He Arotake Pōtitanga Motuhake
Independent Electoral Review

Interim report

Our draft recommendations for a fairer, clearer, and more accessible electoral system

June 2023

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Message from the Chair

Kia ora koutou katoa

The electoral system is an essential part of Aotearoa New Zealand's democracy.

Over the past year, the Independent Electoral Review has been reviewing the electoral system to find out what is working, and what could be improved now and for future generations. We've heard from a range of New Zealanders from diverse backgrounds and viewpoints. We've also looked back, drawing on ideas that have emerged from previous work.

It is now clear to us that while many parts of Aotearoa New Zealand's electoral system work well, we think it can be better. This report sets out the key changes we're proposing, with a view to receiving your input.

One of the main ideas underpinning our draft recommendations is fairness. Getting a 'fair go' is an idea that resonates with New Zealanders. But we've found several areas where our current laws are not as fair as they could be.

We also want to make sure that as many people as possible can take part in our electoral system, whether as voters, candidates, or members or supporters of political parties. We think that making our electoral laws fairer, clearer, and more accessible in the ways that we recommend will encourage this kind of participation and help ensure the success of our democracy in the future.

We hope that our vision for the future of Aotearoa New Zealand's electoral system will resonate with you.

We're due to send our final report to the government in November 2023. Prior to 17 July 2023 we want to hear from you so we can take your views into account when finalising our recommendations. Please tell us what you think. I look forward to hearing from you.

Ngā mihi nui

Deborah Hart

Chair, Independent Electoral Review Panel

Have your say

We want to hear from you

Over the past year, we have been reviewing Aotearoa New Zealand's electoral system to find out what is working well and what could change. We have formed an initial view and would like to hear what you think. This will help us to test our thinking and refine our proposals, before we finalise our report for the Minister of Justice.

In this report, we set out our draft recommendations for each area of the electoral system and then provide an explanation of how we reached this view. The executive summary covers our main proposals.

You can find translated and accessible versions of this report, as well as an overview of the key themes from our proposals, on our website at https://electoralreview.govt.nz/.

How to have your say

We welcome your feedback on our draft recommendations.

Please share your thoughts with us through our online consultation tool. You have the option of filling in a survey or uploading your own written submission. You can answer as many or as few questions as you like. We encourage you to share what matters most to you. To begin, scan the QR code or visit: https://electoralreview.govt.nz/submit/.

Our website provides information on how to make a submission in an alternate format, like New Zealand Sign Language. You can also send your submission to:

Independent Electoral Review

Free Post 113

PO Box 180

Wellington 6140

We have listed dates for upcoming public webinars on our website. Please sign up if you are interested in hearing from the panel.

If you have any questions, please email us at secretariat@electoralreview.govt.nz.

Closing date to share your views

The closing date for all submissions is **17 July 2023**. Submissions received after this date may not be able to be considered. If this closing date might affect or prevent you or your organisation's participation, please let us know.

Proactive release and Official Information Act obligations

The panel may proactively release the submissions that it receives. By default, if submissions are proactively released, they will be published with names but not with the contact information and demographic details of submitters. If you want your name to be anonymised, please state this clearly when you send it to us.

Your submission could also be subject to a request for information under the Official Information Act 1982 (the Official Information Act).

Please let us know if you think there are reasons we should not release information you have provided in your submission, and in particular:

- which part(s) you think should be withheld, and
- the reason(s) why you think it should be withheld.

We will take your views into account when responding to requests under the Official Information Act. However, this does not guarantee that your submission will be withheld. Valid reasons for withholding official information are specified in the Official Information Act.

Privacy Act obligations

The Privacy Act 2020 governs how the Independent Electoral Review collects, holds, uses, and shares personal information about you and the information you provide. You have the right to access and to correct this personal information.

Executive Summary

Background

1. We were established as an independent panel in May 2022 by the Minister of Justice to review our electoral system. Our Terms of Reference cover most aspects of the electoral system but exclude online voting, alternatives to the Mixed Member Proportional (**MMP**) electoral system, the retention of the Māori electorates, local government elections or broader constitutional matters like the re-establishment of an Upper House.

2. Between September and November 2022, we met with a wide range of New Zealanders and received over 1,700 written submissions. We are grateful to all those who took the trouble to tell us their views. We have taken careful account of them when developing our own views. We now seek your feedback on the preliminary conclusions and recommendations we present in this interim report on what we think is working well and what needs to be improved. After we have considered all feedback, we will prepare our final report which we will present to the Minister by the end of November this year.

Part 1: Foundations

Overall design of electoral law

3. The Electoral Act 1993 needs to be thoroughly redrafted to modernise its language, structure, and content to make it easier to understand, implement and keep updated. Some parts are too detailed and some are not detailed enough. It specifies how things are to be done (like using the postal service) rather than what is to be done and to what standard, making it difficult to innovate. It uses outdated language in certain areas, such as provisions referring to mental health and people with disabilities.

4. Alongside this redrafting, the offence provisions also need an overhaul and consolidation to ensure they are consistent and fit for purpose. There are a great many. Some are outdated, some are unclear, some have inconsistent penalties, and for some it is not clear that an offence is the best means of obtaining compliance.

5. An important feature of electoral law in Aotearoa New Zealand is the entrenched, or reserved, provisions. These provisions can only be changed by a majority vote in a public referendum or by a 75 per cent vote in the House of Representatives. We found inconsistencies and gaps across the current entrenchment provisions and recommend additional provisions should be entrenched.

Upholding te Tiriti o Waitangi / the Treaty of Waitangi

6. One of the Crown's most essential tasks is upholding its obligations under te Tiriti o Waitangi / the Treaty of Waitangi (**te Tiriti / the Treaty**) as they relate to our most fundamental of democratic rights: the right to vote and contest free, fair, and regular elections. The Crown must redress past breaches, actively protect Māori electoral rights, and provide equitable opportunities for Māori electoral participation. Decades of systematic breaches by the Crown have resulted in consistently lower rates of Māori voter engagement and participation. The Crown must do better.

7. We recommend that the Electoral Act explicitly requires decision-makers to give effect to te Tiriti / the Treaty and its principles when exercising all functions and powers under the Act and become an explicit statutory objective of the Electoral Commission. A statutory obligation will ensure the Electoral Commission has clear authority to continue its work to reach Māori voters and candidates. We also recommend the Commission works with Māori to enable Māori governance over Māori electoral data.

Part 2: The voting system

Improving MMP

8. We think the way seats in parliament are won in elections could be fairer and should more closely reflect the number of votes each political party gets. Our recommended changes to the core MMP settings function as a package.

9. The current party vote threshold of five per cent is higher than it needs to be. We recommend lowering the threshold to 3.5 per cent. Lowering the threshold will broaden representation by allowing more minor parties into parliament, while still allowing for the formation of stable parliaments and effective governments.

10. We recommend abolishing the one-electorate seat threshold. Currently, a party that wins an electorate is entitled to its share of list seats as well, even if it did not meet the party vote threshold. We have concluded that this gives voters in some electorates more say than voters in other electorates about which parties get represented in parliament.

11. An overhang seat occurs if a party wins more electorate seats than its share of the party vote would otherwise have entitled it to. When this happens, that party keeps all the electorate seats it has won, but the number of list seats allocated to other parties is increased until the next election. This keeps parliament in proportion to the party vote. We recommend removing these extra seats for other parties. Instead, fewer list seats should be allocated. We only recommend this change in conjunction with removing the one-electorate seat threshold so as to limit the number of overhang seats.

12. We propose fixing the ratio of electorate and list seats at 60:40 with an additional proviso that the size of parliament should always be uneven to avoid hung parliaments. The effect of this recommendation would be that parliament would increase gradually in size over time in proportion to changes in our population.

The parliamentary term and election timing

13. Parliaments last for three years. We heard arguments for and against changing the term of parliament, which can only be done by a 75 per cent majority vote in parliament or by a majority in a public referendum. We think this is a decision for voters. It is 32 years since we last had a referendum on whether the term of parliament should be longer. It is time for another referendum, supported by an information campaign about the pros and cons of a longer term.

14. Currently, the prime minister can call a general election at any time within the three-year parliamentary term. In recent years, the prime minister has given plenty of notice – usually announcing the election date early in election year. This convention appears to work well, balancing the need for both flexibility and certainty and so we do not recommend any change.

Vacancies in parliament

15. We think the grounds providing for when a Member of Parliament's (**MP**) seat is vacated remain largely fit for purpose. We propose that the ground for non-attendance be changed from the term of parliament to three months and that the ground for mental incapacity be removed as it is unnecessary.

16. However, we think the 'party-hopping' rules should be abolished. At the moment, an MP can lose their seat if they leave, or are removed from, their party. We heard from some submitters that this reflects the central importance of parties under MMP and the accountability of MPs to their parties and the voters that support them. However, in our view, MPs have the right to freedom of expression and of association and should be able to express dissent with the views of their party. Getting rid of these rules would protect those rights and act as an important check on parties and on the government.

17. Some submitters argued that by-elections are an expensive and unnecessary exercise. However, in our view they continue to fill an important democratic function by providing local representation and should be retained.

Part 3: Voters

18. The rules for who can vote and how, and the way voting is administered, are of fundamental importance to our electoral system and democracy. We have focussed on how to make voting accessible and improve voter participation.

Voter eligibility

19. The right to vote is a fundamental right, recognised and protected by international and New Zealand law. Having reviewed the evidence before us, we recommend lowering the voting age to 16. The small risk of giving the vote to some young people who may not be ready to exercise that right is outweighed by the potential benefits of enfranchising those who are ready.

20. Keeping the voting age at 18 could be viewed as a proportionately greater unjustified age discrimination against Māori. The eligible voters of a given population – and those who turn out to vote – get to choose who represents them. Relative to non-Māori, a greater proportion of the Māori population is aged 16 or 17. These young people are currently represented through the votes of those who are eligible to vote. This means there are proportionately fewer votes to represent the entire Māori population.

21. We also recommend extending the time that New Zealand citizens can spend overseas without losing the right to vote. People have more ways than ever before to stay connected. We think most citizens overseas would continue to be invested in and affected by government policies beyond a single electoral cycle and we recommend extending it to two electoral cycles.

22. Permanent residents, which for electoral purposes means someone living in Aotearoa New Zealand who can stay here indefinitely, may vote after living in Aotearoa New Zealand for a year. We recommend extending this period to one electoral cycle, to provide enough time to establish a sufficient connection to Aotearoa New Zealand. The amount of time that permanent residents can spend overseas without losing the right to vote should stay at 12 months.

23. We recommend all prisoners have the right to vote. Currently, anyone serving a prison sentence of three-years or more cannot vote. Given the fundamental nature of the right to vote, disenfranchisement should not form part of someone's punishment.

Enrolling to vote

24. Currently, enrolment is compulsory, but voting is not. We do not recommend changing these rules, because they are generally working well.

25. Earlier this year, it became possible for people of Māori descent to choose whether to enrol on the general roll or the Māori roll (known as the Māori electoral option) at any time except in the three months leading up to a general election, local election, or once a seat has been formally declared vacant before a by-election happens. While this change helps to address a long-standing issue for Māori voters, we don't think it goes far enough.

26. We recommend that Māori voters should be able to switch rolls at any time up to, and including, election day. The period just before an election is when people are most likely to be thinking about their choice of roll. Based on the evidence available, the current law could prevent people from exercising the option exactly when they are most likely to do so. Extending the option may encourage voter participation.

27. We recommend continuing to limit the exercise of the Māori electoral option during the time after the Speaker of the House gives notice of a vacancy, allowing a by-election to be called. This will stop people switching rolls to vote in elections that they would otherwise not be eligible for.

28. The current rules restrict people from being on different rolls for local body and general elections simultaneously. The growth of local Māori wards around the country makes this choice increasingly relevant for Māori voters. We recommend removing this restriction to reduce administrative barriers.

29. We think considerations of digital enrolment raise important questions that need careful consideration and debate. We are interested in your views on whether and how a person's residence should be verified when enrolling and during the enrolment update campaign.

Voting in elections

30. We make recommendations to modernise voting processes and accommodate changes in voter behaviour. It has become more common to vote before election day (during the advance voting period) than on election day. Nearly 70 per cent of voters voted before election day in 2020.

31. We think the rules for advance voting and election day voting should be more consistent. A minimum period of 12 days should be set for in-person advance voting. Special votes that can be cast in advance, such as postal and dictation votes, could continue to be offered over a longer timeframe.

32. Standards should be set to provide clear direction to the Electoral Commission on what it needs to take account of when choosing polling places, while preserving its

flexibility to determine how those standards should be met. The standards should include a range of accessibility measures.

33. The popularity of advance voting means the distinction between the advance voting period and election day is no longer fit for purpose. Rules regulating electioneering on election day are currently much more restrictive than they are for the advance voting period. We recommend changing election day restrictions to match advance voting rules, so one set of rules applies to the whole period. However, to protect the secrecy of the vote, we recommend people should not be allowed to photograph their ballot papers.

34. We recommend that only party secretaries and independent candidates should be permitted to appoint scrutineers (one per polling place). MPs should be prevented from being scrutineers so as not to influence voters. We recommend a new offence of threatening, intimidating, or harassing electoral officials to signal the importance of protecting their role in the voting process.

Emergencies and disruptions

35. We have all become acutely aware of the potential for natural disasters, pandemics, or other unforeseen events to disrupt an election. Existing emergency provisions already provide for delaying an election or implementing alternative voting processes. We recommend updating these provisions to include a new last resort power to reconvene an expired or dissolved parliament in the event of a catastrophic disaster. We seek feedback on appropriate safeguards for this significant new power.

Counting the vote and releasing results

36. To reduce administrative costs and speed up preliminary election results, we recommend enabling electronic vote counting of preliminary results in the future. This change would enable the Electoral Commission to start long-term work towards a live digital roll mark-off, where voters are marked off the roll electronically. This change supports progress towards a future move away from special voting. It would allow people voting outside the electorate where they are enrolled and people who enrol or update their details later in the election period to cast an ordinary vote. Digital technology has been successfully used for the count in previous referendums. Safeguards, including manually counting the official result, can manage any risks.

Improving voter participation

37. Voter participation is central to a healthy democracy. People are more likely to vote if they understand why voting is important in a democratic system. The Electoral Commission plays a crucial role in improving voter participation and we

support its continued work in this area. We also recommend developing a funding model to support community-led initiatives for civics and citizenship education. Local people and groups are best placed to make the connections to reach communities, but they are not resourced to do so. The fund should be administered outside the Electoral Commission.

38. We also recommend some changes to rules that create barriers for certain voters to participate. For example, we recommend removing a barrier for the rainbow community by allowing people to use preferred names in addition to their legal name when enrolling and voting and enabling people on the unpublished roll to cast an ordinary vote to make voting easier for people concerned for their safety.

Part 4: Parties and candidates

Standing for election

Party regulation

39. Political parties play a vital role in our electoral system. They need to be regulated because they exercise significant public power in the contesting of elections, and they also receive state funding. However, parties must also be able to organise themselves, determine policy, select candidates, and contest policy in ways which reflect their widely differing sizes, ethos, and organisational approaches. Our recommendations balance these two considerations.

