electoral Commission (rather than by Order in Council, as is presently the case).
- 4.9 Miscellaneous further amendments to Electoral Act 1993 (Part 1 Subpart 9): A range of miscellaneous amendments, including in relation to party registration and various publication requirements.
- 4.10 Amendments to Constitution Act 1986 (Part 2): Amendments to existing provisions which provide that Ministers of the Crown must be members of Parliament, and that Parliamentary Under-Secretaries must vacate office when they cease to be members of Parliament. The amendments update these provisions to align with electoral realities, by providing that Ministers and Parliamentary Under-Secretaries may continue to hold office until the close of the day on which the Electoral Commission declares the elected list candidates.

Summary

5. I have concluded that the following aspects of the Bill appear inconsistent with NZBORA:
- 5.1 The blanket disqualification from electoral registration for those detained in prison under a sentence of imprisonment appears inconsistent with s 12 (right to vote).
- 5.2 The transitional provisions relating to prisoner voting appear inconsistent with s 25(g) (right to benefit of lesser penalty).
- 5.3 The registration deadline, according to which eligible persons would be required to register no later than 13 days before polling day, and which would therefore remove the ability of eligible persons to register for a period leading up to, and on polling day, appears inconsistent with s 12 (right to vote).
- 5.4 The revised bribery offence, as drafted, appears inconsistent with ss 12 (right to vote) and 14 (right to freedom of expression).

Disqualification from registration

Prisoner voting

6. The Bill would disqualify from registration as an elector any person detained in a prison under a sentence of imprisonment.¹ The Bill would change the present legislative setting, according to which a person is disqualified from registration as

¹ See Subpart 2 of the Bill, and specifically cl 10.

an elector if detained in a prison under a sentence of imprisonment for life, preventive detention, or imprisonment for a term of 3 years or more.² Registration as an elector is a prerequisite to voting.

7. The proposed disqualification is blanket in that every person detained in prison pursuant to a sentence of imprisonment would be disqualified from being registered to vote, notwithstanding how minor or serious their offending or sentence may be. For completeness, I note the proposed disqualification of prisoners applies only to those detained pursuant to a sentence of imprisonment so that criminal defendants on bail, or prisoners on remand (including remand post-conviction but prior to sentence), and offenders released on parole, for example, shall not fall within the scope of the disqualification.
8. Section 12(a) of the NZBORA provides:

Every New Zealand citizen who is of or over the age of 18 years—

(a) has the right to vote in genuine periodic elections of members of the House of Representatives, which elections shall be by equal suffrage and by secret ballot ...
9. The blanket disqualification of sentenced prisoners from registering to vote engages s 12 as it would disenfranchise those who have a right to vote.
10. Section 12 is not an absolute right – it is subject to reasonable limitation pursuant to s 5 of the NZBORA. However, it is plain on the basis of prior Attorney-General reports to the House,³ New Zealand authority,⁴ comparative authority⁵ and international authority⁶ that the blanket disenfranchisement of prisoners of the sort proposed in the Bill cannot be justified.
11. The Attorney-General’s report to the House on the Electoral (Disqualification of Convicted Prisoners) Amendment Bill 2010, which proposed a similar blanket disqualification for prisoners (that was subsequently enacted and then repealed), addressed the reasons why justification could not be established.⁷ These reasons were subsequently endorsed by the High Court in *Taylor v Attorney-General* (and this aspect of the judgment was not challenged on appeal).⁸ The principal reason may be said to be that a blanket disqualification “disenfranchises in an irrational

² Electoral Act 1993 ss 80(1)(d), 86A-86E.

³ Report of the Attorney-General under the New Zealand Bill of Rights Act 1990 on the Electoral (Disqualification of Convicted Prisoners) Amendment Bill (2010) (available at: <https://www.justice.govt.nz/assets/Documents/Publications/BORA-Electoral-Disqualification-of-Convicted-Prisoners-Amendment-Bill-v2.pdf>) (**Attorney-General Report**).

⁴ *Taylor v Attorney-General* [2015] NZHC 1706; [2015] 3 NZLR 791; [2017] NZCA 215; [2017] 3 NZLR 24; [2018] NZSC 104; [2019] 1 NZLR 213.

⁵ *Sauvé v Canada (Attorney General)* [1993] 2 SCR 438; *R (on the application of Chester) v Secretary of State for Justice* [2013] UKSC 63, [2014] 1 AC 271.

