

# Departmental Disclosure Statement

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Local Electoral Matters 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 Department of Internal Affairs.

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

28 March 2018.

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## **Part One: General Policy Statement**

This Bill is an omnibus Bill introduced under Standing Order 263(a). That Standing Order states that an omnibus Bill to amend more than 1 Act may be introduced if the amendments deal with an interrelated topic that can be regarded as implementing a single broad policy. The single broad policy of the Bill is to provide greater flexibility to enable local electoral arrangements to adapt to changing circumstances. This omnibus Bill achieves that single broad policy by–

- amending the Local Electoral Act 2001 to support the conduct of trials of novel voting methods:
- amending the Electoral Act 1993 to enable the design of voting methods to utilise date of birth information:
- amending the Electoral Act 1993 to enable that analysis of voter participation in local elections (including trials) can utilise age group information.

## Part Two: Background Material and Policy Information

### Published reviews or evaluations

<b>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?</b>	<b>Yes</b>
<p><i>The Report of the Justice and Electoral Committee Inquiry into the 2013 local authority elections.</i> Published on 25 July 2014. This report can be found at: <a href="https://www.parliament.nz/en/pb/sc/reports/document/50DBSCH_SCR56857_1/inquiry-into-the-2013-local-authority-elections">https://www.parliament.nz/en/pb/sc/reports/document/50DBSCH_SCR56857_1/inquiry-into-the-2013-local-authority-elections</a></p> <p>Two of the recommendations in the report were that:</p> <ol style="list-style-type: none"><li>1. the Government encourage the use of alternative methods for casting votes and the collection of ballot papers (such as postal and booth voting, and placing ballot boxes at various locations); and</li><li>2. trials of any online voting systems be conducted successfully before any system is introduced nationwide.</li></ol>	

### Relevant international treaties

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

<b>2.3. Were any regulatory impact statements provided to inform the policy decisions that led to this Bill?</b>	<b>YES</b>
<p>The Department of Internal Affairs (the Department) was the authorising agency for the regulatory impact assessments (RIA) dated 8 March 2018. This can be accessed at: <a href="https://www.dia.govt.nz/diawebsite.nsf/wpg_URL/Resource-material-Regulatory-Impact-Statements-Index?OpenDocument">https://www.dia.govt.nz/diawebsite.nsf/wpg_URL/Resource-material-Regulatory-Impact-Statements-Index?OpenDocument</a></p>	

<b>2.3.1. If so, did the RIA Team in the Treasury provide an independent opinion on the quality of any of these regulatory impact statements?</b>	<b>NO</b>
<p>As agreed in consultation with the Treasury, the RIA was assessed internally by the Department's Regulatory Impact Analysis Quality Assurance Panel. This RIA was determined to meet the quality assurance criteria.</p>	

<b>2.3.2. Are there aspects of the policy to be given effect by this Bill that were not addressed by, or that now vary materially from, the policy options analysed in these regulatory impact statements?</b>	<b>NO</b>
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### Extent of impact analysis available

<b>2.4. Has further impact analysis become available for any aspects of the policy to be given effect by this Bill?</b>	<b>NO</b>
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<b>2.5. For the policy to be given effect by this Bill, is there analysis available on:</b>	
<b>(a) the size of the potential costs and benefits?</b>	<b>YES</b>
<b>(b) the potential for any group of persons to suffer a substantial unavoidable loss of income or wealth?</b>	<b>NO</b>
The RIA contains analysis of the costs and benefits of the proposals given effect by the Bill, this can be found at the links provided under question 2.3	

<b>2.6. For the policy to be given effect by this Bill, are the potential costs or benefits likely to be impacted by:</b>	
<b>(a) the level of effective compliance or non-compliance with applicable obligations or standards?</b>	<b>NO</b>
<b>(b) the nature and level of regulator effort put into encouraging or securing compliance?</b>	<b>NO</b>

## Part Three: Testing of Legislative Content

### Consistency with New Zealand's international obligations

<b>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?</b>
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No international obligations are relevant to this Bill. This was confirmed by referring to Appendix 3 of the Legislation Advisory Committee, *Guidelines on Process and Content of Legislation*, which contains a list of legislation that implements various treaties. The policies given effect to by the Bill do not affect New Zealand's international obligations.

### Consistency with the government's Treaty of Waitangi obligations

<b>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?</b>
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The principles of the Treaty of Waitangi were considered during the development of the Bill. No issues in relation to the Treaty of Waitangi were identified. A number of government agencies and stakeholders were consulted during the policy development stage, including Te Puni Kōkiri, and no issues were raised.

### Consistency with the New Zealand Bill of Rights Act 1990

<b>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?</b>	<b>YES</b>
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The Department understands the Ministry of Justice provided its advice to the Attorney-General. Advice provided to the Attorney-General by the Ministry of Justice, or a section 7 report of the Attorney-General, is generally expected to be available on the Ministry of Justice's website upon introduction of the Bill. Such advice, or reports, will be accessible on the Ministry's website at:

<https://www.justice.govt.nz/justice-sector-policy/>

### Offences, penalties and court jurisdictions

<b>3.4. Does this Bill create, amend, or remove:</b>	
<b>(a) offences or penalties (including infringement offences or penalties and civil pecuniary penalty regimes)?</b>	<b>NO</b>
<b>(b) the jurisdiction of a court or tribunal (including rights to judicial review or rights of appeal)?</b>	<b>NO</b>

### Privacy issues

<b>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?</b>	<b>YES</b>
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The amendments to the Electoral Act 1993 both amend provisions relating to the access of personal information already collected by the Electoral Commission.