40. We think many of the current rules are working well, although we recommend ways to strengthen them. We recommend strengthening the requirements for parties to follow democratic procedures when selecting both electorate and list candidates and allowing the Electoral Commission to deregister a party that fails to do so. Other recommendations include requiring a party to register three months before an election, and requiring registered parties to put forward a list of candidates at each election. We recommend giving the Electoral Commission a power to audit the requirement for registered parties to have 500 current financial members who are enrolled to vote. We also recommend extending the time when a party cannot be registered to the start of the regulated period (that is, about three months before election day).

41. We recommend closing a current loophole where an unregistered party can avoid disclosure requirements by becoming a component party of a registered party.

Candidates

42. Eligibility to stand as a candidate is currently confined to citizens who are registered electors. We think this remains appropriate. Accordingly, it follows that if our recommendations on voting rights are accepted, then these groups should also be able to stand as candidates. That is, 16- and 17-year olds, prisoners and

overseas citizens who have been away from Aotearoa New Zealand for no more than two electoral cycles.

43. We heard from some that electorate candidates should only be able to contest electorates in which they reside and that candidates should not be able to contest an electorate and be on a party list at the same time (dual candidacy). In our view these proposals would undermine the ability of parties to stand strong candidates in all electorates and we do not recommend them.

Political finance

44. Political finance is fundamentally important to the electoral system. Money is used by parties and candidates for a wide range of activities, including developing policy, communicating with the public, and campaigning. Making donations and providing loans is a form of political expression and electoral participation, allowing people to support parties and candidates of their choosing. The right to do so is protected by the New Zealand Bill of Rights Act 1990.

45. However, there are risks to electoral integrity and public confidence in the electoral system if some people are able to unduly influence parties and candidates through making donations or loans. Even the perception of undue influence can undermine the perceived trustworthiness of our democratic processes.

46. Our recommended changes may reduce private funding and increase compliance costs for parties. We recommend changes to state funding to address these effects. Parties are central to our electoral system and supporting them in a fairer, more transparent and up-to-date way is vital.

Private funding

47. Private funding is an important source of political party finance and one that causes considerable concern for the public. We recommend simplifying and tightening a number of vulnerabilities in the existing private funding rules to restore public trust by increasing transparency.

48. Parties and candidates mostly rely on private loans and donations to pay for their day-to-day activities and for their election campaigns. In Aotearoa New Zealand, people have the right to support any party. While this ability requires protection, it also risks enabling the exercise of undue influence through financial means.

49. We recommend that only individuals on the electoral roll should be able to loan or donate to parties and candidates. All entities, whether trusts, companies, trade unions, iwi, hapū, or unincorporated societies should be prohibited from providing funding. They will continue to be able to participate as third-party promoters or by donating to third party promoters.

50. Donation and loan amounts are currently uncapped, and we recommend they are capped at $30,000 per party for each election cycle. We also recommend reducing the amount of money that can be donated anonymously from $1,500 to $500. The reduction will improve transparency while still allowing for 'grass-roots' fundraising. The rarely used protected disclosure regime for large donations should be removed.

51. Reporting and disclosure requirements should increase in frequency ahead of elections. We recommend requiring parties and candidates to disclose the name of large donors (donations of more than $10,000) on a weekly basis in the three months leading up to election day. The disclosure threshold for large donations should reduce from $5,000 to $1,000. Donations of $200 or less should be exempt from recording requirements.

52. The definition of donation should be expanded to include event tickets, paying for access to party members such as MPs, and to purchasers and winners of goods and services at fundraisers.

State funding

53. To balance the effect of our private funding recommendations on the way parties raise funds, we recommend a modest increase in the levels of state funding provided. We appreciate the contentious nature of public spending on parties that individual taxpayers may not support, but parties play a vital constitutional role in our system.

54. The changes we recommend to private funding aim to increase transparency and incentivise parties to seek larger numbers of small donations. These changes are likely to affect the amount received privately. We recommend a mix of direct and indirect state funding to compensate. Per-vote funding should be introduced on a sliding scale. Although this can favour parties already in parliament, other measures we recommend will offset this effect.

55. Tax credits of 33 per cent should be available for political donations of up to $1,000.

56. Base funding of $10,000 should be made to all registered parties, to support compliance with legal obligations. This funding will assist minor parties in particular to meet transparency and disclosure costs.

57. A new fund – Te Pūtea Whakangāwari Kōrero ā-Tiriti / Treaty Facilitation Fund – should be available to facilitate party and candidate engagement with Māori communities, in ways appropriate for Māori.

58. Parties should become eligible to apply to the Election Access Fund Te Tomokanga — Pūtea Whakatapoko Pōtitanga to meet the costs of providing materials to voters with accessibility needs in their campaigns.

59. Costing is difficult to do with any precision, particularly for tax credits. Based on averages of votes received during the past three elections, and the current number of registered parties, we estimate per-vote funding could cost approximately $5.6 million per election, and base funding $160,000 per annum. We note that the approximately $4 million in state funding currently provided through the broadcasting allocation (discussed below) should be reapplied to our funding model. Furthermore, Parliamentary Service funding for the parliamentary wing of parties in the 2022/23 financial year came to approximately $45 million. As some of this funding appears to be spent on election-related activity, some redirection to our proposed state funding model could be considered.

Election advertising and campaigning

60. An election advertisement is generally one that encourages people to vote for or against a particular party or candidate, whether or not they are mentioned specifically. We support the current approach of applying low-level advertising restrictions all the time – such as requiring advertisements to include details of who has placed them – and increasing restrictions closer to the election.

61. We recommend that restrictions on election day advertising should only apply inside or within 10 metres of polling places, which is the approach that currently applies during advance voting. The Electoral Commission should be able to remove election billboards after the election if they have not been taken down, and charge parties for doing so.

Media-specific regulation of advertising

62. Advertising and campaigning are increasingly done over social media and less often on television and radio. The specific rules that apply to broadcasting party and candidate advertisements on television and radio should be removed, along with the current state funding provided through the broadcasting allocation. Instead, parties and candidates should be free to advertise on television and radio as they wish, up to their campaign spending limits.

63. Online advertising, including its targeted (and microtargeted) nature, is a fast-moving and complex area. It is increasingly being used by parties and some protections are in place. We are interested in feedback about whether existing data collection and privacy legal frameworks adequately address concerns about microtargeting.

Campaign spending limits and disclosure requirements

64. Advertising spending limits apply to all electoral participants from three months until the day before election day.

65. We recommend setting a flat spending limit of $3.5 million for all parties, a cap of $31,000 for candidates contesting a general election (or $62,000 for a by-election) and setting the limit for third-party promoters at 10 per cent of the party limit. The

$3.5 million limit reflects amounts commonly spent by the National Party and the Labour Party (including the funding they currently receive through the broadcasting allocation). We do not recommend changing current disclosure requirements.

Part 5: Electoral administration

Electoral Commission

66. The Electoral Commission delivers well-run elections with high levels of integrity. It also facilitates participation in the electoral system, including by working directly with communities with lower participation rates. We think it is important the Commission focuses on understanding and addressing barriers for these communities. We therefore recommend amending the requirement for the Commission to facilitate participation to a requirement that it facilitates equitable participation. The Commission could consider appointing advisory groups to help inform its work.

67. The Electoral Commission board should be expanded from three to five members. The Minister of Justice should also be required to ensure that the board collectively has skills, experience, and expertise in te Tiriti / the Treaty, te ao Māori and tikanga Māori. The board should also collectively have knowledge and experience of working with diverse communities such as rural communities, people from migrant backgrounds, and disabled people.

Accessing the electoral rolls

68. Accurate and up-to-date electoral rolls are critical to conducting elections and to the integrity of the system. As well as having a central part to play in the electoral system, electoral roll data is accessed for other purposes, from research, to preparing jury lists and by political parties wanting to canvass voters before elections. The rolls contain personal identifiable data such as names, addresses and occupations.

69. The need to strongly protect personal data has become more critical now that technology can be used to data-match and target people. We consider electoral roll data should be more stringently controlled by amending the Electoral Act in line with the Privacy Act's requirements.

70. Public inspection and purchase of roll data should cease, as should access to information about who has voted. Access should remain for social science and health research, but with tighter controls.

71. Roll data should not be available to political parties. MPs should be able to contact constituents for parliamentary purposes, but this should be done through the Parliamentary Service.

Boundary reviews and membership of the Representation Commission

72. The boundary review process, conducted by the Representation Commission, determines how the country is divided into electorates. We recommend Stats NZ is given flexibility on the data sources they use to calculate electoral populations, such as using the estimated resident population, instead of being required to rely on census data. We also recommend increasing how much an electorate's population size can depart from the average size (known as the population quota tolerance) from plus or minus five per cent to plus or minus 10 per cent.

73. We recommend the Representation Commission should have to consider communities of interest for Māori alongside general communities of interest when it sets general electorate boundaries as well as when it sets Māori electorate boundaries.

74. The Representation Commission includes political party representation (government and opposition) and government officials. When determining Māori electorate boundaries, the Commission also includes the chief executive of Te Puni Kōkiri and two people of Māori descent (government and opposition). We recommend these members are also members when general electorate boundaries are being considered.

Electoral offences, enforcement and dispute resolution

75. Electoral offences need a comprehensive overhaul and consolidation. The offences, all criminal, have been added and amended over time, with some carried over from earlier electoral laws. As a result, there are some out-of-date offences and clear inconsistencies in the treatment of various behaviours.

76. The offence of 'treating' voters with food, beverage and entertainment before elections should be repealed, and a judge should have a discretion to restore voting rights to someone placed on the Corrupt Practices List.

77. The Electoral Commission lacks a full suite of investigative powers. We recommend giving the Electoral Commission additional investigative powers, such as requiring documents, and undertaking audits, as well as the ability to refer serious financial offending directly to the Serious Fraud Office.

78. The Electoral Commission also has no ability to enforce offences (enforcement is done by the Police and the Serious Fraud Office). As part of the overhaul of all offences, the ability of the Commission to impose low-level sanctions should be considered.

79. The Electoral Act contains mechanisms for resolving election outcomes through election recounts and election petitions. To prevent frivolous or vexatious actions, judges should have the discretion to decide whether a recount goes ahead: whether at the electorate or national level. If this is accepted, we recommend removing deposits required for recounts.

Security and resilience

Managing disinformation

80. The spread of disinformation (that is, false information, intentionally spread to mislead or influence people), especially online, has the ability to undermine the integrity of the electoral system and distort free and open debate. While it is of particular importance to the electoral system, the issue is far broader than the electoral system. We are concerned about the risk disinformation presents to the security and resilience of the electoral system, and to voter participation. Upholding rights to freedom of expression and freedom of association are also important.

81. We recommend extending the timeframe for the offence of knowingly publishing false information to influence votes during the voting period, so that it covers the time for advance voting as well as election day.

82. Internationally, finding ways to regulate disinformation is a developing area. In Aotearoa New Zealand, ways to address it are being considered by social media companies and by the Government. The outcome of that work will impact on the electoral system. In the meantime, education is the best tool we have.

Foreign interference

83. Efforts by other countries to influence, disrupt or subvert our national interest present a risk to our electoral system. The New Zealand Security Intelligence Service did not identify systemic, state-sponsored interference activity in the 2020 election. However, electoral interference remains a key area of its focus, due to the prevalence of interference in elections around the world. The New Zealand Secret Intelligence Service has confirmed a small number of states engage in interference activities against our national interest, including by targeting our political sector.

84. Our current law contains a number of safeguards, and the Electoral Commission works with our security agencies to identify potential foreign interference. We recommend addressing an existing vulnerability in our system by preventing third-party promoters using money from overseas persons to fund election advertising in the three months before an election.

Draft Recommendations

Part 1: Foundations

Chapter 2: The Overall Design of Electoral Law

R1. **Redrafting the Electoral Act 1993 to incorporate the changes set out in this report and to update the statute's structure and language with the aim of making it modern, comprehensive and accessible.**

R2. **Reassessing the appropriate use of primary and secondary legislation as part of the redrafting process.**

R3. **Adding to the currently entrenched provisions by entrenching:**

- **a. the Māori electorates (to the same extent that the general electorates are already entrenched)**
- **b. the method for the allocation of seats in parliament and the party vote threshold**
- **c. the right to vote and to stand as a candidate**
- **d. the process for removing members of the Electoral Commission.**

Chapter 3: Upholding te Tiriti o Waitangi / the Treaty of Waitangi

R4. **Requiring decision-makers to give effect to te Tiriti o Waitangi / the Treaty of Waitangi and its principles when exercising functions and powers under the Electoral Act. This obligation should apply generally across the Act and be explicitly included in the Electoral Commission's statutory objectives.**

R5. **The Electoral Commission prioritises establishing Māori governance over data collected about Māori in the administration of the electoral system.**

Part 2: The Voting System

Chapter 4: Representation Under MMP

R6. **Lowering the party vote threshold for list seat eligibility from five per cent of the nationwide party vote to 3.5 per cent.**

R7. **Abolishing the one-electorate seat threshold, provided the party vote threshold is lowered.**

R8. **Removing the existing provision for extra seats to compensate for overhang seats, with fewer list seats allocated instead, if the one-electorate seat threshold is abolished, as recommended.**

R9. **Fixing the ratio of electorate seats to list seats at 60:40, requiring parliament to be an uneven number, and allowing the size of parliament to grow in line with the population.**

Chapter 5: Parliamentary Term and Election Timing

R10. **Holding a referendum on the parliamentary term, supported by a well-resourced information campaign (including dedicated engagement with Māori communities and leaders).**

R11. **Continuing to allow the prime minister to call a general election at any time before the end of the parliamentary term.**

Chapter 6: Vacancies in Parliament

R12. **Changing the ground for non-attendance so that a Member of Parliament's seat becomes vacant once they have been absent from parliament without the leave of the House for three months.**

R13. **Removing mental incapacity as a ground to remove an Member of Parliament.**

R14. **Retaining the remaining grounds for when an Member of Parliament's seat becomes vacant, including the grounds of citizenship and for criminal convictions.**

R15. **Repealing the restriction on Members of Parliament remaining in parliament if they cease to be a member of the party from which they were elected.**

R16. **Keeping the current rules for filling vacant electorate seats and list seats, including the process for a seat that is vacated within six months of a general election.**

Part 3: Voters

Chapter 7: Voter Eligibility

R17. **Lowering the voting age to 16.**

R18. **Extending the time that New Zealand citizens can spend overseas without losing the right to vote to two electoral cycles.**

R19. **Extending the time that permanent residents must spend in Aotearoa New Zealand before gaining the right to vote to one electoral cycle.**

R20. **Keeping the time that permanent residents can spend overseas without losing the right to vote at 12 months.**

R21. **Clarifying the use of the term 'permanent resident' for electoral purposes to avoid confusion.**

R22. **Granting all prisoners the right to vote.**

Chapter 8: Enrolling to Vote

R23. **Retaining compulsory enrolment.**

R24. **Retaining voluntary voting.**

R25. **Allowing the Māori electoral option to be exercised at any time up to and including election day for general and local elections, while retaining the current prohibition ahead of by-elections.**

R26. **Allowing anyone of Māori descent to be registered simultaneously on one roll for general elections and a different roll for local elections.**

R27. **Improving education and engagement about the Māori electoral option.**

Chapter 9: Voting in Elections

R28. **Requiring advance voting to be provided for a minimum period of 12 days.**

R29. **Including standards in electoral law for polling places to ensure they are widely available and accessible, including during advance voting.**

R30. **Repealing the requirement to state your name to be issued a ballot.**

R31. **Repealing the ability of a scrutineer to question voters about their identity and whether they have voted.**