⁶ *Hirst v United Kingdom (No 2)* (2005) 42 EHRR 849; *Scoppola v Italy (No 3)* (2012) 56 EHRR 663; CCPR General Comment No 25: Article 25 (Participation in Public Affairs and the Right to Vote), CCPR/C/21/Rev.1/Add.7 (12 July 1996) at [14] (“If conviction for an offence is a basis for suspending the right to vote, the period of such suspension should be proportionate to the offence and the sentence”).

⁷ Attorney-General Report above n 3.

⁸ *Taylor v Attorney-General* [2015] NZHC 1706; [2015] 3 NZLR 791 (HC) at [27]-[29], [32]-[35].

and irregular manner”.⁹ In contrast Crown Law has previously advised, and previous Attorneys-General have accepted, that more tailored schemes for disqualification of prisoners may constitute justified limits on the right to vote.¹⁰

12. The Cabinet Paper for the present Bill says that the rationale for imposing the disqualification is breach of civic responsibilities.¹¹ But whether a person would be disenfranchised under the proposed scheme would depend more on the vicissitudes of timing than breach of civic responsibility, including type and degree of breach. A person imprisoned for a one-month period, that happens to coincide with polling day, shall be disenfranchised but a person who committed a premeditated murder, but is released on parole in the weeks prior to election day, shall be able to vote, as will a person that serves a two-year sentence in between elections. A person convicted of serious sexual offending, but not yet sentenced, shall be able to vote. Persons sentenced to imprisonment of two years or less are eligible for home detention, but whether such person is detained in prison, and therefore will be disqualified from voting, may depend less on the degree of breach of civic responsibility and more on whether they have a suitable address at which home detention can be served.¹²
13. The Attorney-General’s overall conclusion in respect of the 2010 Bill applies to the present Bill:¹³

The disenfranchising provisions of this Bill will depend entirely on the date of sentencing, which bears no relationship either to the objective of the Bill or to the conduct of the prisoners whose voting rights are taken away. The irrational effects of the Bill also cause it to be disproportionate to its objective.

14. Under the present Bill those detained in a hospital or secure facility shall not be disqualified from registering to vote.¹⁴ As the previous Attorney-General observed in regard to proposals in the 2010 Bill to allow certain persons detained in a hospital or secure facility to register to vote, while imposing a blanket disqualification on prisoners, this introduces “irrational inconsistencies”.¹⁵ The disconnect between criteria for disqualification and the stated civic responsibility rationale is further illustrated by provision in the present Bill for the same convicted person’s qualification to vote changing as they transfer between detention in a hospital/secure facility and prison.¹⁶ It follows that a sentenced person’s eligibility to be registered and vote depends on where they are detained,

⁹ Attorney-General Report above n 3 at [14].

¹⁰ Crown Law Advice on Electoral (Registration of Sentenced Prisoners) Amendment Bill (14 February 2020) (available at: <https://www.justice.govt.nz/assets/Documents/Publications/Electoral-Registration-of-Sentenced-Prisoners-Amendment-Bill.pdf>).

¹¹ *Electoral Matters Legislation Amendment Bill: Approval for Introduction and Further Policy Decisions* at [4] (**Cabinet Paper**).

¹² *Taylor v Attorney-General* [2015] NZHC 1706, [2015] 3 NZLR 791 at [34]-[35].

¹³ Attorney-General Report above n 3 at [15].

¹⁴ See cl 10 of the Bill, which amends s 80(1)(c) of the Electoral Act 1993, and see cl 12 of the Bill.

¹⁵ Attorney-General Report above n 3 at [13].

¹⁶ See cl 10, 12 of the Bill.

rather than on the degree of departure from accepted standards of civic responsibility involved in their offending.

15. I advise that the proposed disqualification of prisoners from registration and therefore voting appears inconsistent with the NZBORA.
16. For completeness, I note that the Court of Appeal held a previous blanket disqualification of prisoners did not involve unjustified discrimination against Māori.¹⁷ That was for several reasons, including that disqualification applied equally and with equal effect to both Māori and non-Māori. That reasoning applies with equal force to the Bill's proposed blanket disqualification. As such, there does not appear to be inconsistency with s 19(1) of the NZBORA (freedom from discrimination).

