

Departmental Disclosure Statement

Broadcasting (Election Programmes and Election Advertising) Amendment Bill
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The departmental disclosure statement for a government Bill seeks to bring together in one place a range of information to support and enhance the Parliamentary and public scrutiny of that Bill.

It identifies:

- the general policy intent of the Bill and other background policy material;
- some of the key quality assurance products and processes used to develop and test the content of the Bill;
- the presence of certain significant powers or features in the Bill that might be of particular Parliamentary or public interest and warrant an explanation.

This disclosure statement was prepared by the Ministry of Justice.

The Ministry of Justice certifies that, to the best of its knowledge and understanding, the information provided is complete and accurate at the date of finalisation below.

13 October 2016

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Part One: General Policy Statement

This Bill amends and updates Part 6 of the Broadcasting Act 1989, which regulates election programmes on television and radio.

The Bill enables political parties to communicate with voters through digital media more flexibly and cost-effectively, while maintaining existing safeguards and restrictions.

This will be achieved by removing the requirements for opening and closing addresses to be broadcast at election time, along with the need for Television New Zealand and Radio New Zealand to provide free broadcasting time for these addresses.

Parties will now be able to use their allocations of funding for Internet advertising, in addition to television and radio as currently permitted.

The funds allocated to a party will remain the limit on the party's use of television and radio for election programmes.

Other rules for the broadcasting of election programmes remain in place.

Part Two: Background Material and Policy Information

Published reviews or evaluations

2.1. Are there any publicly available inquiry, review or evaluation reports that have informed, or are relevant to, the policy to be given effect by this Bill?	YES
<ul style="list-style-type: none"> • <i>Report of the Electoral Commission on the 2014 General Election</i>, Electoral Commission, April 2015. Provided in accordance with section 8(1) of the Electoral Act 1993. http://www.elections.org.nz/events/2014-general-election/election-results-and-reporting/electoral-commission-report-2014-general • <i>Inquiry into the 2014 General Election</i>, Justice and Electoral Committee, Jacqui Dean, Chairperson, April 2016. Presented to the House of Representatives. https://www.parliament.nz/en/pb/sc/reports/document/51DBSCH_SCR68922_1/inquiry-into-the-2014-general-election-i7a 	

Relevant international treaties

2.2. Does this Bill seek to give effect to New Zealand action in relation to an international treaty?	NO
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Regulatory impact analysis

2.3. Were any regulatory impact statements provided to inform the policy decisions that led to this Bill?	NO
A Regulatory Impact Statement was not prepared for this Bill due to the minimal regulatory burden imposed by the amendments.	

Extent of impact analysis available

2.4. Has further impact analysis become available for any aspects of the policy to be given effect by this Bill?	NO
2.5. For the policy to be given effect by this Bill, is there analysis available on:	
(a) the size of the potential costs and benefits?	NO
(b) the potential for any group of persons to suffer a substantial unavoidable loss of income or wealth?	NO
<ul style="list-style-type: none"> • The Bill will result in increased flexibility for political parties to reach the public with their messages in the lead up to general elections. • There is an increase in public funds allocated for election programmes on television and radio, and election advertising on the internet during the election period (the roughly one month period between writ day and the election). The increase in appropriation offsets the value of the broadcasting time allocation, which the Bill removes. • Administering the changes in the Bill will have no or only minor cost implications as it involves relatively small modifications to current practice. The Electoral Commission expects to be able to implement the amendments without the need for any additional funding. 	

2.6. For the policy to be given effect by this Bill, are the potential costs or benefits likely to be impacted by:	
(a) the level of effective compliance or non-compliance with applicable obligations or standards?	YES
(b) the nature and level of regulator effort put into encouraging or securing compliance?	YES
<ul style="list-style-type: none"> The Electoral Commission will make all political parties aware of the new rules resulting from the Bill. On the whole, the Ministry expects general compliance with the legislation. 	

Part Three: Testing of Legislative Content

Consistency with New Zealand's international obligations

3.1. What steps have been taken to determine whether the policy to be given effect by this Bill is consistent with New Zealand's international obligations?
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The only international obligations identified by the Ministry are contained in the United Nations Universal Declaration of Human Rights (primarily Article 21, the right to participate in government and in free elections) and the International Covenant on Civil and Political Rights (primarily Article 25, the right to political participation). The Ministry formed a view internally that the Bill is consistent with these obligations. No further steps were taken.