R32. **Future-proofing special voting provisions by:**

- **a. Allowing anyone voting outside their electorate to cast a special vote at any time during the voting period.**
- **b. Removing postal voting as an option for overseas voters.**
- **c. Considering how to scale up voting methods for people who cannot vote in person as postal services decline.**

R33. **Making it a criminal offence to harass electoral officials.**

R34. **Applying one set of rules to prevent voter interference for the entire voting period.**

R35. **Aligning restrictions on election day with those of the current advance voting period for the wearing of lapel badges, rosettes and party colours.**

R36. **Vesting emergency powers in the Board of the Electoral Commission, not just in the Chief Electoral Officer.**

R37. **Adding a new general power for the Electoral Commission to extend the time available for any electoral processes or deadlines where they are disrupted by an unforeseen or unavoidable disruption that could impact the proper conduct of an election.**

R38. **Adding a new ability for parliament to be reconvened after it has expired or dissolved in the event of a catastrophic emergency or disaster with ongoing impacts on the proper conduct of the election.**

R39. **Making amendments to the Constitution Act to ensure the continuity of executive government in the event of an adjourned election.**

Chapter 10: Counting the Vote and Releasing Results

R40. **Enabling the preliminary count to be conducted electronically.**

R41. **Requiring the release of the preliminary results in legislation.**

R42. **Allowing a person's vote to be counted if they have voted in advance and die before election day.**

Chapter 11: Improving Voter Participation

R43. **Developing a funding model to support community-led education and participation initiatives, with this model also providing for 'by Māori for Māori' activities.**

R44. **Allowing people to include preferred names in addition to their legal name for enrolment and voting purposes.**

R45. **Allowing people on the unpublished roll to cast an ordinary vote.**

Part 4: Parties and Candidates

Chapter 12: Standing for Election

R46. **Strengthening requirements by providing the Electoral Commission with the power to either refuse to register, or to de-register, a party:**

- **a. whose rules do not meet the existing statutory requirement to follow democratic procedures when selecting candidates, but only after**
- **b. the party has been notified and given an opportunity to amend its rules to comply with its statutory obligations.**

R47. **Requiring a registered party to submit a list of party candidates at each general election to remain registered.**

R48. **Strengthening the current requirement that a party has 500 current financial members before it is eligible to register by:**

- **a. requiring those 500 members to be enrolled to vote, and**
- **b. enabling the Electoral Commission to audit any registered party for compliance with this ongoing requirement.**

R49. **Requiring a party secretary to confirm by statutory declaration that the process for ranking list candidates complied with the party's candidate selection rules.**

R50. **Extending the period before an election in which parties cannot be registered to the start of the regulated period (usually three months before election day).**

R51. **Prohibiting unregistered parties from becoming component parties of registered parties.**

R52. **Broadening candidate eligibility, in line with our voter eligibility recommendations, to include:**

- **a. 16- to 17-year-olds**
- **b. citizens living overseas for two electoral cycles**
- **c. all prisoners.**

Chapter 13: Political Finance

R53. **Permitting only registered electors to make donations and loans to political parties and individual candidates.**

R54. **Spending on election advertisements that requires authorisation from a party or candidate should be treated as a donation.**

R55. **Limiting the total amount a registered elector may give by way of donations and loans to each political party and its candidates to $30,000 per electoral cycle.**

R56. **Reducing the amount that can be donated anonymously to $500.**

R57. **Abolishing the protected disclosure regime.**

R58. **Increasing the frequency of disclosing donations and loans in election year and lowering the thresholds for when disclosure must be made.**

R59. **Requiring the disclosure of all donors and lenders who give more than $1,000 to a political party or candidate, but only requiring that donor and lender names are made public.**

R60. **Expanding the definition of donation to include a range of fundraising activities.**

R61. **Reducing administration by only requiring donor details to be recorded for donations above $200.**

R62. **Increasing state funding:**

- **a. by providing registered political parties with per vote funding on a sliding scale**
- **b. with base funding for registered political parties**
- **c. by providing tax credits for people who make donations of up to $1,000**
- **d. in a new fund – Te Pūtea Whakangāwari Kōrero ā-Tiriti / Treaty Facilitation Fund – to facilitate party and candidate engagement with Māori communities**
- **e. by expanding the purpose of the Election Access Fund to include applications by parties to meet accessibility needs in their campaigns,**

such as providing accessible communications and New Zealand Sign Language interpretation at events.

Chapter 14: Election Advertising and Campaigning

R63. **Permitting election advertising on election day anywhere except inside or within 10 metres of polling places (where voters and scrutineers may only display lapel badges, rosettes, and party colours on their person).**

R64. **Empowering the Electoral Commission to remove election billboards and hoardings from public places from the Monday after election day, with an ability to charge a party or candidate for the cost of doing so.**

R65. **Allowing promoter statements to use PO Box numbers or email addresses instead of a physical address.**

R66. **Abolishing the restrictions on the use of television and radio for election advertising by parties and candidates.**

R67. **Abolishing the process for providing funding to parties to run election advertisements on television and radio, and reallocating the funding to our package of state funding recommendations.**

R68. **Providing the Advertising Standards Authority with funding during election periods to support its ability to respond to complaints in a timely way.**

R69. **Applying the following spending limits during the regulated period:**

- **a. registered parties: $3.5 million**
- **b. candidates: $31,000 for a general election (and $62,000 for a by-election)**
- **c. third-party promoters: ten per cent of the registered party spending limit (which would be $350,000 at present).**

Part 5: Electoral Administration

Chapter 15: Electoral Commission

R70. **Amending the objective of the Electoral Commission to facilitate equitable participation.**

R71. **Expanding membership of the board of the Electoral Commission from three to five members.**

R72. **Requiring the board of the Electoral Commission to have a balance of skills, knowledge, attributes, experience and expertise in te Tiriti o Waitangi / the Treaty of Waitangi, te ao Māori and tikanga Māori.**

Chapter 16: Accessing the Electoral Rolls

R73. **Removing the availability of the main and supplementary rolls for public inspection.**

R74. **Removing the availability of the master roll for public inspection after an election.**

R75. **Removing the ability for any person to purchase electoral rolls and habitation indexes.**

R76. **Retaining access to electoral rolls and habitation indexes for social scientific and health research, but with tighter controls on data access and use and a stronger ethics approval process.**

R77. **Removing access to the electoral rolls by political parties, candidates and Members of Parliament.**

R78. **Removing the ability for scrutineers to access marked copies of the electoral rolls, which show who has voted, during the voting period and to share this information with political parties and candidates.**

R79. **Allowing Parliamentary Service to access names and addresses from the electoral roll in order to facilitate outreach to constituents on behalf of Members of Parliament.**

R80. **Removing the *Index of Streets and Places* from sale.**

R81. **Retaining the existing provisions for being enrolled on the unpublished roll.**

Chapter 17: Boundary Reviews and the Representation Commission

R82. **Removing the requirement that the boundary review is based on census data, so that eventually other data sources could be used. Noting that improved processes will be required to ensure Māori data sovereignty and a more robust calculation of the population of Māori descent.**

R83. **Increasing the population quota tolerance (that is, the extent to which it can vary from the average population in an electorate) to plus or minus 10 per cent when setting electorate boundaries.**

R84. **Considering communities of interest for Māori alongside general communities of interest in the setting of general electorates as well as for setting the Māori electorates.**

R85. **Retaining the current membership of the Representation Commission.**

R86. **Adding the current Māori members of the Representation Commission – the Chief Executive of Te Puni Kōkiri and the two political representatives of Māori descent – as members for determining general electorate boundaries.**

Chapter 18: Electoral Offences, Enforcement and Dispute Resolution

R87. **Undertaking an overhaul and consolidation of all electoral offences and penalties, to ensure they are consistent and still fit for purpose. This work should be guided by the principles of proportionality, effectiveness and practicality.**

R88. **Giving judges an express discretion to restore voting rights for people found guilty of a corrupt practice.**

R89. **Repealing the offence of treating voters with food, drink or entertainment before, during, or after an election for the purpose of influencing a person**

to vote or refrain from voting. Also repealing the offence of corruptly accepting food, drink or entertainment under these conditions.

R90. Giving the Electoral Commission additional investigative powers (including to require documents, and to undertake audits).

R91. Giving the Electoral Commission the ability to refer serious financial offending directly to the Serious Fraud Office.

R92. Considering whether the Electoral Commission should be able to impose sanctions for low-level electoral breaches, dependent on the outcome of a broader overhaul and consolidation of electoral offences.

R93. Removing deposit fees for applications for recounts and otherwise retaining deposits at current amounts.

R94. Permitting judicial discretion as to whether an electorate-level or national-level recount goes ahead.

R95. Retaining existing notice periods for initiating an election petition and commencing the hearing for that petition.

Chapter 19: Security and Resilience

R96. Extending the timeframe for the offence of knowingly publishing false information to influence voters to include the entire advance voting period and polling day.

R97. That the overhaul and consolidation of the offences and penalties regime for electoral law (recommended above) specifically considers the scope of the undue influence offence, and whether it should be expanded to include disinformation methods and mechanisms.

R98. That registered third party promoters cannot use money from overseas persons to fund electoral advertising during the regulated period.

Minor and technical recommendations

Appendix 1 set out the minor and technical changes we recommend for each part of our interim report.

1. Introduction

Why do elections matter?

1.1 Elections determine who has the power to govern the country and make its laws. The government is formed out of Members of Parliament (**MPs**) from a political party (or group of parties) that can win key votes in parliament. The government (through ministers and cabinet) proposes changes to the law and is in charge of ministries and departments that implement the law.

1.2 Therefore, regular, free, and fair elections are important. They are fundamental to the success of Aotearoa New Zealand's democracy.

Our task

1.3 Electoral law helps keep our elections fair and accessible, allowing us to participate in choosing who will govern the country and parties to compete for our votes. These laws apply to voters, parties, candidates, the media, advocacy groups, and officials including the Electoral Commission (the independent body that administers elections).

1.4 The laws governing our elections are quite complex and many of them have not been properly considered for many years. Many of them have not been updated in a long time. The Minister of Justice has asked us to review these laws to see what is working and what could be improved. We have specifically been asked to consider whether the laws for our electoral system:

- are fair
- are clear and consistent
- are practicable and enduring
- encourage electoral participation
- uphold te Tiriti o Waitangi / the Treaty of Waitangi
- are open and accountable
- produce a representative parliament
- produce an effective parliament and government.

1.5 Our brief is wide: we were required to review almost everything to do with how our elections work. A copy of the terms of reference for the review is available on our website at https://electoralreview.govt.nz/about-us/terms-of-reference/.

1.6 The review was set up to be independent from the Minister and the government. We have been asked to consider the issues, seek public feedback, and make recommendations we think best for the electoral system as a whole.

1.7 We were appointed as the review panel by the Minister of Justice in May 2022. Our chair is Deborah Hart. Our members are Professor Maria Bargh (deputy chair), Professor Andrew Geddis, Associate Professor Lara Greaves, Alice Mander and Robert Peden. More information about us and about this review can be found on our website: https://electoralreview.govt.nz/.

Some issues are out of scope

1.8 We have not been asked to look at broader constitutional matters. Matters specifically out of scope are alternatives to the Mixed Member Proportional (**MMP**) voting system, the retention of Māori electorate seats, re-establishing an Upper House, the role and functions of the Head of State, and the current size of parliament. Online voting is also out of scope.

Our approach

1.9 Our immediate priority was to understand how well our current electoral system is working for New Zealanders and what needs to change. We released a consultation document in September 2022. It outlined our current electoral law and practice and invited people to share their views.

1.10 We received over 1,700 written submissions during this first stage of engagement, which ended in November 2022. These submissions include:

- more than 1,300 responses to our online survey
- more than 400 submissions by email.

1.11 We also met with 51 organisations and 32 individuals over 58 meetings and heard from 43 submitters at public meetings held online and in person in Auckland, Wellington, and Christchurch. In addition, we met all the political parties currently represented in parliament, alongside a number of other registered political parties.

1.12 In partnership with National Iwi Chairs Forum Pou Tikanga, 10 community workshops with Māori were run, using a mix of kanohi-ki-te-kanohi (in-person) and online hui.

1.13 We published a summary of submissions in March 2023, which is available here: https://electoralreview.govt.nz/have-your-say/submissions/.

1.14 When we refer to submitters in this document, the classifications in figure 1.1 have been used to quantify the views of submitters who commented on a particular question or topic.

Figure 1.1: Classification of submissions

Classification	Definition
Few	Fewer than five per cent of submitters who commented on a question or topic
Some	Five to 25 per cent of submitters who commented on a question or topic
Many	26 to 50 per cent of submitters who commented on a question or topic
Most	More than 50 per cent of submitters who commented on a question or topic

Our interim report

1.15 We are extremely thankful to all of those who took the time to make a submission or talk to us about our electoral system. We have studied this feedback, considered the possible options, undertaken research (including looking at overseas systems), and considered previous reports and recommendations from the Electoral Commission, parliament's Justice Select Committee, and the 1986 Royal Commission on the electoral system.

1.16 This report sets out our initial recommendations on how we can make Aotearoa New Zealand's democracy clearer, fairer and fit for the challenges of the 21st century.

1.17 Our review can be thought of as a 'warrant of fitness' for the electoral system. We found some parts of it are working well. In particular, New Zealand has a relatively high voter turnout, voters report high levels of satisfaction and have confidence in the Electoral Commission's fairness and impartiality.

1.18 However, we have identified a range of important issues and opportunities to make Aotearoa New Zealand's electoral system clearer, fairer and fit for the challenges of the 21st century. This report discusses these issues in five parts:

- Part 1: Foundations
- Part 2: The Voting System
- Part 3: Voters
- Part 4: Parties and Candidates
- Part 5: Electoral Administration.

1.19 All of these recommendations should be read in the context of two foundations of our electoral system that we discuss first – namely:

- the overall design of our electoral law (**Chapter 2**)
- upholding te Tiriti o Waitangi / the Treaty of Waitangi (**Chapter 3**).

1.20 This report is an opportunity for New Zealanders to consider our initial recommendations and tell us what they think. The options for how you can submit are on our website: https://electoralreview.govt.nz/.

1.21 We will then finalise our recommendations for change and report back to the Minister of Justice by November 2023.

Part 1

Foundations

This part covers:

- the overall design of electoral law (**Chapter 2**)
- upholding te Tiriti o Waitangi / the Treaty of Waitangi (**Chapter 3**)

2. The Overall Design of Our Electoral Laws

The Panel recommends:

R1. **Redrafting the Electoral Act 1993 to incorporate the changes set out in this report and to update the statute's structure and language with the aim of making it modern, comprehensive and accessible.**

R2. **Reassessing the appropriate use of primary and secondary legislation as part of the redrafting process.**

R3. **Adding to the currently entrenched provisions by entrenching:**

a. **the Māori electorates (to the same extent that the general electorates are already entrenched)**

b. **the method for the allocation of seats in parliament and the party vote threshold**

c. **the right to vote and to stand as a candidate**

d. **the process for removing members of the Electoral Commission.**

2.1 Good legislative design means that laws are clear, effective, accessible and constitutionally sound.

2.2 In this review, we are considering the Electoral Act 1993, the Electoral Regulations 1996, Parts 2 and 3 of the Constitution Act 1986, and Part 6 of the Broadcasting Act 1989. Our Terms of Reference include the overall design of the legislative framework for electoral law, in particular:

- Whether the legislative framework strikes the right balance between certainty and flexibility in its use of primary legislation, secondary legislation, and other instruments. If not, what is the appropriate balance?