Prisoner voting – transitional arrangements

17. The Bill addresses transitional arrangements in regard to prisoner registration and voting.¹⁸ It provides that persons detained in prison at the time the Electoral Matters Legislation Amendment Act 2025 enters force and who are not disqualified from registering to vote because they are serving a term of less than 3 years will remain of that status and continue to be qualified for registration. On the other hand, persons detained and who are serving a term of imprisonment of more than 3 years shall continue to be disqualified from registering to vote. In other words, the position of prisoners subject to the present scheme is preserved.
18. It follows that those prisoners who would be subject to the disqualification provided for in the Bill are those who enter detention in prison pursuant to a sentence of imprisonment, after commencement of the Electoral Matters Legislation Amendment Act 2025.
19. I consider that the transitional arrangements do not appear to engage s 25(2) of the NZBORA, which proscribes double punishment. That is because those who are already detained pursuant to a sentence of imprisonment at the commencement of the Electoral Matters Legislation Amendment Act 2025 shall be insulated from the provisions providing for disqualification, so the Act cannot result in a second punishment for them. For those sentenced and detained after commencement of the Act, any disqualification shall be a necessary incident of their punishment of a sentence of imprisonment.
20. However, I consider that s 25(g) appears to be engaged by the transitional arrangements. Section 25(g) provides:

Everyone who is charged with an offence has, in relation to the determination of the charge, the following minimum rights:

...

¹⁷ *Ngaronoa v Attorney-General* [2017] NZCA 351, [2017] 3 NZLR 643.

¹⁸ Schedule 1 of the Bill.

(g) the right, if convicted of an offence in respect of which the penalty has been varied between the commission of the offence and sentencing, to the benefit of the lesser penalty:

21. Section 25(g) is engaged specifically in respect of those persons who:
 - 21.1 Will be detained in prison pursuant to a sentence of imprisonment imposed after the 2025 Act enters force, and shall therefore be disqualified from registering to vote;
 - 21.2 But who committed the relevant offending to which the sentence pertains before commencement of the Act;
 - 21.3 And at a time when the law did not provide for disqualification from registration and voting for a person detained pursuant to a sentence of the type and/or length now imposed (i.e. imprisonment for a term of less than three years).
22. The Supreme Court has adopted a wide definition of “penalty” and “punishment” under the NZBORA, so that deprivation of the right to vote as a consequence of criminal sentencing appears to fall within it.¹⁹
23. For certain persons who will be disqualified from registering to vote pursuant to the 2025 Act, the Act shall have the effect of varying the penalty between the commission of the offence and sentencing, but deny those persons the benefit of the lesser penalty.
24. As an illustrative hypothetical, consider a person who committed an offence in 2024, when the law provided that a prisoner detained pursuant to a sentence of imprisonment of under 3 years would not be disqualified from voting, but who is sentenced in 2026, after commencement of the 2025 Act, and will be detained in prison pursuant to a sentence of two years’ imprisonment. In this case the person’s penalty has been varied between the time of their offending, and the time of their sentencing; at the time of offending the penalty, in their case, would not have included deprivation of the right to vote, whereas at the time of sentencing it does.
25. Given that blanket disqualification of prisoners from voting is itself inconsistent with NZBORA, the variation of applicable penalties between offending and imposition of sentence cannot, as an aspect of implementation of a rights-inconsistent disqualification, be justified.
26. I conclude that the transitional provisions appear, to the extent explained, inconsistent with the NZBORA.

Persons detained in hospitals and secure facilities

27. Currently the Electoral Act 1993 provides that a person who is detained in a hospital under the Mental Health (Compulsory Assessment and Treatment) Act

¹⁹ See in particular *D v Police* [2021] NZSC 2, [2021] 1 NZLR 213; *Attorney-General v Chisnall* [2024] NZSC 178, [2024] 1 NZLR 768.

1992 or in a secure facility under the Intellectual Disability (Compulsory Care and Rehabilitation) Act 2003, and has been so detained for a period exceeding 3 years, is disqualified from registration as an elector if that person²⁰

- 27.1 has been found unfit to stand trial or has been acquitted on account of insanity; or
 - 27.2 has been found to be mentally impaired; or
 - 27.3 is subject to a compulsory treatment order or compulsory care order; or
 - 27.4 is voluntarily receiving psychiatric care and treatment and is a person to whom s 80(1)(d) of the Electoral Act would otherwise apply (which addresses the disqualification for prisoners).
28. The Bill proposes that those detained in a hospital or secure facility will no longer be subject to disqualification from registering as an elector (regardless of length of detention in a hospital or secure facility).²¹
29. This proposal does not engage s 12 of the NZBORA, because it does not limit the right to vote. It removes an existing limit. As such, that amendment does not appear inconsistent with the right to vote.

