

Departmental Disclosure Statement

Electoral (Integrity) Amendment Bill

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.

7 December 2017.

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Part One: General Policy Statement

This Bill amends the Electoral Act 1993 in order to enhance public confidence in the integrity of the electoral system by upholding the proportionality of political party representation in Parliament as determined by electors. The Bill provides for a member to vacate their seat in Parliament if they choose to give notice to the Speaker of their ceasing parliamentary membership of the party for which they were elected. The Bill also provides for a vacancy to occur if the member's party leader gives notice that the leader reasonably believes that the member's actions have distorted, and are likely to continue to distort, the proportionality of political party representation in Parliament, as determined at the last general election. It is not compulsory for the party leader to give the notice which leads to a vacancy under this Bill. The giving of notice to the Speaker is at the leader's discretion, which means they can take into account the circumstances and their party's own rules.

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
<p>The Select Committee considered a similar Bill in 2006.</p> <ul style="list-style-type: none"> Report of the Justice and Electoral Committee. (May 2006). Electoral (Integrity) Amendment Bill. Presented to the House of Representatives. https://www.parliament.nz/resource/en-NZ/48DBSCH_SCR3432_1/81603a6c8ec39714f4234304b91190d011b19c0c 	

Relevant international treaties

2.2. Does this Bill seek to give effect to New Zealand action in relation to an international treaty?	NO
2.2.1. If so, was a National Interest Analysis report prepared to inform a Parliamentary examination of the proposed New Zealand action in relation to the treaty?	NO

Regulatory impact analysis

2.3. Were any regulatory impact statements provided to inform the policy decisions that led to this Bill?	NO
<p>Treasury indicated that a Regulatory Impact Analysis is not required, as the analysis would substantially replicate the analysis by the Crown Law Office as to the Bill's consistency with the New Zealand Bill of Rights Act 1990.</p>	

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
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?	NO
(b) the nature and level of regulator effort put into encouraging or securing compliance?	NO

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 and the International Covenant on Civil and Political Rights. These international obligations protect the right to freedom of association and the right to freedom of expression. The Bill significantly limits these freedoms. In considering the Bill's consistency with the New Zealand Bill of Rights Act 1990, the Attorney-General concluded that while the issue is finely balanced, the limitations on the freedoms are justified.
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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?

The Ministry of Justice analysed the Bill and did not identify any implications for the rights and interests of Māori protected by the Treaty of Waitangi.
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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
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The Attorney General has reviewed the draft Bill. The Bill significantly limits freedom of expression and freedom of association and so raises the issue of whether those limits are justifiable under section 5 the New Zealand Bill of Rights Act 1990 (NZBORA). The Attorney-General has concluded that while the issue is finely balanced, the limitations on the freedoms are justified.

The advice is 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/ .
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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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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
The Clerk of the House of Representatives has been consulted on this Bill.	

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
Aspects of the policy in this Bill, which was present in the 2001 Act, were tested when applied by the Supreme Court in <i>Awatere Huata v Prebble</i> . The Court applied the provisions to create a vacancy in an instance where an MP's party membership had lapsed.	

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

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?	YES
<p>The Bill creates a power by which a parliamentary party, through the Speaker, can make a determination that an MP must vacate their seat. This determination affects the MPs rights to freedom of expression and freedom of association recognised by the NZBORA, as well as their interest in remaining an elected member. The Attorney-General has concluded that while the issue is finely balanced, the limitations on the above freedoms are justified.</p> <p>Safeguards or constraints on the use of this power are that, unless initiated by the member concerned, their party leader can only initiate it on the basis of a reasonable belief, having given the MP the opportunity for written response, and with two-thirds of the party caucus agreeing.</p>	

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
4.8. Does this Bill create or amend any other powers to make delegated legislation?	NO

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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