- The protection of fundamental electoral rights through reserved provisions.
- What other improvements could support the review's objectives.

2.3 We also considered how well the legislative framework upholds te Tiriti o Waitangi / the Treaty of Waitangi (**te Tiriti / the Treaty**).

Earlier recommendations

1986 Royal Commission

The 1986 Royal Commission recommended that the Electoral Act should be redrafted with the aim of making it as comprehensive and accessible as possible.

It also recommended entrenchment of the right to vote and to be a candidate, the method of voting, the determination of the number of seats and their boundaries, the Representation Commission, the term of parliament, and the tenure of the Electoral Commissioner.

The Royal Commission suggested that the substance of these matters should be entrenched rather than the specific provisions. It also supported double entrenchment, though it did not consider it crucial.

Electoral Commission

The Electoral Commission has made a range of recommendations over the years to modernise and simplify the Electoral Act – for example, updating the use of archaic language and removing references to outdated methods of communication like fax.

The Electoral Commission has also recommended prescribing only the purpose and information required for electoral forms (such as enrolment and special declaration forms) to allow discretion and flexibility to better meet the needs and circumstances of electors. Many forms previously in the Electoral Act and the Regulations have been prescribed, with the form of the ballot being a key exception to this approach.

Is there a case for change?

2.4 We have focused our consideration of legislative design on the following issues.

Modernising electoral law

2.5 The current Electoral Act was passed in 1993 when the Mixed Member Proportional (**MMP**) voting system was adopted. Its basic framework was taken from the Electoral Act 1956. Some provisions in the current law have been largely unchanged since the nineteenth century.

2.6 The Electoral Act has been subject to piecemeal change since it was passed. It has been amended 76 times since 1993.

2.7 Making piecemeal changes risks inadvertently introducing inconsistencies or contradictions into the law. It also leads to the law becoming more complex and harder to access. The absence of a thorough review also means that other provisions may become outdated or irrelevant over time.

2.8 There are many instances throughout the Electoral Act where the structure and language are convoluted, difficult to understand, or simply archaic. To provide just a few examples:

- the offence of 'undue influence' refers to inflicting 'any temporal or spiritual injury, damage, harm, or loss upon or against any person'
- the voter and candidate eligibility provisions are scattered throughout various sections of the Electoral Act in an illogical order
- the fact that there is a section 206ZH in the Electoral Act indicates that it has been revised so many times that it has become unwieldy
- the special voting regulations refer to 'convalescent, aged, infirm, incurable, destitute, or poor people'.

The use of primary and secondary legislation

2.9 Electoral law sits across primary legislation (the Electoral Act 1993) and secondary legislation (the Electoral Regulations 1996). Changes to the Electoral Act are debated and passed by the House of Representatives and are subject to public scrutiny through the Select Committee process.

2.10 The Electoral Act empowers regulations to be made for specific purposes. Most of the current electoral regulations relate to special voting. Changes to the Electoral Regulations are confirmed by Cabinet and approved by the Governor-General. While parliament does not play a role in making these regulations, the Regulations Review Select Committee reviews all regulations, and the House of Representatives can disallow a regulation, meaning it no longer has force.

2.11 The use of primary and secondary legislation needs to strike a balance between certainty and flexibility. A high degree of prescription in primary legislation may mean that the intent of the law is clear, but it is difficult and time-consuming to make reasonably minor changes and improvements. Regulations are commonly used where laws may need to be updated regularly or where technical or administrative detail needs to be set out.

2.12 The different kinds of legislation also reflect the strength of the safeguards in place when making changes to electoral law. The entrenched provisions, discussed in the next section, represent the highest level of protection from change. Primary legislation is subject to parliamentary scrutiny and public debate, which means

that changes go through an open and transparent process. Secondary legislation is primarily the responsibility of the lead Minister and Cabinet, though additional safeguards can be put in place. These safeguards may be particularly important for electoral law, given that it regulates the political system itself.

2.13 Currently, our electoral law may rely too heavily on overly prescriptive primary legislation. The regulation-making powers in the Electoral Act are also quite narrowly defined and may not have kept pace with best practice.

The entrenched provisions

2.14 An important feature of electoral law in Aotearoa New Zealand is the entrenched, or reserved, provisions. These provisions can only be changed by a majority vote in a public referendum or by a 75 per cent vote in the House of Representatives.

2.15 The entrenched provisions, set out in section 268 of the Electoral Act, are:

- the membership of the Representation Commission (section 28)
- the process for dividing New Zealand into general electorates, as well as the definition of 'general electoral population' (section 35)
- the allowance for adjusting the population quota within electorates (section 36)
- the definition of the term 'adult', so far as those provisions set the minimum voting age (section 74)
- the method of voting (section 168).

2.16 The maximum term of parliament, as set out in section 17(1) of the Constitution Act 1986, is also entrenched.

2.17 The higher threshold for changing these provisions reflects the importance of protecting certain aspects of electoral law from changes intended to benefit one or more particular political parties. Entrenchment reflects the idea that changes to core aspects of electoral law should typically be made with broad political and public support.

2.18 The entrenched provisions were introduced in the Electoral Act 1956. There have been no changes to which provisions are entrenched since then, even though potential gaps and inconsistencies have been raised over time.

2.19 When the Electoral Act 1956 was passed, it was believed that entrenchment could not be legally effective as it would constrain parliamentary sovereignty. Parliamentary sovereignty is the concept that parliament has supreme decision-making authority and the full power to make laws. At the time, the prevailing view was that this meant that one parliament could not bind the actions of future parliaments. Entrenchment was considered to impose a moral and political check on parliamentarians rather than a binding legal one.

2.20 For similar reasons, the entrenched provisions were not doubly entrenched, meaning that the entrenching provision (section 268 of the Electoral Act) is not itself entrenched. As a result, section 268 could be repealed or amended by legislation passed by a simple majority and the entrenched provisions subsequently changed or repealed with a simple majority.

2.21 Since then, interpretations of parliamentary sovereignty have become more nuanced. It is now more commonly accepted that 'manner and form' provisions, which limit the procedure or process to be followed by parliament when changing certain aspects of the law, could be legally binding and restrict how parliament may make new law.

2.22 Although these questions of legal interpretation have not yet been finally resolved, in practice the entrenchment provisions have been consistently followed by successive parliaments. Entrenchment has thus developed into a widely respected constitutional convention.[1]

Our view

Modernising electoral law

2.23 The Electoral Act requires a thorough redrafting. The basic framework has not been updated to reflect the major changes in electoral practice over the last 60 years. The Electoral Act has been amended so many times that the order and structure no longer make sense, making it very difficult to navigate. Many provisions have been carried over from the Electoral Act 1956 (or even earlier) without any consideration of whether they are still relevant or fit for purpose.

2.24 This situation creates the risk that the effect of the law will cease to be clear and consistent. Continuing to amend such a heavily revised law on a piecemeal basis is likely to only increase the risks to its overall coherence. Given the democratic importance of electoral law, it is problematic that many people affected by the laws may struggle to understand them.

2.25 We think the time is right for a fundamental redraft of the Electoral Act to make it as modern, accessible and comprehensive as possible. Implementing the package of changes set out in this report will be a significant task. It also provides an opportunity for a comprehensive update and refresh of the Electoral Act to bring it into the 21st century.

2.26 The Royal Commission on the Electoral System recommended the same approach in 1986. While the Electoral Act 1993 made significant changes to incorporate the new MMP voting system, this more fundamental review of the law did not happen

[1] A constitutional convention is a practice followed so consistently and with such force that it is generally considered to govern behaviour.

at that time. Some 37 years have passed since the Royal Commission's recommendation and this exercise has still not been undertaken. It is now long overdue.

2.27 This redrafting exercise would not need to be a radical overhaul of all of the law's content. In our review, we have found that many aspects of electoral law are working well, and these should be retained. However, our recommendations for changing some parts of the law provide an opportunity to rewrite the entire Electoral Act in modern legislative language that makes it more accessible and coherent.

2.28 As part of this process, we would recommend attention be paid to:

- modernising outdated language
- improving clarity to avoid uncertainty about rights or responsibilities or difficulty in interpreting the law
- removing provisions that are no longer fit for purpose
- improving the order and organisation of provisions into a more logical structure
- embed a more technology neutral approach, particularly in primary legislation.

2.29 On the final point, we note that it is important that the use of new technologies should still be subject to appropriate safeguards and democratic scrutiny. We do, however, think that primary legislation should avoid specifying the use of certain technologies (such as the postal service) unless there is a strong reason to do so. This approach will allow electoral provisions to evolve over time as technologies change. Regulations could be used to provide for any technical detail and safeguards needed to facilitate these changes responsibly. These regulations will be subject to review by parliament's Regulations Review Committee.

The use of primary and secondary legislation

2.30 In general, the use of primary and secondary legislation is a matter best considered by the Parliamentary Counsel Office, which drafts legislation. The redrafting exercise that we recommend above would provide an opportunity to explore whether the right balance has been struck in each area of electoral law.

2.31 A thorough and detailed review of this nature is not a task that can be undertaken as part of this review. To inform this process, however, we set out some general issues and comments that could help to guide the approach.

2.32 Primary legislation is appropriate for the most important features of electoral law that should be subject to parliamentary scrutiny and public input through the Select Committee process. The Electoral Act should set out matters of principle

and significant policy, while regulations can provide the detail on how those principles and policies should be implemented.

2.33 In many instances, electoral law is set out in highly prescriptive detail in primary legislation. This approach provides clear direction to the Electoral Commission and leaves little to subjective decision-making. The consequence, however, is that the primary legislation is long, complex, inflexible and may need frequent updating.

2.34 The exact balance between the Electoral Act and its regulations should be determined during the redrafting process. Examples of matters that should generally be contained in primary legislation are:

- the right to vote and to stand for office
- the voting system
- the creation and process for filling vacancies in parliament
- the term of parliament and the election timetable
- core aspects of the voting method, such as the secrecy of the vote, the form of the ballot, and the provision of in-person and special voting
- the composition, powers and functions of electoral administration bodies
- core aspects of the regulation of election campaigns and finances
- serious electoral offences
- rights to appeal or legal challenge.

2.35 In general, these features of electoral law are already included in primary legislation, and we think they should continue to be in future versions of the Electoral Act.

2.36 With these core aspects protected, there are some areas of electoral law where we think the balance between primary and secondary legislation needs to be revisited. One such area is voting methods and procedures. Most laws for ordinary voting are in the Electoral Act, while special voting laws sit largely in the regulations and advance voting provisions are split between the two. This allocation may reflect ad hoc changes that have been made over time rather than deliberate consideration of the ideal balance. The growth of advance and special voting makes a case for a more consistent legislative treatment across voting methods. More detailed voting procedures may be acceptable in secondary legislation.

2.37 We also think there may be value in reviewing the regulation-making powers in the Electoral Act. In general, the powers to make regulations are quite detailed and prescriptive, with an exception for a standard provision for a more general regulation-making power to give effect to the Electoral Act. A more up-to-date

approach might see the regulation-making powers set at a similar, and generally higher, level.

2.38 It may also be useful to consider whether there should be stronger consultation requirements for electoral regulations as an additional safeguard on the use of these delegated powers. Consultation may be particularly valuable on areas of public interest, such as voting procedures and access to the electoral rolls, rather than administrative matters. Consultation with Māori as the Crown's te Tiriti / the Treaty partners will also be important.

The entrenched provisions

2.39 We have followed the guidance set out by the Royal Commission on the Electoral System that sets on considerations for whether a provision should be entrenched, including:

- whether the matter is constitutional in nature
- whether it would reduce the rights of the electorate
- whether it would grant powers to parliamentarians that could be misused.

2.40 We also considered the Royal Commission's suggestion to entrench the substance of particular aspects of electoral law rather than entrench specific provisions. The appeal of this approach is that it would entrench the essence or principle underlying protected rights. However, we do not recommend it because we are concerned it might give rise to uncertainty about the precise scope of what is entrenched

2.41 We began by examining the provisions that are currently entrenched. Our view is that they should remain entrenched. Each provision is a fundamental aspect of our electoral system and meets the threshold established by our principles for entrenchment. They have also generally worked well and been broadly accepted since they were adopted in 1956.

2.42 We found inconsistencies and gaps across the current entrenchment provisions and recommend that the following additional provisions should be entrenched:

- **the Māori electorates***:* while the boundary determination process for general electorates is entrenched, the same provisions for the Māori electorates are not. This means that the Māori electorates could be abolished by a simple majority, while changes to general electorates must meet a higher threshold for political or public consensus. This discrepancy is inconsistent and unfair. The Māori electorates can be seen as an expression of the tino rangatiratanga guaranteed under te Tiriti / the Treaty. Entrenching the Māori electorates affirms the importance of this right. It also supports the active protection of the right to equal participation

- **the allocation of seats in parliament and the party vote threshold**: some aspects of the MMP voting system are already effectively entrenched. The voting method requires a voter to mark their party vote and electorate vote, and the boundary determination process defines the number of electorate seats. There is no corresponding entrenchment, however, of the allocation of list seats, the overall size of parliament, and the party vote threshold. These are core parts of MMP that require broad consensus for any change and could be subject to self-interested partisan interference. We therefore propose section 191 of the Electoral Act is entrenched
- **the right to vote and to stand as a candidate**: currently, the voting age is the only aspect of the right to vote that is entrenched. We think there is cause to entrench the right to vote more broadly. Changes to voter eligibility could reduce the rights of the electorate, and political parties may be motivated to allow or restrict certain groups to vote for their own gain. We recommend entrenching the provisions of the Electoral Act which set the requirements and disqualifications for voter eligibility. Likewise, we think this approach should extend to the provisions that set the eligibility to stand as a candidate. Entrenching these provisions would also protect the rights to political participation affirmed by section 12 of the New Zealand Bill of Rights Act 1990
- **the tenure of the Electoral Commission**: an independent and impartial electoral administrator is an important part of our electoral system. This includes that the government of the day should not be able to remove members of the Electoral Commission prematurely if it does not agree with their decisions or actions. While the independence of the Electoral Commission is already protected in law, entrenching the provisions which deal with how its members may be removed would be a strong symbolic message about the importance of maintaining the Electoral Commission's independence
- **Representation Commission**: in addition, we recommend that the current entrenchment of provisions relating to the Representation Commission and the boundary determination process should be extended to include section 40 of the Electoral Act. This section provides for the electorates set by the Representation Commission to take legal effect without any parliamentary role or oversight. It should therefore be protected.

2.43 Finally, we considered the issue of double entrenchment. The current approach to entrenchment has developed into a constitutional convention and has been well-respected by subsequent parliaments. We also think there are risks in making the constraints on parliament's law-making powers too rigid, given how effective the current convention has been as a safeguard. We therefore do not consider double entrenchment to be necessary.

Interaction with our other recommendations

2.44 In **Chapter 3**, we recommend that the Electoral Act require decision-makers to give effect to te Tiriti / the Treaty and its principles, as well as a specific objective for the Electoral Commission. These changes would support the active protection of Māori rights and interests in all aspects of electoral administration.

2.45 In Chapter 14, we recommend abolishing the broadcasting regime for election programmes. These changes would remove the need for the provisions in Part 6 of the Broadcasting Act 1989.