Registration deadline

30. At present electors can register at any time before or on polling day, and then vote in the corresponding election. The Bill proposes to change this by providing for a different registration deadline of 13 days prior to polling day.²² If a person has not registered by this deadline they would be unable to vote (or unable to vote in the electoral district in which they now reside) in the upcoming election. The rationale for this change is to address delays in the post-election vote count, which have become more pronounced in recent elections.
31. While acknowledging the public importance of promoting timeliness in the counting of votes, I nonetheless consider that the specific proposal for a 13-day registration deadline appears inconsistent with the right to vote in s 12 of the NZBORA. As discussed below, there may be alternative measures for addressing delays in the processing of votes, which are less restrictive of the right to vote, and could therefore possibly be justified.

Right to vote

32. The right to vote is engaged because the proposed registration deadline has a potentially disenfranchising effect that is not immaterial. That is, people who have an entitlement to vote under s 12 NZBORA may nonetheless be prevented from voting because of the registration deadline. The precise nature of this disenfranchising effect is discussed further below under “Justification”.

²⁰ Electoral Act 1993 s 80(1)(c).

²¹ See cl 10 of the Bill, amending Electoral Act 1993 s 80(1)(c).

²² Subpart 1 of Part 1 of the Bill.

33. As the High Court of Australia has held, whereas such a measure may have a procedural or machinery character, and does not in terms carve out an exception to the franchise, it nonetheless has a substantive effect upon entitlements to vote, and so affects exercise of the franchise.²³ Further, where a law removes a legally sanctioned opportunity for registration (here, being able to register up to and on polling day), it is the change effected that must be considered (here, a requirement to register at least 13 days prior to polling day in order to exercise the franchise).²⁴ As such, it is not necessary first to determine some baseline for rights-consistency.²⁵ As acknowledged in the Cabinet Paper and policy materials, a change such as introduction of a registration “freeze” in the days immediately preceding polling day has the potential to or will cause a reduction to the franchise.²⁶ This in turn involves a detriment to the s 12 right.

Justification

34. Before applying the justification analysis required by s 5 of the NZBORA, it is necessary to recall that the New Zealand Supreme Court, and other common law apex courts, have emphasised the fundamentality of the right to vote as lying at the heart of the democratic system, and that any restrictions on that right will be closely scrutinised, especially where they affect the franchise.²⁷ On the other hand Parliament’s democratic credentials in setting the parameters of the electoral system must also be recognised and respected.²⁸

Sufficiently important goal and rational connection

35. Analysis of whether the registration deadline involves a demonstrably justified limit on the right to vote requires consideration of whether the public goal served by the change is sufficiently weighty to limit the right and whether there is a rational connection between the proposed measure and the public goal.²⁹
36. I consider these aspects of justification analysis are fulfilled. The principal reason for introduction of a 13-day registration deadline is to speed up completion of the vote count following polling day.

- 36.1 There is a significant public interest in the expeditious completion of the vote count and declaration of results. Delays in counting the vote can create uncertainty and affect party negotiations and formation of government, which may depend on knowing the results of the election. This can lead to extended periods of caretaker government, when by

²³ *Rowe v Electoral Commissioner* [2010] HCA 46, (2010) 243 CLR 1 at [24].

²⁴ At [25]

²⁵ At [25].

²⁶ *Electoral Matters Bill – Policy Approvals (timeliness and efficiency)*, CAB-25-SUB-0112 (April 2025) at [24]; Ministry of Justice, *Regulatory Impact Statement: Improving the Timeliness of the Official Vote Count* (27 March 2025) at [52]-[57], [96] and 23 (RIS).

²⁷ *Make It 16 Ltd v Attorney-General* [2022] NZSC 134, [2022] 1 NZLR 683 at [51], citing *Sauvé v Canada* 2002 SCC 68, [2002] 3 SCR 519 at [13]; *Rowe v Electoral Commissioner* [2010] HCA 46, (2010) 243 CLR 1 at [78].

²⁸ *Make It 16 Ltd v Attorney-General* [2022] NZSC 134, [2022] 1 NZLR 683 at [66]; *Rowe v Electoral Commissioner* [2010] HCA 46, (2010) 243 CLR 1 at [29].