Consistency with the government's Treaty of Waitangi obligations

3.2. What steps have been taken to determine whether the policy to be given effect by this Bill is consistent with the principles of the Treaty of Waitangi?

Principle 1: Active Protection:

- Analysis of the proposals included consideration of how different groups are, or would be, impacted. The Ministry formed an internal view that Māori candidates, parties and voters would not be disadvantaged by the Bill.

Principle 4: Duty to Consult:

- The Justice and Electoral Committee, in its Inquiry into the 2014 General Election, provided all New Zealanders, including Māori, with the right to submit orally on their proposals or submit in writing.

Consistency with the New Zealand Bill of Rights Act 1990

3.3. Has advice been provided to the Attorney-General on whether any provisions of this Bill appear to limit any of the rights and freedoms affirmed in the New Zealand Bill of Rights Act 1990?

YES

Advice provided to the Attorney-General by Crown Law, or a Bill of Rights Act 1990 section 7 report of the Attorney-General, is generally expected to be available on the Ministry of Justice's website upon a Bill's introduction at: <http://www.justice.govt.nz/policy/constitutional-law-and-human-rights/human-rights/bill-of-rights/>

Offences, penalties and court jurisdictions

3.4. Does this Bill create, amend, or remove:	
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(a) offences or penalties (including infringement offences or penalties and civil pecuniary penalty regimes)?	NO
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(b) the jurisdiction of a court or tribunal (including rights to judicial review or rights of appeal)?	NO
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(a) The Bill does not alter the effect of existing offences in Part 6 of the Broadcasting Act.

3.4.1. Was the Ministry of Justice consulted about these provisions?

YES

The Ministry of Justice is the responsible department for Part 6 of the Broadcasting Act 1989, and has led the policy development of the Bill.

Privacy issues

3.5. Does this Bill create, amend or remove any provisions relating to the collection, storage, access to, correction of, use or disclosure of personal information?	NO
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External consultation

3.6. Has there been any external consultation on the policy to be given effect by this Bill, or on a draft of this Bill?	YES
<p>The Bill implements the recommendation of the Justice and Electoral Committee, in their <i>Inquiry into the 2014 General Election</i>, that parties be given choice and flexibility in how they place their broadcasting allocations.</p> <p>The Committee received public submissions on the issues and proposals covered in its Inquiry, and these have been taken into account both in the Committee's final report and in the policy decisions subsequently made by Government.</p> <p>The Electoral Commission provided information to the Inquiry and has also been consulted on the practical implications of the details of the Bill during each stage of its development. The Electoral Commission is comfortable with the Bill.</p>	

Other testing of proposals

3.7. Have the policy details to be given effect by this Bill been otherwise tested or assessed in any way to ensure the Bill's provisions are workable and complete?	YES
<p>The Electoral Commission has been involved in developing the Bill to ensure the administrative processes are practical and workable.</p>	

Part Four: Significant Legislative Features

Compulsory acquisition of private property

4.1. Does this Bill contain any provisions that could result in the compulsory acquisition of private property?	NO
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Charges in the nature of a tax

4.2. Does this Bill create or amend a power to impose a fee, levy or charge in the nature of a tax?	NO
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Retrospective effect

4.3. Does this Bill affect rights, freedoms, or impose obligations, retrospectively?	NO
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Strict liability or reversal of the usual burden of proof for offences

4.4. Does this Bill:	
(a) create or amend a strict or absolute liability offence?	NO
(b) reverse or modify the usual burden of proof for an offence or a civil pecuniary penalty proceeding?	NO
New section 80J retains the existing strict liability offences of breaching ss 70, 71 or 72.	

Civil or criminal immunity

4.5. Does this Bill create or amend a civil or criminal immunity for any person?	NO
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Significant decision-making powers

4.6. Does this Bill create or amend a decision-making power to make a determination about a person's rights, obligations, or interests protected or recognised by law, and that could have a significant impact on those rights, obligations, or interests?	NO
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Powers to make delegated legislation

4.7. Does this Bill create or amend a power to make delegated legislation that could amend an Act, define the meaning of a term in an Act, or grant an exemption from an Act or delegated legislation?	NO
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4.8. Does this Bill create or amend any other powers to make delegated legislation?	NO
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Any other unusual provisions or features

4.9. Does this Bill contain any provisions (other than those noted above) that are unusual or call for special comment?	NO
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