2.46 Several of our recommendations would require changes to the entrenched provisions, such as the term of parliament (**Chapter 5**) and the voting age (**Chapter 7**). Where relevant, we have commented on whether we think these changes should be made by referendum or by parliamentary vote.

What do you think about our recommendations on the overall design of our electoral laws and why?

3. Upholding te Tiriti o Waitangi / the Treaty of Waitangi

The Panel recommends:

R4. **Requiring decision-makers to give effect to te Tiriti o Waitangi / the Treaty of Waitangi and its principles when exercising functions and powers under the Electoral Act. This obligation should apply generally across the Act and be explicitly included in the Electoral Commission's statutory objectives.**

R5. **The Electoral Commission prioritises establishing Māori governance over data collected about Māori in the administration of the electoral system.**

3.1 Our terms of reference require us to consider how to ensure New Zealand continues to have an electoral system that upholds te Tiriti o Waitangi / the Treaty of Waitangi (**te Tiriti / the Treaty**).

3.2 To make this assessment we first set out a summary of the historical context surrounding te Tiriti / the Treaty. We discuss the ways it has been upheld or breached over time and what this legacy means for our current electoral system.

Historical context

3.3 Before colonisation, Aotearoa New Zealand was governed by Māori in accordance with a system of laws and rules. A key concept in Māori governance was tikanga –

law, practices and values.[2] Tikanga was developed over centuries of Māori culture and society in Aotearoa New Zealand. Tikanga provided the core values and principles which governed Māori political, legal, economic and social behaviour.

3.4 At the start of the nineteenth century, European settlers began to arrive in Aotearoa New Zealand. Initially settlers tended to abide by the system of tikanga-based governance. However, as increasing numbers of settlers arrived and their demands for land increased, this placed pressure on tikanga-based governance. In He Whakaputanga o te Rangatiratanga o Nu Tireni (the Declaration of Independence, signed in 1835) Māori announced their sovereignty and independence which was acknowledged by the British Crown. British Resident James Busby was instrumental in negotiations but was also concerned about the increasingly lawless behaviour of British settlers. His assessment was that further controls were required on the British settlers to ensure peace. Māori were interested in the British government establishing control over their own people and having Māori mana and rangatiratanga formally acknowledged and reaffirmed.

Te Tiriti o Waitangi / the Treaty of Waitangi

3.5 In 1839 the British government sent William Hobson to Aotearoa New Zealand. He had instructions to establish a British colony, impose British law on settlers, and to establish the sovereignty of the British Crown. Hobson drafted an agreement between the Crown and Māori that would fulfil this objective. This agreement made certain promises to Māori.

3.6 There are two versions of this agreement: one is the Treaty (the English language version), the other is te Tiriti (the Māori language version). Te Tiriti purported to be a te reo Māori translation of the Treaty. It was not an accurate translation.

3.7 The agreement that was presented to rangatira at Waitangi on 5 February 1840 was the Māori language version: te Tiriti. The vast majority of rangatira signed the te reo Māori version.

3.8 There are several fundamental differences of meaning between the two texts. These are often debated but can be summarised as:

- the agreement signed by most Māori stated the Crown obtained 'kāwanatanga' (the authority to govern). In contrast, the English version

[2] As set out in Gallagher, T., 2008. Tikanga Māori Pre-1840. *Te Kāhui Kura Māori*, 0(1) – 'tikanga has been defined in many ways. Judge Eddie T. Durie defines it as the 'values, standards, principles or norms to which the Māori community generally subscribed for the determination of appropriate conduct' ... Chief Judge Joe Williams describes tikanga as 'the Māori way of doing things – from the very mundane to the most sacred or important fields of human endeavour'. No one definition is completely correct or wrong.'

stated the Crown obtained 'sovereignty' (supreme power, authority or rule - total control over the country)

- the agreement signed by most Māori reaffirmed their 'tino rangatiratanga over their whenua, kainga and taonga' (unqualified exercise of chiefly authority over their lands, homes and all their treasures). In contrast, the English version only promised Māori the 'full exclusive and undisturbed possession of their Lands and Estates Forests Fisheries and other properties'.

3.9 While it is beyond the scope of this report to examine the detailed implications of these two versions of the agreement between the Crown and Māori, the issues that arise from the differences between them are helpfully summarised by the Waitangi Tribunal:[3]

> *…Britain's representative William Hobson and his agents explained the Treaty as granting Britain 'the power to control British subjects and thereby to protect Māori', while rangatira were told that they would retain their 'tino rangatiratanga', their independence and full chiefly authority.*
>
> *Though Britain went into the treaty negotiation intending to acquire sovereignty, and therefore the power to make and enforce law over both Māori and Pākehā, it did not explain this to the rangatira. Rather, in the explanations of the texts and in the verbal assurances given by Hobson and his agents, it sought the power to control British subjects and thereby to protect Māori.*
>
> *…*
>
> *The rangatira who signed te Tiriti o Waitangi in February 1840 did not cede their sovereignty to Britain. That is, they did not cede authority to make and enforce law over their people or their territories.*
>
> *The rangatira agreed to share power and authority with Britain. They agreed to the Governor having authority to control British subjects in New Zealand, and thereby keep the peace and protect Māori interests.*
>
> *The rangatira consented to the treaty on the basis that they and the Governor were to be equals, though they were to have different roles and different spheres of influence. The detail of how this relationship would work in practice, especially where the Māori and European populations intermingled, remained to be negotiated over time on a case-by-case basis.*

[3] Waitangi Tribunal, 2014. *He Whakaputanga me te Tiriti The Declaration and the Treaty: The Report on Stage 1 of the Paparahi o Te Raki Inquiry*, Wellington.

Māori political representation

3.10 The Crown, bound by te Tiriti / the Treaty, had (and has) a duty to recognise and respect Māori expressions of tino rangatiratanga. It has not done so.

3.11 In the second half of the nineteenth century, Māori sought to develop their own institutions and expressions of political power in accordance with the guarantee of tino rangatiratanga. These included, for example, the regional parliaments set up by hapū and iwi around the country, and the Kotahitanga movement in the 1890s which strove to establish a national Māori parliament.

3.12 Ultimately, the Crown steadfastly refused to recognise and support any of these institutions or expressions of tino rangatiratanga. As a result, Māori then sought to improve Māori representation in parliament as 'their last vestige of a lost autonomy'.[4]

3.13 The Crown was also obliged to ensure that Māori were politically represented in the kāwanatanga sphere (that is, parliament and its precursors) in a manner that was fair and equitable. It did not. Instead, some important examples are:[5]

- the New Zealand Constitution Act 1852 enfranchised all males aged 21 or over, subject to a property test. However, this property test excluded almost all Māori men due the different legal status of Māori land. This was despite Māori both being a majority of the population and owning the majority of the land at the time
- no provision was made for Māori representation in parliament until four Māori electorates were introduced in 1867. However, these Māori electorates provided far fewer representatives than Māori were entitled to on a population basis
- unlike the number of general electorate seats which increased based on population growth, the number of Māori electorate seats remained fixed at four until 1993 – under the First-Past-the-Post system this meant the vote of a Māori voter in a Māori electorate was worth less than those in the general electorates
- until 1975 only so-called 'half-castes' (for example, those with one Māori and one European parent) were allowed to choose which seats they wished to vote in. Otherwise, Māori were required to vote in the less-representative Māori electorates

[4] M. P. K. Sorrenson, 'A History of Māori Representation in Parliament', in *Report of the Royal Commission on the Electoral System: Towards a Better Democracy*, The Royal Commission on the Electoral System 1986, Appendix B.

[5] For a fuller account, refer to: *Parliamentary Library, 2003. The Origins of the Māori Seat Research Paper*, Wellington.

- until 1967 only Māori could stand for election in the Māori electorates, while Māori were prohibited for standing for election in the general electorates. Effectively, this limited the number of Māori who could be elected to parliament to four
- the secret ballot (now a fundamental electoral right) was introduced in European seats in 1870, while Māori were prevented from doing so until almost 70 years later.

Te Tiriti / the Treaty and the electoral system today

The importance of constitutional change

3.14 These examples show that there is a legacy of the Crown failing to uphold the right of equitable participation of Māori in the electoral system and rejecting proposals for expressions of tino rangatiratanga. Both actions were contrary to what was agreed in te Tiriti / the Treaty.

3.15 We heard clearly and forcefully from Māori communities that the Crown's legacy of breaching Māori political rights impacts perceptions of the electoral system to this day. These perceptions have been compounded by the ongoing and unresolved tension between the guarantee of tino rangatiratanga for Māori and the Crown's exercise of kāwanatanga.

3.16 We heard that for Māori this continues to be a significant and ongoing concern. Many raised work that has already been done by Māori – including with the Crown – to suggest ways forward to having their political rights upheld (such as the Constitutional Conversation, Matike Mai). However, despite the devotion of much time and effort by Māori these issues have not yet been acknowledged and addressed by the Crown. We heard this frustration in our engagement with many Māori who consistently expressed that broader constitutional change was their top priority rather than modernising the electoral system.

3.17 These issues go to the heart of Aotearoa's our constitution and raise questions about whether our unicameral parliament can ever be said to uphold the guarantee of tino rangatiratanga in te Tiriti / the Treaty.

3.18 While answering such questions is beyond our terms of reference, these issues influence Māori perceptions of the electoral system and therefore the objectives we were asked to consider (such as rates of participation and public confidence). We therefore recognise that the electoral system in and of itself may not be able to uphold tino rangatiratanga in a way that gives effect to te Tiriti without broader constitutional changes. We encourage further partnership between the Crown and Māori in considering how to best properly acknowledge and address these issues of constitutional significance.

The positive impact of an improving Māori/Crown relationship

3.19 At the same time, we also recognise that Māori/Crown relations have come a long way. There has a been a slow but positive evolution in how te Tiriti / the Treaty has been recognised by the Crown. In particular:

- the government has established a ministerial portfolio for Māori/Crown relations and established a dedicated agency, Te Arawhiti to support the portfolio. The purpose of Te Arawhiti is to help guide the Māori Crown relationship from historical grievance towards true Treaty partnership, and to help guide the Crown, as a Treaty partner, across the bridge into te ao Māori
- the new Public Service Act 2020 specifies that the role of the public service includes supporting the Crown in its relationships with Māori under te Tiriti / the Treaty
- Cabinet has endorsed or published guidance on including te Tiriti / the Treaty provisions in legislation and guidance for policy makers on te Tiriti / the Treaty implications of their work
- recent changes to legislation fostered the ability of local authorities to establish Māori wards or constituencies. This is one way for councils to honour the principle of partnership committed to in te Tiriti / the Treaty because they guarantee that Māori will be represented at council
- the new resource management system (currently before parliament) incorporates te ao Māori, mātauranga Māori and ensures Māori participation in planning and decision-making at national, regional and local levels.

3.20 It is our task to update the electoral system and electoral law to recognise te Tiriti / the Treaty.

Our approach to considering te Tiriti / the Treaty

3.21 It is within the spirit of a maturing and evolving Māori/Crown relationship that we have approached our assessment of whether the electoral system upholds te Tiriti / the Treaty.

3.22 To do so consistently and transparently, we have identified three considerations to apply when te Tiriti / the Treaty issues arise during our review of the electoral system.

3.23 These considerations (see **Figure 3.1**) are derived from te Tiriti / the Treaty itself and interpretations of it expressed by the courts and the Waitangi Tribunal (its

principles). This approach is not meant to be exhaustive and broader considerations are incorporated where relevant.

Figure 3.1: Te Tiriti o Waitangi / the Treaty of Waitangi assessment framework

Consideration	Comment
Active protection of equitable Māori electoral rights	The Crown has the obligation to actively protect Māori rights, including citizenship and political rights. Derived from Articles 1 and 3, we consider whether an option fosters the equitable participation of Māori at all levels of the electoral system. It recognises that the exercise of kāwanatanga as envisaged by Article 1 is legitimate only to the extent it is based on the ability of Māori to, amongst other things, fully participate in regular, free, and fair elections on an equitable basis with all other people.
The guarantee of tino rangatiratanga	The Crown has the obligation to recognise and respect Māori tino rangatiratanga. Derived from the guarantee in Article 2, this consideration looks at whether the electoral system enables Māori to exercise self-determination and have maximum control or autonomy over electoral activities. This control or autonomy should be exercised consistently with other principles derived from te Tiriti / the Treaty.
Partnership and informed decisions	We also consider whether an option supports the Crown and Māori to act towards each other in good faith, fairly, reasonably, and honourably.

Our recommendations

3.24 The Crown has an obligation arising from te Tiriti / the Treaty to redress past breaches, actively protect Māori electoral rights, and provide equitable opportunities for Māori participation.

3.25 Ensuring the electoral system upholds te Tiriti / the Treaty is one of the Crown's most critical Tiriti / Treaty obligations as it relates to the most fundamental of democratic rights: the right to vote and contest free, fair, and regular elections.

A statutory obligation to uphold te Tiriti / the Treaty

3.26 Upholding te Tiriti / the Treaty must therefore be central to the administration of the electoral system. One way to facilitate this is to include an explicit requirement in the Electoral Act for decision-makers to give effect to te Tiriti / the Treaty and its principles when exercising functions and powers under the Act (known as a general Tiriti / Treaty clause). We are also recommending that this obligation is explicitly included in the Electoral Commission's statutory objectives.

3.27 This approach recognises the centrality of te Tiriti / the Treaty to our electoral system. We considered a more specific clause that identifies sections of the Electoral Act where te Tiriti / the Treaty considerations are relevant. While this would have provided greater certainty to the Electoral Commission, it would apply only narrowly and not be enduring as te Tiriti / the Treaty relationship evolves.

3.28 In making this recommendation we acknowledge work already undertaken by the Electoral Commission to better reach Māori voters and support the participation of Māori candidates. These new obligations will ensure the Electoral Commission has clear statutory authority to continue this work and explicitly authorise it to have an ongoing focus on its te Tiriti / the Treaty obligations when undertaking its duties and prioritising its resources.

3.29 The new statutory obligation will allow for evolution in how the electoral system upholds te Tiriti / the Treaty over time and as circumstances change. In practice, we expect its immediate impact could be that:

- the Electoral Commission continues and improves its direct engagement with Māori as iwi, hapū and individuals through a range of mechanisms, including Māori advisory groups
- barriers to Māori participation in the electoral system at all levels are identified and eliminated (in particular, we expect that the Electoral Commission's post-election report will now have an enduring focus on how the electoral system is upholding te Tiriti / the Treaty and if it is realising equitable outcomes for Māori). If it is not, we expect the Electoral Commission to recommend how to overcome these issues
- Māori voters, candidates, and parties are empowered to exercise political power through the electoral system equitably and disparities in participation rates will begin to fall.

The importance of Māori data sovereignty

3.30 In administering the electoral system, data about Māori are collected and used (for example, the boundary review process and the Māori electoral option). We heard that for Māori, data is a taonga with immense value. The guarantee of tino rangatiratanga requires that Māori data should be governed by and for Māori. This ensures Māori data are stored, transferred and applied in accordance with tikanga and to the benefit of those to whom it belongs.

3.31 As such, we recommend that the Electoral Commission, in line with its new objective to give effect to te Tiriti / the Treaty, prioritises establishing Māori governance over Māori electoral data. The Electoral Commission should do this in partnership with Māori communities and Māori data experts.