²⁹ *Hansen v R* [2007] NZSC 7, [2007] 3 NZLR 1 at [104]; *Attorney-General v Chisnall* [2024] NZSC 178, [2024] 1 NZLR 768 at [195].

convention significant policy decisions are deferred. There is also a public interest in the public knowing the results as soon as possible.

- 36.2 Recent elections have raised concerns in relation to the time taken to process votes after election day. One reason for such delay is that the Electoral Commission must process “late” enrolments post-polling day, and there has been a trend over time towards late enrolments: at the 2023 General Election enrolment “transactions” during the voting period increased by 46 per cent compared to the 2020 General Election. Further, votes cast by electors who register or update their registration details (for example in relation to their electoral district) between writ day (when the supplementary rolls close) and polling day, are special votes, which take more time to process. There has been sustained growth over time of special votes in both volume and as a percentage of total votes.
- 36.3 The registration deadline also seeks to address the growing size of the electorate. An expanding electorate, among other contributing factors, means that special votes are liable to continue to grow, if no changes are made, leading to challenges for system sustainability.

Less restrictive means and proportionality

37. However, while recognising the importance of addressing delays in processing votes and completing the count, I have concluded that the 13-day registration deadline does not appear to pass the other stages of justification analysis, bearing in mind the fundamental nature of the right to vote. The registration deadline does not appear to represent the least restrictive means for achieving the relevant public goal, and the detriments imposed by the measure do not appear proportionate to the benefits served by the measure.³⁰ It does not follow that rights-justified measures are not available to address the timeliness of the vote count: alternative measures, some of which are discussed below, may be as or more effective at addressing delays in processing the vote count and/or impose less significant restrictions on the right to vote.
38. There are four key considerations to be weighed:
- 38.1 Benefits of the proposed change.
- 38.2 Detriments of the proposed change, especially for the right to vote.
- 38.3 Alternative measures.
- 38.4 Electoral settings in comparable jurisdictions.
39. First, as acknowledged in the Cabinet Paper and policy documents, it is uncertain whether the proposed registration deadline will have a beneficial or significantly beneficial impact in speeding up the vote count.³¹ The stated rationale for the

³⁰ *Hansen v R* [2007] NZSC 7, [2007] 3 NZLR 1 at [104]; *Attorney-General v Chisnall* [2024] NZSC 178, [2024] 1 NZLR 768 at [195].

³¹ See RIS above n 26 at 1-5, 15-18, 23-25, 29; *Electoral Matters Bill – Policy Approvals (timeliness and efficiency)*, CAB-25-SUB-0112 (April 2025) at [22].

registration deadline is that it may allow processing of voter registration (or updating of registration details) to be completed earlier, and allow processing of special votes to begin sooner, in turn alleviating burdens – which would facilitate a faster vote count. However, the precise impact of the proposed registration deadline, and whether it will facilitate desired reductions in time taken to count the vote, is uncertain. For example, the deadline may merely shift enrolment demand earlier in the election period, rather than reduce it (and could increase demand), and the impact on quantum of special votes, which are time-intensive to process, is not clear, so that positive benefits for timeliness are uncertain. One challenge in this regard is an acknowledged lack of data on the basis of which to more precisely model anticipated impacts of the proposed registration deadline.³² Any substantial reduction in the time taken for the vote count may take several electoral cycles to emerge, as this may depend on changes in registration behaviour over time.

40. Second, benefits need to be weighed against detrimental impacts of the change on the franchise. There are two types of exclusionary impact that need to be considered: “direct” and “indirect”.
41. In regard to *direct* impact, it is estimated 22,700 people may have their eligibility to vote (or to vote in the electoral district in which they actually reside) directly affected by the proposed registration period.³³ However, this number reduces to 3,400 when other features of the Bill are taken into account. Specifically, the Bill provides for (i) registration as an elector of those who are 17 years old before the registration deadline, but who will be 18 years old by or on polling day; and (ii) registration as an elector in a particular electoral district where the elector has not resided in that district for 1 month at the time of the end of the registration period, but will have resided in that electoral district for at least 1 month by polling day.³⁴ The estimated 3,400 people who would be potentially disenfranchised by the registration period include people returning from overseas after being away for an extended time, and people who, during the registration period, may become New Zealand residents or be released from prison. Making provision for these remaining groups would create added operational complexity, and there is a difference between these groups and those provided for in the Bill (17/18 year olds and people moving electoral district), in that it is harder to assess in advance and with certainty what the person’s position will be on polling day, which in turn may engage electoral integrity concerns.³⁵
42. *Indirect* impact here refers to otherwise eligible electors being effectively excluded from the franchise by the practicalities of the operation of a 13-day pre-election registration deadline.³⁶ The precise scale of indirect impact is more difficult to

³² RIS above n 26 at 4.

