

**Government Response to
Declaration of Inconsistency: Voting age in the Electoral Act 1993
and the Local Electoral Act 2001**

Presented to the House of Representatives

In accordance with section 7B of the New Zealand Bill of Rights Act 1990

Introduction

- 1 The Government has carefully considered the Declaration of Inconsistency: Voting age in the Electoral Act 1993 and the Local Electoral Act 2001 (the Declaration), issued by the Supreme Court on Monday 21 November 2022.
- 2 The Government responds to the Declaration in accordance with section 7B of the New Zealand Bill of Rights Act 1990 (NZBORA).

Background

The Declaration

- 3 On 12 December 2022, the Attorney-General notified the House, under section 7A of NZBORA, that the Supreme Court had made a final declaration of inconsistency in the following terms:

“A declaration is made that the provisions of the Electoral Act 1993 and of the Local Electoral Act 2001 which provide for a minimum voting age of 18 years are inconsistent with the right in s 19 of the New Zealand Bill of Rights Act 1990 to be free from discrimination on the basis of age; these inconsistencies have not been justified in terms of s 5 of the New Zealand Bill of Rights Act.”

- 4 Section 19 of NZBORA provides for the right to freedom from discrimination on any of the grounds set out in the Human Rights Act 1993. Section 21 of the Human Rights Act 1993 lists age as a prohibited ground of discrimination from the age of 16.
- 5 Section 5 of NZBORA states that the rights and freedoms set out in NZBORA “may be subject only to such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society”.

Requirement to respond

- 6 When a notification is made under section 7A, a select committee considers and produces a report on the declaration, and the Minister responsible for the relevant enactment must present a Government Response.¹ The Minister responsible for the Electoral Act 1993 is the Minister of Justice and the Minister responsible for the Local Electoral Act 2001 is the Minister of Local Government.

The Justice Committee report

- 7 The Declaration was referred to the Justice Committee on 14 December 2022. The Committee presented its report on the Declaration to the House on 19 May 2023. The Committee recommended, by majority, that the Government:

¹ Sessional Orders of the 53rd Parliament as at 10 May 2023 and NZBORA s 7B.

- 7.1 amend the Local Electoral Act 2001, and any other necessary laws and regulations, to provide for a minimum voting age of 16 years in local elections; and
- 7.2 investigate lowering the minimum voting age in parliamentary elections to 16 years, taking into consideration the legal consequences of a change to the minimum voting age as set out in its report.²

8 The Government thanks the Justice Committee for its report.

Government Response

The right voting age for New Zealand

- 9 We note that 16- and 17-year-olds are more likely to be living at home, be connected to their community, have a stable address, and be attending an educational institution than those just a few years older.
- 10 We also note that the three-year electoral cycle means that some New Zealanders are almost 21 years old before they have their first opportunity to participate in a parliamentary election, and that the government and parliament make decisions every day which have a significant impact on young people.
- 11 The Government has considered the Supreme Court's Declaration, and notes that the current inconsistency, as determined by the Supreme Court, with the right to be free from discrimination on the basis of age should be removed to the extent possible. However, there is not currently Parliamentary support for lowering the parliamentary election voting age to 16. Preparing and progressing a bill that has no prospect of being passed into law would be a costly and time-consuming exercise that would not lead to practical change. For that reason, the Government has determined that the best way forward to remedy these issues is to progress legislation to lower the voting age in local elections, and for the matter of the parliamentary election voting age to be considered by a future Parliament.

Voting age in the Local Electoral Act 2001

- 12 The Government will introduce a Bill, in this parliamentary term, to lower the voting age to 16 for local elections.
- 13 The Supreme Court did not consider the issue of the appropriate age for standing as a candidate. The Government intends to continue the current approach that there will be no distinction between the voting age and candidacy age. The Bill will lower the age for standing as a candidate in local elections to 16.
- 14 The Bill will maintain the minimum age of 18 for voting or candidacy in alcohol licensing trust elections. This is consistent with the purchasing age for alcohol.

² The minimum voting age for parliamentary elections is linked to several other rights and duties under New Zealand law including eligibility to stand as a member of parliament and serve as a juror.

Voting age in the Electoral Act 1993

- 15 The Government generally agrees with the Justice Committee's recommendation to consider lowering the voting age in parliamentary elections to 16 years over a longer time horizon.
- 16 Lowering the age to 16 for parliamentary elections requires the support of at least 75 percent in the House of Representatives or a majority of electors in a referendum.³ The minority views in the Justice Committee report indicate that that there is insufficient support in the current Parliament to make this change.
- 17 The interim report of the Independent Electoral Review, released on 6 June 2023, includes a draft recommendation that the voting age be lowered to 16 for parliamentary elections. The Independent Review will present its final report to the Minister of Justice later this year, for subsequent public release. Responding to the recommendations of the Independent Review will provide a further opportunity to consider lowering the voting age.

³ The provisions establishing the minimum voting age for parliamentary elections are sections 60 and 74 of the Electoral Act 1993, together with the definition of "adult" in section 3(1). These are reserved provisions under section 268 of the Electoral Act meaning they are subject to different amending procedures to other legislation.