3.32 The Electoral Commission should also consider the Māori data governance model that is being co-designed by StatsNZ and the Data Iwi Leaders Group of the

National Iwi Chairs Forum. As part of this work, we understand consideration is being given to establishing a Māori Chief Data Steward, which would align with the existing role of the Government Statistician and Government Chief Data Steward. This role has not yet been confirmed.

3.33 In this next stage of engagement, we are seeking recommendations and input from Māori communities and data experts on how to best ensure Māori governance over Māori electoral data. We are interested in what this governance may look like operationally and what mandate may be needed to ensure it is effective.

3.34 In relation to the mandate, we are interested in whether specific provisions are needed in the Electoral Act (such as establishing a Māori Data Officer) or whether our recommendation for the Electoral Commission to uphold te Tiriti / the Treaty will be sufficient. As part of this consideration, we are exploring what role the 'whole-of-government' approach to Māori data governance being developed by StatsNZ and the Data Iwi Leaders Group could play in the governance of Māori electoral data.

Other ways to uphold te Tiriti / the Treaty

3.35 As we have examined the issues within our terms of reference, we identified a number of areas where there were opportunities to better uphold te Tiriti / the Treaty. These are discussed in the relevant sections of the report and summarised in **Figure 3.2**.

Figure 3.2: Summary of other recommendations that ensure the electoral system upholds te Tiriti / the Treaty

Chapter of report	Recommendation	Rationale
Chapter 2: The Overall Design of Electoral Law	Entrench the Māori seats on the same basis as general electorate seats.	The Māori electorate seats could be abolished or changed by a simple majority, unlike the general seats. This is not equitable treatment as promised under te Tiriti / the Treaty. Further, some consider the Māori seats as taonga – and a limited expression of tino rangatiratanga and thus need to be protected. The 1986 Royal Commission commented 'the Māori seats have come to be regarded by Māori as an important concession to, and the principal expression of, their constitutional position under the Treaty of Waitangi.'

Chapter of report	Recommendation	Rationale
Chapter 7: Voter Eligibility	Removing disqualification of prisoners.	The ongoing disqualification of some prisoners disproportionally impacts Māori who are overrepresented in the prison system as a result of systemic bias and social and economic disadvantage. As such, the Waitangi Tribunal held that the Crown failed in its duty to actively protect Māori electoral rights.
	Lowering the voting age.	The current voting age of 18 was found by the Supreme Court to be 'inconsistent with the right…to be free from discrimination on the basis of age [and] these inconsistencies have not been justified in terms of s 5 of the New Zealand Bill of Rights Act.'[6] This unjustified discrimination has a disproportionate impact on Māori (as the Māori population is significantly younger than the non-Māori population).
Chapter 8: Enrolling to Vote	The Government recently removed some restrictions on when the Māori electoral option can be exercised. We think these should go further by allowing: • the option to be exercised at any time up to and including election day • anyone of Māori descent to be registered simultaneously on one roll for general elections and a different roll for local elections.	Supports greater autonomy to Māori voters to choose how they wish to engage with the electoral system. Reduces inequitable administrative barriers.

[6] *Make It 16 Incorporated* v *Attorney-General* - SC 14/2022.

Chapter of report	Recommendation	Rationale
Chapter 11: Improving Voter Participation	Funding for 'by Māori for Māori' participation and engagement activities and led by iwi, hapū, and/or other Māori organisations.	Supports the guarantee of tino rangatiratanga. Funding levels should recognise the finding of the Privy Council[7] that 'especially vigorous' remedial action from the Crown may be required if the issue arises from the Crown's breach of te Tiriti / the Treaty.
Chapter 13: Political Finance	Require the establishment of a new fund – Te Pūtea Whakangāwari Kōrero ā-Tiriti / Treaty Facilitation Fund – to facilitate party and candidate engagement with Māori communities, in ways appropriate for Māori (including in te reo and at marae).	Supports parties and candidates to build relationships with Māori communities through use of te reo Māori and kanohi-kitea contact with those who may otherwise be overlooked.
Chapter 15: Electoral Commission	Require the Minister of Justice to ensure that the Electoral Commission's board collectively has skills, experience, and expertise in te Tiriti o Waitangi / the Treaty of Waitangi, te ao Māori and tikanga Māori.	Ensures the Electoral Commission has the right expertise to uphold its Tiriti / Treaty obligations.
Chapter 17: Boundary Reviews and the Representation Commission	Considering communities of interest for Māori alongside general communities of interest in the setting of general electorates as well as for setting the Māori electorates.	Ensures alignment with the existing criteria for general electorates, upholding the Crown's equity and participation obligations under te Tiriti / the Treaty. The change allows for whakapapa links across hapū and iwi (among other considerations) reducing the chances of these natural communities being split across boundaries.

[7] *New Zealand Māori Council* v *Attorney-General* [1994] 1 NZLR 513.

Tensions between our recommendations and te Tiriti / the Treaty

3.36 As noted earlier, there can sometimes be a tension between kāwanatanga (or the government's ability to realise its public policy objectives) and the rights and interests that are protected under te Tiriti / the Treaty.

3.37 The electoral system is no different. Some of our recommendations deliver strong benefits while also potentially engaging te Tiriti / the Treaty rights. These are summarised in **Figure 3.3,** with more detail contained in the relevant section of the report.

Figure 3.3: Tensions between our recommendations and te Tiriti / the Treaty

Chapter of report	Recommendation	Comment
Chapter 4: Representation Under MMP	Remove the one-electorate seat threshold.	The one electorate seat threshold has on occasion resulted in more MPs of Māori descent entering into parliament than otherwise. But this is not guaranteed Māori representation, and many non-Māori MPs have also gained seats in the same fashion. For the reasons outlined in detail in Chapter 4 we see the one-electorate seat as unfair to all voters. It should be removed. Our recommendation to lower the party vote threshold will support minor parties gain representation, mitigating some of the impact of removing the one-electorate seat threshold.
Chapter 5: Parliamentary Term and Election Timing	Referendum on extending the term of parliament.	A longer term will reduce the opportunities Māori have to select their political representatives which could be seen to undermine electoral rights protected by te Tiriti / the Treaty. On the other hand, we heard that a 3-year term requires a frequent 'reset' of the Crown Māori relationship which makes a sustained partnership more difficult. Māori will also be a minority vote in the public referendum, so it is important to make sure any Māori concerns are heard elsewhere in this constitutional change. We are recommending a well-resourced and comprehensive public information campaign, with dedicated engagement with Māori leaders and communities.

Chapter of report	Recommendation	Comment
Chapter 13: Political Finance	Restricting private donations to enrolled individuals only.	Imposing restrictions on ability of Māori collectives (iwi, hapū, trusts, and community organisations) to make donations could be seen to restrict tino rangatiratanga because it limits the autonomy of Māori organisations to participate politically in whatever manner they choose. On the other hand, Māori collectives only donate a small amount relative to other non-individuals (for example, company donations).

Consultation

3.38 The issues raised in this section impact the rights and interests of Māori as the Crown's Tiriti / Treaty partner. We will be engaging with Māori communities and experts to inform our final recommendations. We also encourage Māori communities and experts to make a written submission on these (and all other) matters raised by our interim recommendations.

What do you think about our recommendations on how the electoral system could uphold te Tiriti o Waitangi / the Treaty of Waitangi and why?

Part 2

The Voting System

This part covers:

- representation under MMP (**Chapter 4**)
- the parliamentary term and setting the election date (**Chapter 5**)
- vacancies in parliament (**Chapter 6**)

4. Representation Under MMP

Composition of parliament

4.1 In 1996, Aotearoa New Zealand held its first election under the Mixed Member Proportional system (**MMP**). Under this voting system, people have two votes: one for the candidate they want to represent the area they live in and one for the political party they want to represent them.

4.2 Our parliament typically has 120 seats, made up of a combination of general and Māori electorate seats and list seats. Both types of seats are important, with electorate seats ensuring local areas are represented, and list seats primarily used to ensure the seats won by a party reflect its share of the national vote. List seats may also be used to balance diverse interests and groups.

Allocation of seats

4.3 Electorate seats go to the candidate who wins the most votes in each electorate. Candidates can represent a political party or be independent. The remaining seats are allocated proportionally to each party based on the party votes they received, so long as they passed one of either:

- the **party vote threshold**: where a party receives at least five per cent of the nationwide party vote – this was about 146,000 votes in the 2020 election, **or**
- the **one-electorate seat threshold**: where the party's candidates win at least one electorate seat.

4.4 Where a party does not pass either threshold, they receive no list seats. The party votes for these parties are not included in the list seat allocation process.

4.5 The total number of seats a qualifying party is entitled to – electorate and list seats combined – reflects its share of the nationwide party vote. The party's entitlement is first filled by any electorate seats its candidates have won. Any remaining seats go to candidates from the party list, in the order that the party ranks them (excluding any successful electorate candidates).

4.6 Where a party wins more electorate seats than it would be entitled to through its share of the party vote, it keeps the extra seat or seats, and the size of parliament is increased by that number of seats until the next election. These are called overhang seats. Further seats are allocated to other parties until the next election

to make sure the number of seats each party has remains in proportion to its share of the nationwide vote.

4.7 The way seats are allocated determines the composition of parliament. Any changes to the MMP rules need to consider how they work in combination; changing or removing one component is likely to affect how the others operate, influencing voting habits and impacting election outcomes. Therefore, we have considered the effect of our proposed changes on each other. We have also considered their overall impact on proportionality[8] and the effectiveness of parliament.

4.8 With this interaction in mind, our recommendations in this part of the report form a package and should be read together.

Party vote threshold

The Panel recommends:

R6. Lowering the party vote threshold for list seat eligibility from five per cent of the nationwide party vote to 3.5 per cent.

4.9 Under MMP, the primary representation threshold for parties is to win five per cent of the party vote. (The exception to this rule is where a party wins an electorate seat, which we discuss below.) The party vote threshold allows parties to enter parliament without needing to win an electorate seat, but it also prevents minor parties, who may struggle to meet the threshold, from doing so. Permitting more minor parties in parliament may be more representative of voters' preferences. However, a proliferation of too many minor parties could lead to difficulties forming governments, unstable governing arrangements, and ineffective parliaments.

4.10 The party vote threshold is aimed at balancing these two competing factors – that is, a parliament that represents a wide range of interests and that is also stable enough to allow for effective government and law-making.

[8] Proportionality is the degree to which a party's share of the party vote corresponds with that party's share of the seats in the House.

Earlier recommendations

1986 Royal Commission on the Electoral System

The Royal Commission recommended:

- setting the party vote threshold at four per cent. It considered five per cent as 'too severe' a barrier for new and emerging parties
- no threshold for parties primarily representing Māori interests (although this was recommended in the context of wider constitutional change that did not take place).

1993 Electoral Reform Bill

When the Bill that established MMP was introduced into the House, it set the party vote threshold at four per cent. The Select Committee report on the Bill recommended raising the threshold to five per cent but did not give a reason for this change.

2001 Justice Select Committee Inquiry into the Review of MMP

There was no agreement between the parties on the threshold, and no recommendation was made.

2012 Electoral Commission Review of MMP

The Commission:

- advised that the five per cent threshold was higher than it needed to be
- recommended it was lowered to four per cent. It thought this lowering could be done without risk to effectiveness or stability
- argued that reducing the threshold to three per cent could be implemented without significant risks, but that would be a step too far at that stage
- that the new threshold of four per cent be reviewed and reported on after three general elections.

The Commission's view was that a party vote threshold below 3 per cent would be too large a departure from the balanced approach recommended by the Royal Commission and affirmed in referendums. It stated it would be contrary to public opinion, and in effect constitute a new voting system.

Is there a case for change?

Arguments against change

4.11 Around a third of submitters who answered our consultation question about the party vote threshold supported the status quo.

4.12 These submitters thought that the five per cent threshold ensured that parties represented in parliament appeal to significant numbers of people, which avoids fragmenting the political system and undermining the effectiveness of parliament and government.

4.13 Other arguments against changing the party vote threshold we are aware of include:

- governments and parliaments could become less effective with a lower threshold if more parties are involved in our governing arrangements. For example, more parties could lead to coalition arrangements that do not last the term of parliament. It could be harder for a government to agree on policies and take decisive action where appropriate
- a lower threshold could also lead to more deal-making between parties seeking to form a coalition government. This behaviour may be unpopular with voters
- a lower threshold may also hamper the ability of parliament to function effectively. For example, a large number of parliamentary parties could impact on the Business Committee's ability to agree on the parliamentary timetable. It could also fragment the opposition, decreasing its ability to counter and debate government decisions, and delivering parties with too few members to participate in parliament effectively
- while broad representation and having diverse voices in parliament is an important feature of our system, a lower threshold risks electing extremist parties that may not share Aotearoa New Zealand's democratic ideals. A proliferation of such parties could detract from the effectiveness of parliament.

Arguments for change

4.14 Around half of submitters wanted a lower party vote threshold, for several reasons:

- a lower party vote threshold makes it easier for minor parties to enter parliament, which increases the diversity of views represented. The current five per cent threshold presents a high barrier for those parties. In each of the last four MMP elections, only four parties crossed the five per cent threshold, while between nine and 15 parties fell below it

- lowering the threshold would reduce the number of votes that do not count toward the final result and increase the proportionality of our parliaments. The number of votes that do not count toward the final result with a five per cent threshold is sizeable: for example, in the 2020 general election, more than 250,000 votes (7.71 per cent of valid votes) went to parties that did not meet the party vote threshold or the one-electorate seat threshold and were therefore wasted
- increasing the number of minor parties in parliament may also increase the choice of coalition partners, providing more routes to a parliamentary majority and reducing the likelihood that any one minor party can decide who will govern by choosing which major party to go into coalition with
- a lower threshold could still support party effectiveness. In its 2012 report, the Electoral Commission considered that about five Members of Parliament (**MPs**) would be sufficient for a political party to be effective in parliament. This number of seats would be likely under a four per cent or under a 3.5 per cent threshold, for example.

4.15 Some submitters supported a higher party vote threshold. These submitters argued the current threshold gives minor parties undue influence when forming a coalition – undermining fairness in representation and potentially leading to government instability.

Interaction with our other recommendations

4.16 Lowering the party vote threshold interacts with our remaining recommendations in this Chapter. We discuss this interaction as we work through the next topics.

Our view

4.17 We recommend a party vote threshold of 3.5 per cent.

4.18 In coming to our recommendation, we considered several different party vote thresholds, including the current threshold of five per cent as well as several lower thresholds. We considered earlier reviews and the views of experts, submitters to this review, data modelling, and academic research.

4.19 Our approach is to set the party vote threshold at the lowest possible level that is consistent with maintaining an effective parliament and stable government, in order to achieve a representative parliament. In our view, lowering the threshold to four per cent does not go far enough in providing for a representative and proportionate parliament, while three per cent goes too far in creating a risk of ineffective and unstable governments and parliaments. To some extent, any representation threshold represents a compromise between competing considerations.

4.20 We considered retaining the five per cent threshold. Some submitters supported this option. They felt it appropriately balanced diversity of representation and minority influence in government decision-making against the risks fringe or extremist parties might pose for the stability of government. However, we consider there is merit in a lower threshold to improve representation, and that the evidence shows the concerns around instability can be addressed.