³³ Ministry of Justice, *Electoral Matters Bill: Exceptions to the Enrolment Deadline and Drafting Clarifications* (6 May 2025) (***Exceptions to the Enrolment Deadline***); Cabinet Paper above n 11 at [15].

³⁴ Cl 8 of the Bill.

³⁵ *Exceptions to the Enrolment Deadline* above n 33; Cabinet Paper above n 11 at [16]. The Cabinet Paper records at [17] that it is proposed that consideration will be given to whether an approach that enables participation by these remaining groups would be feasible for subsequent elections.

³⁶ As recognised in: RIS above n 26 at [52], [96] and 23; *Electoral Matters Bill – Policy Approvals (timeliness and*

gauge than direct impact, because it depends on how voters respond to the new deadline in behavioural terms. However, it is likely the registration period will have a disenfranchising effect that is not insubstantial:

- 42.1 There has been an expectation, since 1993, that electors can register to vote either on the day before polling day, or on polling day. Expectations based on longstanding legislative settings are salient to judging potential prejudice and proportionality.³⁷ It is also relevant in this respect that the trend over time has been towards greater flexibility as to when people may register to vote, whereas the imposition of the registration deadline would run against that trend. Publicity campaigns could be used to ameliorate potential impacts on participation, but the extent to which such campaigns may affect elector behaviour and how soon behavioural change may be effected is uncertain.
- 42.2 For the 2023 General Election special votes included over 97,000 people who registered for the first time during the voting period, and nearly 134,000 people who changed electoral districts during the voting period.³⁸ This gives some indication of the number of people who may be affected, and the farther out the registration deadline from polling day, the greater the disenfranchising impact is likely to be.³⁹ In this regard, it is worth noting alternative possible timeframes which would impose less onerous limits on the right to vote, such as reverting to a deadline of the day before election day (the legislative setting from 1993 to 2020) or three, five or seven days before polling day, for example.
- 42.3 The Electoral Commission has data that indicates that special votes are more likely to come from areas with larger Māori, Asian and Pasifika communities, and that younger people are more likely to cast special votes.⁴⁰ This may indicate that these communities will be more affected by the proposed registration deadline.⁴¹
- 42.4 It is acknowledged that a cohort of voters who miss the 13-day deadline will still be able to vote. Specifically, a person may forget to update their address by the registration deadline, with their old address located in a different electoral district to their new address; their party vote would be counted, but their electorate vote would be disallowed. There is also the possibility that a person may forget to update their address on the electoral roll but might still vote in their old electoral district. In these situations, operation of the registration deadline does not result in complete disenfranchisement, but the results are not satisfactory.

efficiency), CAB-25-SUB-0112 (April 2025) at [24].

³⁷ *Rowe v Electoral Commissioner* [2010] HCA 46, (2010) 243 CLR 1; RIS above n 26 at [96].

³⁸ RIS above n 26 at [53].

³⁹ At [53].

⁴⁰ At [55]-[56].

⁴¹ At [55]-[56].