The amendment to section 112 clarifies, to remove any doubt, the existing provision for disclosing age group information does extend to local authorities for the purpose of analysis of participation in an election. The Department's Privacy Impact Assessment threshold assessment found no increased privacy concerns or risks were anticipated as a result of this

amendment.

The amendment to section 113 will create a provision for the Electoral Commission to provide date of birth information to local authorities if this is required for the purpose of conducting an election. The Department prepared a Privacy Impact Assessment report on this amendment dated 8 March 2018. This can be accessed at:

[https://www.dia.govt.nz/diawebsite.nsf/wpg\\_URL/Resource-material-Regulatory-Impact-Statements-Index?OpenDocument](https://www.dia.govt.nz/diawebsite.nsf/wpg_URL/Resource-material-Regulatory-Impact-Statements-Index?OpenDocument)

**3.5.1. Was the Privacy Commissioner consulted about these provisions?**

**YES**

The Privacy Commissioner commented:

*“The Privacy Commissioner is supportive of modernising the voter system. It is the Privacy Commissioner’s role to assess new or novel uses of personal information. The proposed distribution of date of birth information for local elections to local authorities is a new use of that personal information.*

*The Commissioner considers that the case has not been made for the amendment proposed because:*

*a) collection and use of date of birth information for trial purposes provides little additional assurance of identity; and*

*b) date of birth information is unlikely to be used in the final online voting solution;*

*The Commissioner therefore does not support the amendment to section 113.*

*The Privacy Commissioner notes that internationally online voting models generally require more stringent identity verification than a code + date of birth and therefore recommends that Ministers instruct officials to enquire more widely as to the options for better achieving the identity authentication of voters, including among other options the use of RealMe”.*

## External consultation

<b>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?</b>	<b>YES</b>
<p>Alongside the consultation with the Office of the Privacy Commissioner discussed under question 3.5 above, the Department consulted the following agencies and representative bodies on both the policy to be given effect by the Bill and the draft Bill:</p> <p>The Electoral Commission – <i>“The Commission supports modernising voting methods and looks forward to working with the local authority sector on increasing participation and modernising voting, including authentication methods.</i></p> <p><i>We think the best way to increase uptake and ensure a successful online trial is to take a measured approach where both accessibility and the integrity of the election are considered. This approach is the best way to minimise the likelihood of an incident occurring that would significantly set back efforts to modernise local body and parliamentary elections.</i></p> <p><i>The Electoral Commission agrees with the conclusion of the Privacy Commissioner that authentication using a voter’s date of birth is not particularly robust. Enrolment information is provided under compulsion. We would defer to the Privacy Commissioner on his view on whether the benefit and impact justify the supply of date of birth information for local body elections.”</i></p> <p>The Commission is also of the opinion that local authorities can already access data under section 112 of the Electoral Act 1993. The purpose of this amendment is to remove any doubt.</p> <p>New Zealand Society of Local Government Mangers and Local Government New Zealand – support the policy proposals and wording giving effect to these in the Bill.</p> <p>The proposals in the Bill were also discussed, in general terms, with representatives of some councils participating in a working group to develop a trial of online voting.</p>	

## Other testing of proposals

<b>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?</b>	<b>NO</b>
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## 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?	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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<b>4.8. Does this Bill create or amend any other powers to make delegated legislation?</b>	<b>YES</b>
<p>Clause 5 and 6 of the Bill extend the regulation-making powers in section 139(1)(c) of the Local Electoral Act 2001. This amendment enables regulations to be made that authorise the use of a voting method by a specified class of elector in specified local elections or polls.</p> <p>Clause 7 of the Bill amends section 141 of the Local Electoral Act 2001 to enable regulations that authorise a voting method trial to apply to subdivisions of electors, and provides that where regulations provide access to date of birth information, that information must be protected in specified ways.</p> <p>Clause 8 provides that regulations relating to electoral rolls must not provide for any electoral roll to include an electors' date of birth. Clause 9 makes a consequential amendment to regulation 11 of the Local Electoral Regulations 2001 to provide that an electoral roll must not include an elector's date of birth.</p> <p>The purpose of the power to enable regulations to be made that authorise the use of a voting method by a specified class of elector in specified local elections or polls enables the Government to provide for trials of future voting methods with reduced risk. The level of technical detail that would be provided in the regulations would be of an extent and nature that is not generally considered appropriate for primary legislation. Regulations promulgated under section 139 of the Local Electoral Act 2001 will be subject to normal procedural and disallowance processes, Regulations Review Committee complaint oversight, and regulatory impact statement requirements.</p> <p>Amendments to the content of an electoral roll for local authorities is to ensure privacy of electors' personal information and prevent this from being published as part of the electoral roll provided for public inspection.</p>	

#### Any other unusual provisions or features

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