4.21 We ruled out a threshold greater than five per cent because it would limit the representation of a wide range of interests, and we consider there is no evidence that a higher threshold is needed to maintain an effective parliament and stable government.

4.22 We also considered removing the party vote threshold altogether, with all parties eligible for list seats. However, in practice a default threshold of around 0.4 per cent would operate, simply because there are a limited number of seats available for allocation. With this default threshold there would be very few votes that did not count towards the final result. Parliaments would be proportionate to the share of votes a potentially large number of parties received.

4.23 However, this default threshold would likely lead to numerous parties being represented in parliament, including fringe parties with very limited nationwide support (about 12,000 votes would be required). This outcome would fragment and could well render ineffective both parliament and government. Indeed, we consider any threshold under three per cent (around 85,000 votes at the 2020 election) carries an unacceptable risk of this outcome occurring and so we do not support it.

4.24 We note the consistent support for a four per cent threshold from the Royal Commission, the Electoral Commission, the Justice Select Committee and academics, and by some submitters to this review. Lowering the threshold is often cited as the first of two steps, with a subsequent decision about whether it can be lowered further. We consider that four per cent – requiring approximately 115,000 votes at the 2020 election – would still be higher than it needs to be.

4.25 We considered whether the party vote threshold could be lowered to three per cent. However, we consider this amount of change would be too great a step to take as a single change. We agree with experts and the Electoral Commission's 2012 view that change should be put in place incrementally, and not by making a 40 per cent change in one step. Therefore, although the data support the possibility of the threshold being lowered to three per cent (as the data did in 2012) without too much risk of a fragmented parliament, we do not recommend it.

4.26 We consider that a lower representation threshold of 3.5 per cent - around 100,000 votes at the 2020 election - represents the best compromise for Aotearoa New Zealand for the present, in line with having the lowest threshold possible.

4.27 MMP has been in place since 1996. It has settled over time and the public has become used to how it operates. A number of countries democratically similar to

Aotearoa New Zealand function with a 3.5 per cent threshold or lower, without instability.

4.28 Data modelling undertaken for us based on prior election results supports this option (see **Appendix 2**). Of the last eight elections held under MMP, only in 2008 and 2014 would lowering the threshold to 3.5 per cent have affected the allocation of seats, government formation or proportionality. New parties would have entered the House in 2014 (at a 3.5 per cent threshold) and 2008 (at a four per cent threshold) but these changes would not have been likely to have affected government formation, and proportionality would have been improved.

4.29 While these results can only give an indication – because a lower threshold would likely change both voter and party behaviour – in general, lowering the threshold to 3.5 per cent would improve representation without leading to a proliferation of parties, avoiding either political gridlock or instability.

Alternative options we considered

4.30 We considered retaining the party vote threshold but waiving the threshold for parties primarily representing the interests of Māori. The 1986 Royal Commission recommended this waiver instead of retaining the Māori electorate seats (alongside broader constitutional change). This approach could support and improve the representation of Māori interests in parliament.

4.31 However, there are difficulties of identifying appropriate and sufficiently clear criteria for determining what is a political party representing primarily Māori interests. These concerns led to this proposal being abandoned in 1993 when parliament was considering the change to MMP.

4.32 We share these concerns. Problems with any definition could affect the structure and development of parties focused on Māori and Māori interests in unforeseen ways. For example, there may be a diversity of definitions of a 'Māori party' in communities that don't fit the legislated definition, causing dispute amongst groups and harming Māori representation.

4.33 We considered introducing a preferential voting system for the party vote. A preferential voting system allows voters to rank their preferred parties (for example, they could select a first, second, and third choice). If a voter's first choice does not meet the party vote threshold, their vote would transfer to their second-choice party (and so-on). This voting system allows voters to support minor parties without fear their vote will be wasted and not count in the makeup of parliament.

4.34 The downside of this approach is that it is more complicated for voters. We think improvements to representation are better realised by lowering the party vote threshold without adding additional complexity.

What do you think about our recommendation to lower the party vote threshold to 3.5 per cent and why?

One-electorate seat threshold

The Panel recommends:

R7. Abolishing the one-electorate seat threshold, provided the party vote threshold is lowered.

4.35 If a party wins at least one electorate (general or Māori electorate), it is eligible for list seats in proportion to its nationwide party vote even if it did not pass the party vote threshold.

4.36 The one-electorate seat threshold is often referred to as the 'coat-tail provision' because a party with strong support in a single electorate can bring in other MPs on the back of that support.

4.37 In the past, this provision has enabled some minor parties to gain additional representation in the House.

Earlier recommendations

1986 Royal Commission on the Electoral System

The Royal Commission recommended a one-electorate seat threshold as part of its MMP model (In later years, several Commissioners identified this recommendation as a mistake).

2012 Electoral Commission Review of MMP

The Commission:

- recommended the abolition of the one-electorate seat threshold due to the arbitrary and inconsistent way it supported proportionality, and that it compromised MMP's core principles of equity and fairness
- reasoned that the one-electorate seat threshold confuses the purposes behind the two votes under MMP, and considered that any benefit to proportionality is outweighed by the negative impact on fairness. The abolition of the one-electorate seat threshold would result in all parties being treated in the same way, that is all having to cross the same party vote threshold
- stated that the purpose of the electorate vote is to elect a local representative. However, the one-electorate seat threshold goes beyond this purpose, and can significantly influence the make-up of parliament, by bringing in list MPs that would not otherwise be elected.

2017 and 2020 Electoral Commission post-election reports

In these reports, the Commission considered that the 2012 Review of MMP recommendations (addressing this aspect and others) would improve New Zealand's voting system and recommended that they be considered by parliament.

Is there a case for change?

Arguments against change

4.38 In its 2012 review of MMP, the Electoral Commission also noted that one rationale for maintaining the one-electorate seat threshold was that it can help increase the effectiveness of minor parties entering parliament this way by enabling the workload to be shared amongst more MPs. Since the introduction of MMP, the one-electorate threshold has helped avoid seven instances of single-MP parties. It has also happened to increase the number of MPs of Māori descent in recent elections.

4.39 People who favour retaining the one-electorate seat threshold consider it supports proportionality and representation. This view is held because votes for parties that win an electorate but are under the party vote threshold nationally are still allocated list seats rather than these votes being discarded. About half of submitters who responded to this question supported keeping the threshold.

4.40 Some academics have noted that through the mechanism of the one-electorate seat threshold, local support leads to proportional representation at a nationwide level. For example, in 2002, the Progressives won a list seat with 1.7 per cent of the

party vote after winning the Wigram electorate. Without the electorate threshold, all party votes for the Progressives would have not counted in the final result.

Arguments for change

4.41 As noted by the Electoral Commission, the way the one-seat threshold enables minor parties to gain additional representation in the House on the back of strong support in a single electorate has long been disliked by sections of the public. The threshold is seen by some people as unfairly favouring parties who have their support clustered in one electorate, rather than having significant nationwide support. Almost all electoral experts and academics who responded to this question thought the one-seat threshold was unfair or undermined the idea that the party vote should primarily determine the overall makeup of parliament in MMP elections. Around half of submitters called for change, with some noting the inconsistency in how the threshold supports minor parties and therefore produces unequal election results.

4.42 A widely used example of this effect is the 2008 election result, where the ACT party was awarded four list seats after winning the Epsom electorate, but the New Zealand First party did not get any MPs in parliament even though they received more party votes than the ACT party.

4.43 Another criticism of the one-electorate seat threshold is that it can result in excessive focus on a few electorates, as parties target these seats as a route to representation in the House. There is a view that this threshold results in the voters in key electorates having a disproportionate influence over the final shape of parliament.

4.44 A few submitters thought the one-electorate seat threshold should be retained only in Māori electorates.

Our view

4.45 We consider that the one-seat threshold is fundamentally unfair and should be removed. It can, and has, led to situations where two parties receive a similar number of party votes yet only one party is represented in parliament because of where that support was located. It has created a disproportionate focus on some electorates (and voters) over others. It has also clouded the important principle that in an MMP election, the party vote should primarily determine the make-up of parliament.

4.46 We recognise that, in several respects, the one-seat threshold has contributed positively to our electoral system. It has:

- led to more representative parliaments than if it hadn't been in place and the votes for the relevant party discarded

- supported the effectiveness of minor parties by bringing in additional MPs to share the load.

4.47 We have also considered the case made by some submitters for retaining the threshold for the Māori electorates as a way to support the equitable participation and representation of Māori. If it were retained only for those who won a Māori electorate seat it would not necessarily guarantee increased Māori representation.

4.48 The one electorate seat threshold has on occasion resulted in more MPs of Māori descent entering into parliament than otherwise. But this outcome is not guaranteed. Many non-Māori MPs have also gained seats in the same fashion. For the reasons above we see the one-electorate seat as unfair to all voters.

Interaction with our other recommendations

4.49 The negative impacts of removing the one-seat threshold on proportionality and representation are mitigated through some of our other recommendations. As such, they should be considered as an overall package of reform.

4.50 In particular, our recommendation to lower the party vote threshold will mitigate the negative impacts on proportionality and representation arising from abolishing the one-seat threshold.

4.51 Our modelling shows that combining a lower 3.5 per cent party vote threshold with removing the one-electorate seat threshold represents a middle-ground between changing one or the other (see **Appendix 2**). Based on previous election results, two more minor parties would have entered parliament. Parliaments would also have been more proportional and in general, outcomes would have been fairer.

What do you think about our recommendation to abolish the one electorate seat threshold and why?

Overhang seats

The Panel recommends:

R8. Removing the existing provision for extra seats to compensate for overhang seats, with fewer list seats allocated instead, if the one-electorate seat threshold is abolished, as recommended.

4.52 An overhang seat occurs if a party wins more electorate seats than its share of the party vote otherwise would have entitled it to. This allocation can happen, for example, when a party's candidates win one or more electorate seats, but their party wins only a very small number of party votes. When this occurs, that party keeps all the electorate seats it has won, but the number of list seats allocated to other parties is increased until the next election.

4.53 Therefore, the size of parliament may vary depending on the election results. Overhangs of one or two seats have been required in four out of the nine MMP elections held so far.

Earlier recommendations

1986 Royal Commission on the Electoral System

The Royal Commission recommended that if a party won more electorate seats than its overall entitlement, extra seats should be created in the House until the next election. It stated that this was to be an 'unlikely event'.

2012 Electoral Commission Review of MMP

The Commission:

- recommended that if the one-electorate seat threshold was abolished, the provision for overhang seats should also be abolished. For example, in 2011, with it abolished there would have been six overhang seats, which the Commission viewed as likely to be publicly unacceptable. Its modelling of previous election results indicated that removal of the overhang seats would have had a minimal impact on proportionality

- noted that there would be little point in abolishing overhangs if the one-electorate seat threshold remained.

Is there a case for change?

Arguments against change

4.54 About half of submitters who responded to our consultation question about overhang seats thought they should be retained. They thought the overhang provisions are important for ensuring the proportionality of parliament. They achieve proportionality through supporting the primacy of the party vote in determining the composition of parliament, and reduce any distortions created by parties with local support that is greater than their national support. They ensure that all parties receive the seats they are entitled to, either through winning electorates or through their share of the party vote.

4.55 Other arguments against changing the overhang provisions include:

- removing the overhang provisions would unfairly favour parties with strong local support. Parties that win more electorate seats than they are entitled to (based on their share of the party vote) would get a 'windfall': they would retain their additional seats *and* get a proportional benefit because other parties would receive fewer seats
- abolishing the overhang provisions could encourage parties, candidates, and voters to act strategically in ways that could undermine proportionality.

Arguments for change

4.56 Many of the submitters who called for overhang seats to be abolished referred to the arguments made by the Electoral Commission in 2012. The Commission noted that, if the one electorate seat threshold was abolished, there would be a greater chance that parties win more electorate seats than their party vote would entitle them to. That would then lead to more overhang seats being created to achieve a parliament reflecting party proportionality. The Commission argued that large overhangs would likely be unpopular with the public and create issues for governing.

4.57 If the one-electorate threshold is removed (as we recommend), the frequency and size of overhangs could increase significantly. Larger parliaments may increase the costs and difficulties of running parliament.

Our view

4.58 If, as we recommend, the one-seat threshold is abolished, there would be a risk of an increased incidence of overhang seats. This increased incidence may happen because, without the compensating effects of the one-seat threshold, every electorate won by a party that did not cross the party vote threshold would generate an overhang.

4.59 When the Electoral Commission considered the abolition of overhangs in 2012, they modelled what the impact would have been on the proportionality of results in previous elections and found it to be minimal. We have repeated this modelling for recent elections and found the same result. While caution is required when using past election results to assess different arrangements because of the impact these may have on voting behaviour, we think the modelling provides a reasonable indication that the abolition of overhangs would not have an undue impact on the proportionality of our electoral system.

4.60 Our modelling of a combination of a 3.5 per cent party threshold, abolishing the one-electorate seat threshold, and abolishing the overhang (**Figure 1, Appendix 2**) based on previous election results shows that, generally, the changes would have resulted in more proportional and fairer elections.

4.61 For example, under the Gallagher Index (widely regarded as the best measure of proportionality), a perfectly proportional parliament has a disproportionality rate of zero. In 2012, the Electoral Commission noted that, generally speaking, a rate of less than 3 per cent is an indication that an electoral system is, on balance, fair. The bigger the number the more disproportionate the parliament. First-Past-the-Post parliaments from 1946-1990 had an average rating of 10.66 per cent. Our modelling shows improved proportionality in most elections compared to current settings – for example, with our recommended changes, the parliament after the 2014 election would have rated 1.40 on the disproportionality index (down 2.32 from 3.72). However, proportionality would have remained unaffected in the last two elections in 2017 and 2020.

4.62 Another effect of our combined recommendations is greater representation of minor parties, although this effect is mixed, with fewer seats for the major parties resulting in a transfer of seats from one minor party to another. For example, in the 2014 election **Figure 1, Appendix 2** shows three fewer seats for the National Party, one fewer seat for the Labour Party, the Green Party and the Māori Party, with five extra seats going to the Conservative Party.

4.63 Further, there would have been two elections where the government of the day would have required an additional party to reach a parliamentary majority. We accept that, given the range of behaviour changes expected due to changing several key settings at the same time, models may not accurately predict what might happen in the future. Nevertheless, these models provide added confidence of the outcome of changing these settings.

Interaction with our other recommendations

4.64 Due to the interdependencies between our recommendations, the changes we suggest to representation under MMP should be considered as a package:

- **lowering the party vote threshold to 3.5 per cent** will lower the barrier to representation for minor parties
- **abolishing the one-electorate seat threshold** will improve the fairness of our electoral system, but it should only be removed if the party vote threshold is lowered to provide other avenues to representation for minor parties; and
- **abolishing the overhang provisions** will mitigate the risk of an increase in the number of overhang seats that might result if the one-electorate seat threshold is abolished.

What do you think about our recommendation to for the overhang provisions and why?

Ratio of electorate to list seats

The Panel recommends:

R9. Fixing the ratio of electorate seats to list seats at 60:40, requiring parliament to be an uneven number, and allowing the size of parliament to grow in line with the population.

4.65 List seats aim to create a more diverse and representative parliament. They also ensure proportionality; that is, that the composition of parliament reflects the party vote. After electorate seats are tallied, list seats are used to ensure each party has a total number of seats in proportion to its share of the party vote. For this aspect of MMP to work, there needs to be enough list seats available to allocate.