43. Also relevant, in terms of gauging detriments, is that freezing registration earlier in the voting period has the potential to harm confidence and trust if people are not able to vote because they missed the deadline and/or more votes are disallowed.⁴² It is also relevant that the proposal to close enrolment significantly in advance of election day has not been considered in detail through previous reviews that involved public consultation.⁴³ This could mean that some potential risks and impacts have not been canvassed.⁴⁴
44. Third, independently of the change to registration deadline, the Bill provides for the Electoral Commission to be able to update an elector's address on the roll on the basis of information received from other agencies.⁴⁵ This is likely to improve the speed of the vote count over time, as it has the potential to significantly reduce special votes which are administratively burdensome to process, while increasing electoral participation – because an elector's details on the roll are more likely to be kept up to date.⁴⁶ This is a less restrictive measure in human rights terms than the proposal for a 13-day registration deadline. Further, the fact that automatic updating of electoral details is predicted to be reasonably effective in cutting down special votes and therefore improving the speed of the vote count, over time,⁴⁷ means it may be less apparent there is a pressing need also for a registration deadline, and specifically a deadline that is 13 days in advance of polling day.
45. As discussed above, registration deadlines which are less than 13 days out from polling day, such as reversion to the pre-2020 position (a deadline of the day before polling day) or a deadline of three or five days, would be less rights-restrictive, as any disenfranchising impact would likely be more limited (other things being equal). A shorter timeframe between the registration deadline and polling day would represent a less significant departure from existing settings and therefore prevailing voter expectations.
46. Fourth, there are precedents in other liberal democracies for a registration deadline of the sort proposed in the Bill, however settings vary considerably.⁴⁸ To the extent other systems adopt some sort of registration cut-off in advance of polling day, this may weigh in favour of the 13-day registration deadline being justified. However, case law tells us that local circumstances, and specifically long-standing expectations formed on the basis of electoral settings, may be more significant than comparative practice, especially as comparative practice is highly varied.⁴⁹ In New Zealand there has been a longstanding approach of permitting

⁴² At [52].

⁴³ At [58].

⁴⁴ At [58].

⁴⁵ Cl 25 of the Bill (and see Electoral Act 1993 s 263B). The Electoral Commission must notify the elector of the action it proposes to take and give the elector a 28-day period to provide such evidence as may be necessary to satisfy the Electoral Commission that the proposed action should not be taken. If the proposed action is taken, the Commission must notify the elector.

⁴⁶ RIS above n 26 at 2-4, 18-20, 23-25.

⁴⁷ Ibid.

⁴⁸ At [62].

⁴⁹ *Rowe v Electoral Commissioner* [2010] HCA 46, (2010) 243 CLR 1.

enrolment until late in the election period, so that the 13-day deadline is a significant change.

47. Taking into account these factors, I conclude the proposal for a 13-day registration deadline appears to constitute an unjustified limit on s 12 of the NZBORA. The accepted starting-point is the fundamental importance of the right to vote within a liberal democracy. A compelling justification is required to limit that right. As the High Court of Australia has held in evaluating a legislative registration deadline, which departed from previous settings, impact on the franchise is a “heavy price”.⁵⁰ However, the benefits of the proposed 13-day registration deadline are not certain and there appear to be alternative, less restrictive measures that may be capable of rights-justification.

Electoral offences

48. The Bill proposes to amend existing electoral offences and introduce new offences into the Electoral Act 1993.⁵¹ The rationale for these offences is to maintain electoral integrity by proscribing practices that could undermine integrity, such as acts designed to influence a person whether to vote or not.
49. A feature of the relevant clauses is that they update existing offences to address influence in relation to a person’s choice whether or not to exercise the Māori option. This does not raise an issue of direct or indirect discrimination under s 19(1) of NZBORA because the option of choosing between rolls is unique, so there is no comparator, while the relevant offences in general apply equally to influencing a person’s choice whether to vote or not, for example.

Treating and undue influence

50. The proposed amendments to the offences of treating and undue influence appear consistent with the NZBORA.⁵² Either the proposals are consistent with protected rights such as s 12, by positively upholding the integrity of the electoral system, or to the extent that they impose limits on protected rights, those limits are justified given (i) the important goal of preserving electoral integrity; and (ii) the offences are appropriately bounded. For example, the treating offence must involve a “corrupt” motivation, which sets a reasonably high threshold, while the undue influence offence proscribes practices that are plainly wrong such as threatening force.

Bribery

51. I consider the proposed amendments to the offence of bribery appear inconsistent with the NZBORA as they would impose unjustified limits on the right to vote (s 12) and the right to freedom of expression (s 14).⁵³
52. As a matter of principle prohibiting the provision of money or another benefit designed to influence whether a person votes or not (or exercises other relevant

⁵⁰ At [78].

⁵¹ Subpart 7 of Part 1 of the Bill.

⁵² Cl 44-45 of the Bill.

⁵³ Cl 43 of the Bill.

choices within the electoral system) is necessary to ensure the integrity of electoral processes, and therefore may not engage the right to vote and/or freedom of expression, or constitute a justified limit on given rights and freedoms.

53. However, the way that the bribery offence is drafted in the Bill means that it does appear to engage ss 12 and 14. The offence is framed broadly. In turn it may capture and therefore prohibit legitimate and/or innocuous electoral activities and speech. And, even if the offence is construed narrowly by the courts, the provisions on their face are broad, and create a real risk of chilling innocuous and/or legitimate activity. The risk of a chilling effect is real because the potential penalties for conviction for bribery are significant, including either two years' imprisonment or a fine of up to \$40,000.⁵⁴ Further, bribery is a "corrupt practice", so that conviction results in suspension from being able to vote for three years.⁵⁵
54. The following are examples of the potential rights-limiting effects of the offence as drafted in cl 43:
- 54.1 Clause 43(2)(a) provides that it is bribery to give any money to, or procure any benefit for, a voter to induce the voter to, inter alia, vote or refrain from voting or exercise or not exercise the Māori option. This offence could encompass a neighbour giving someone a lift to or from the polling station to vote, or a parent giving their 18 year old teenager petrol money to fill up their car to drive to the polling station. It could include someone throwing a party for their friends who are going to vote or someone offering to buy another person a round of golf to skip voting and instead play golf.
- 54.2 Clause 43(2)(e) provides that it is bribery to give any money to or procure a benefit for any person to induce that person to procure, inter alia, the return of any candidate or candidates in an election. Clause 43(2)(f) provides it is bribery to receive any money or obtain any benefit to procure the return of any candidate or candidates at an election. On the face of these clauses, it could be bribery for a candidate to pay a strategist to develop a winning campaign strategy for them; for a person to make donations to a candidate's campaign to help get them elected; or for an elected politician to follow through on campaign promises which benefit certain persons or groups.
55. It is understood that, apart from updating the bribery offence to provide for the Māori option, the amendment in cl 43 is principally designed to replicate the existing bribery offence in s 216(2) of the 1993 Act, but in a modern form of drafting. However, because the clauses on their face actually prohibit, or create a real risk of chilling, legitimate and/or innocuous electoral activity or speech, they engage ss 12 and 14.
56. In terms of justification it is acknowledged that a certain degree of generality in drafting offences is warranted so as to comprehend the array of different types of

⁵⁴ Electoral Act 1993 s 224.


⁵⁵ Electoral Act 1993 s 216(1) and see ss 80(e), 98(e), 100.

situations and behaviours that could pose risks to electoral integrity. However, even accounting for this, the proposed bribery offence is over-broad to the point that it outstrips its rationale of protecting electoral integrity. Unlike the treating or undue influence offences it lacks sufficient thresholds to differentiate legitimate from illegitimate activities; for example the treating offence uses the touchstone of “corruptly” to draw this line.

57. As such, while a bribery offence is justifiable and indeed necessary to maintain electoral integrity, the bribery offence, *as drafted in cl 43 of the Bill*, is overbroad and to that extent outstrips the rationale of electoral integrity, so that that rationale cannot provide a justification for the degree of limitation imposed on protected rights by the offence as drafted.

Providing food, drink or entertainment around polling places

58. The Bill proposes a new offence that during a voting period a person must not provide, free of charge, any food, drink (excluding water) or entertainment within 50 metres of the entrance to a polling place.⁵⁶ The offence is underpinned by a similar rationale to that which underpins treating. The new offence recognises that when people go to vote may be when they are most vulnerable to influence.
59. To the extent the new offence may engage protected rights, specifically ss 12 and 14, the offence appears to be a justified limit and not inconsistent with the NZBORA. A brightline rule will invariably be both under- and over-inclusive. However, such a rule appears warranted given the important public interest in voters not being subject to influence when they attend a voting station. Further, a rule defined by a spatial area is a logical response to the potential for activities in proximity to polling stations that may undermine electoral integrity. A clear rule provides certainty. It is also relevant that water is excluded (so may be provided free of charge near polling stations); entities providing food, drink or entertainment free of charge in their ordinary course of business are excluded from the rule; there is provision for a defence of reasonable excuse; the rule is temporary in operation, only applying during a voting period; and the offence is not a “corrupt practice”.



Hon Judith Collins KC
Attorney-General
26 June 2025

After this report was prepared and prior to introduction in the House, changes were made to the Bill, including to rename it the Electoral Amendment Bill and progress amendments to the Constitution Act 1986 as a standalone Bill. No substantive changes were made that affect this advice.

⁵⁶ Cl 46 of the Bill.