4.66 Since the introduction of MMP in 1993, the number of list seats has decreased as the number of electorates has increased. At the first MMP election in 1996 there

were 65 electorates. Over time this has increased to 72 electorates. This increase has occurred because the Electoral Act provides for the number of electorates to change in line with population changes. There is a concern that, as a result of this process, we may reach a point where there are insufficient list seats to maintain proportionality or a diversity of representation in parliament.

Earlier recommendations

2012 Electoral Commission Review of MMP

The Commission suggested consideration be given to a 60:40 ratio of electorate to list seats to maintain both diversity of representation and prevent problems arising in maintaining proportionality in parliament. It considered it prudent to opt for a ratio of electorate seats to list seats well below where a problem may arise. Making an explicit recommendation on the size of parliament was out of scope of the review.

2017 and 2020 Electoral Commission post-election reports

The Commission reiterated its 2012 recommendations in its 2017 and 2020 post-election reports.

Is there a case for change?

Arguments against change

4.67 Around 30 per cent of submitters who answered our question about the ratio of electorate to list seats supported maintaining the status quo. Many of these submitters had concerns about the role of list MPs, and their perceived lack of accountability to voters.

4.68 Some submitters considered that parliament has too many MPs already and that it should be reduced in size. Our Terms of Reference exclude us from considering the size of parliament, except in relation to the ratio of electorate seats to list seats.

Arguments for change

4.69 Just over half of submitters who responded to our question supported a fixed ratio. Submitters were concerned about the impact of declining list seats as the number of electorates grows. If there are not enough list seats, they cannot be used to 'top up' a party's seats to achieve proportional representation. Our parliaments would become less representative of the nationwide party vote over time.

4.70 List seats have also been important for widening demographic representation. Fewer list seats could therefore also result in a narrower range of demographic representation in parliaments.

4.71 Most of the submitters who indicated their preferred ratio supported a ratio of 60:40 for electorate-to-list seats, as recommended by the Electoral Commission in 2012. However, a few submitters preferred a 50:50 ratio.

4.72 Many of these submitters also supported the Electoral Commission's recommendation to allow the number of MPs to rise with population changes. A few submitters argued that the size of parliament should always be an odd number to avoid deadlocks that may impact the formation of government.

4.73 If there are fewer list seats available to compensate for overhang seats, then the frequency and size of overhangs may increase significantly. If an election result generates several overhang seats, and there are insufficient list seats available, then extra seats would need to be awarded (under current settings). As the number of electorates, and the chance of overhang seats increases, more overhang seats and larger parliaments are likely.

Our view

Fixing a ratio of electorate to list seats

4.74 We recommend that the ratio of electorate to list seats is fixed at 60:40, and that the size of parliament increase gradually over time as the number of electorates increase in line with population changes to maintain this ratio, subject to the additional proviso that there should always be an uneven number of MPs.[9] A fixed ratio would ensure there are enough list seats to maintain parliament's proportionality and the representation of diverse communities.

4.75 Without a fixed ratio, the electorate vote could begin to have an outsized impact on the makeup of parliament, incrementally moving us away from the major benefits of MMP.

4.76 The diversity of demographic representation for some groups in parliament has increased considerably under MMP, largely due to the election of MPs from party lists. For example, between 1996 and 2011:

- 43 per cent of MPs elected from party lists were women, compared to 24 per cent of MPs elected from electorates

[9] We note that the Terms of Reference for our review identify matters relating to the current size of parliament as being out of scope, except as it relates to the Electoral Commission's 2012 Review recommendation relating to the ratio of electorate to list seats. As such, we consider both matters in this recommendation are within scope.

- 21 per cent of MPs elected from party lists identified as Māori, compared to 14 per cent of electorate MPs, including Māori electorates. Only 5 per cent of general electorate MPs identified as Māori
- MPs who openly identified as LGBTQIA+, Pasifika MPs and MPs of Asian descent also increased.

4.77 Although it is difficult to assess with any precision, we may already be approaching the ratio of electorate to list seats at which proportionality may be at risk. There are different views on when this point is reached. In 2012, the Electoral Commission suggested problems might arise at ratios of electorate seats to list seats of 67:33 – that is, 80 electorate seats and 40 list seats in a 120-seat parliament – or even lower. International literature suggests that risks to proportionality can be expected at a 75:25 ratio of electorate to list seats. We currently have 72 electorate seats and 48 list seats in parliament; a ratio of 60:40 (that is, three electorate seats for every two list seats).

4.78 Modelling suggests this will become more of a problem over time. If the way in which the number of electorate seats is decided stays the same, population growth scenarios suggest there may need to be 78 electorates by 2044, resulting in a ratio of 64:36.

4.79 While there are differing views on what the exact ratio of electorate to list seats should be to avoid issues with proportionality, setting the ratio at 60:40 aligns both with the recommendations of the Electoral Commission, and reflects the current composition of seats in the House.

Allowing the size of parliament to change in line with population change

4.80 It is not possible to fix the ratio of seats without allowing for parliament to grow in line with population growth, unless significant changes are made to the electorate boundary setting process. There is no simple or acceptable way of doing this.

4.81 If no other changes were made in response to fixing the ratio of seats, the number of people in each North Island and Māori electorate would become significantly greater than in the South Island electorates, as no more electorates could be created to reflect population growth differences. Under a medium population growth scenario, by 2044 the South Island electorates would each have about 76,000 people in them, but the North Island and Māori electorates would have 81,000-83,000 people. The South Island would be overrepresented in parliament. This inequity in the number of voters represented in each electorate could also be inconsistent with the active protection of Māori electoral rights.

4.82 We considered whether to unfix the number of South Island general electorates. This change would allow all electorates to remain equal in terms of the population they represent, but modelling suggests the South Island would lose an electorate from 2038 onwards. This impact would exacerbate the existing issue of

geographically large electorates in the South Island. As this option would both compromise the effectiveness of local representation (as each electorate MP would need to represent increasing numbers of people), and as it would be unfair to South Island electors to further reduce their access to representation, we do not support this option.

4.83 Our recommendation instead is that the size of parliament should be unfixed, to allow it to gradually grow in line with population changes. This recommendation would continue to allow more electorates to be created over time, with extra list seats added to maintain a 60:40 ratio between electorate and list MPs. This recommendation balances fairness, representation and proportionality and provides an enduring response to population growth. It ensures electorates contain similar numbers of voters and allows the fixed ratio of electorate to list seats to be maintained (preserving the representation function of the list seats). To achieve this balance, the size of parliament must be able to respond to population growth by increasing in size.

4.84 Our modelling suggests the House may undergo incremental growth to 128-130 seats by 2044, depending on population growth. Gradual increases in the size of parliament also took place under the First-Past-the-Post system, and at this size, the numbers of representatives for the country's population would be in line with other democracies.

Interaction with our other recommendations

4.85 This recommendation has implications for the size of electorates and the boundary review process, which we address in **Chapter 17**.

What do you think about our recommendations on the ratio of electorate to list seats and the size of parliament and why?

5. Parliamentary Term and Election Timing

The parliamentary term

The Panel recommends:

R10. Holding a referendum on the parliamentary term, supported by a well-resourced information campaign (including dedicated engagement with Māori communities and leaders).

5.1 Regular elections are a critical part of any democracy. In Aotearoa New Zealand, the longest a parliament can run is three years. A shorter period is possible if the prime minister calls an early election (we discuss that issue further in the next section **Election Timing**).

5.2 The length of the parliamentary term must balance two objectives:

- **effectiveness**: allowing parliaments and governments enough time between elections to do their jobs. For governments, this means enough time to develop, consult on, and implement their policies. Parliaments, meanwhile, need time to scrutinise governments and examine legislation
- **accountability**: elections hold politicians accountable to the people they serve. The term of parliament needs to be short enough to provide this opportunity regularly, but long enough for the public to be able to understand and assess the performance of the government and Members of Parliament (**MPs**).

5.3 We have been asked to consider whether the current three-year term of parliament continues to be appropriate for Aotearoa New Zealand. Our Terms of Reference state that we should consider:

- whether a longer parliamentary term would improve the effectiveness of government, parliament and MPs
- if the term of parliament was longer, whether voters would still have an appropriate level of influence over government and MPs; and
- other related changes (such as the dissolution and expiry of parliament).

Earlier recommendations

1986 Royal Commission on the Electoral System

The Royal Commission found the arguments on the length of the term finely balanced and that any change needed to sit alongside other restraints, particularly the introduction of its recommended Mixed Member Proportional (**MMP**) voting system. The Commission recommended a public referendum on whether the term should be extended to four years soon after MMP was introduced.

Earlier public referendums

Referendums in 1967 and in 1990 rejected extending the term by just over a two-thirds majority.

2013 Constitutional Advisory Panel

The Constitutional Advisory Panel:

- noted a reasonable level of support for a longer term among those it consulted
- recommended further public consultation on what additional checks and balances might be desirable if a longer term was implemented.

Is there a case for change?

Arguments against change

5.4 Half of submitters answering this question supported keeping a three-year term. Submitters who supported the status quo thought that it holds politicians and political parties to account and ensures they remain responsive to voters. The ballot box is a powerful safeguard in democracies. These submitters were

concerned that the current restraints on governmental authority were too weak, and they emphasised the need to ensure political accountability.

5.5 For some submitters (and for a number of experts), the lack of checks and balances in our constitution make frequent elections more important. Unlike many other countries, Aotearoa New Zealand:

- has one central government (rather than state and federal governments)
- has a single-chamber parliament (rather than having an upper and a lower House)
- does not have a written constitution
- does not have the power for the courts to strike down laws made by parliament
- has the ability for parliament to move into urgency with a majority vote, giving governments the ability to pass laws with less parliamentary scrutiny.

5.6 Submitters argued a stronger and more independent parliament (for example, one with stronger Select Committees and more MPs), is needed before extending the term of parliament. Some submitters noted that they would be more comfortable supporting a four-year term if such changes were made before or alongside it.

5.7 In theory, a longer term may lead to better consultation and more considered law-making. However, some people question whether this has happened in other countries with longer parliamentary terms.

5.8 A longer term would also mean some young people would have to wait longer to vote. We consider the voting age in **Chapter 7**.

Arguments for change

5.9 Aotearoa New Zealand's parliamentary term is one of the shortest in the world. Three-year terms are rare. Only two other countries with one House of Representatives – El Salvador and Nauru – have a three-year term. In contrast, 49 countries with single Houses have a four-year term.

5.10 Some people, including some submitters to this review, consider three years does not provide enough time for governments and parliaments to be effective.

5.11 Some submitters noted that the actual 'working period' is shorter than three years, once pre- and post-election rules and election campaign times are factored in. Submitters argued that this creates imperfect and rushed law-making, resulting in poor quality laws and piecemeal reform. Consultation times can become short, and a lack of parliamentary time can result in laws being passed under urgency, with fewer checks on their content.

5.12 Half of submitters answering this question supported a four-year term. A number of these submitters thought a four-year term would be better for busy communities and organisations with multiple goals and interests because there would be more time to consult. Many submitters thought a longer term could help governments to tackle difficult issues requiring longer-term transformational change. These submitters included diverse community-based organisations and Māori groups.

5.13 There would also be cost savings because elections would be held less often.

5.14 Of the submitters who expressed a view on whether an extension to the parliamentary term should be decided by parliament or public referendum, most submitters supported a referendum with an appropriate educational programme.

Other impacts

The term of parliament is entrenched

5.15 Changing the term of parliament requires a 75 per cent majority vote in parliament or by a bare majority at a public referendum.

Changing the parliamentary term would impact local government elections

5.16 Changing to a four-year term would have an impact on local government elections. These also take place every three years, meaning the two elections always take place in different years. If parliament is elected every four years, local body and general elections would sometimes fall in the same year.

5.17 The draft report of the Future for Local Government Review recommends that local elections should move to a four-year cycle. This change would allow general and local body elections to take place alternatively, so that one was held two years after the other.

Te Tiriti o Waitangi / the Treaty of Waitangi implications

5.18 A longer term will reduce the opportunities Māori have to select their political representatives which could be seen to undermine electoral rights protected by te Tiriti o Waitangi / the Treaty of Waitangi (**te Tiriti / the Treaty**). On the other hand, this change impacts all New Zealanders equally. We also heard that a 3-year term requires a frequent 'reset' of the Crown Māori relationship which makes a sustained partnership more difficult.

Our view

5.19 Legitimate concerns have been raised about whether the current three-year term is enough time for government, parliament, and MPs to be effective. The arguments in favour of a four-year term – that it would improve the ability of parliament to scrutinise the government, produce better laws and more effective governments – are strong arguments, in line with our objectives.

5.20 On the other hand, we also heard that there is no certainty that a four-year term would deliver the promised benefits when compared to a three-year term. A longer term would allow more time to develop and make new laws but might not improve the law-making process. We also heard that, in the absence of greater checks on how governments exercise power, more frequent elections help voters hold governments to account.

5.21 While there are differing views, we have heard enough to recommend that a referendum should be held on the term of parliament. Given the constitutional significance of the term of parliament, we think that the public, not MPs, are best placed to decide what the most appropriate and effective term is. We also think it would be timely for the public to have an opportunity to do so, seeing as the last referendum took place 32 years ago.

5.22 Along with some submitters, we agree that this referendum should be supported by a well-resourced information campaign. As Māori will be a minority voice in the public referendum, it is important to make sure any Māori concerns are heard elsewhere in this constitutional change. For that reason, we recommend the information campaign should include dedicated engagement with Māori leaders and communities.

Interaction with our other recommendations

5.23 Holding a referendum on the term of parliament term should be considered as one part of our package of recommendations. Taken together, our recommendations aim to improve democracy in Aotearoa New Zealand. A greater gap between elections may be more acceptable to some people if our other recommendations were adopted. For example, our recommendation to lower the party threshold to 3.5 per cent will result in a more representative parliament. This recommendation could counter-balance less frequent elections.

5.24 Our recommendation to retain the ability of the prime minister to call an early election (discussed below in **Election Timing**) means that shorter terms would still be possible.

5.25 Our recommendation to enhance public information and improve citizenship education should inform voters in a referendum.

5.26 Other parts of this report cover matters that are linked to the three-year term, and so they would need to be changed if the term is extended to four years. One

example is voter eligibility requirements (**Chapter 7**). At the moment, disqualification from voting for those living overseas or those convicted of a corrupt practice last for three years because they are linked to the current term of parliament.

What do you think about our recommendation for a referendum on the term of parliament, with a well-resourced informed campaign, and why?

Election timing

The Panel recommends:

R11. Continuing to allow the prime minister to call a general election at any time before the end of the parliamentary term.

5.27 In Aotearoa New Zealand, we have a maximum parliamentary term (every parliament expires after three years), but no minimum term. A general election can be called at any time before the end of the three-year term.

5.28 The prime minister can call an early election at any time within the three-year term, although this has only happened three times (in 1951, 1984 and 2002). There is no requirement for a period of notice. In 1984 a snap election was called with four weeks' notice; in 2002 it was six weeks. However, in recent years a practice has developed where the prime minister announces the election date early in the third year of parliament, providing many months' notice for the Electoral Commission, parties and candidates to prepare.

Earlier recommendations

1986 Royal Commission on the Electoral System

The Royal Commission favoured setting a minimum term in the context of having a longer, four-year term. The Commission did not feel a longer term could be implemented without restraint on the right to dissolve parliament. It preferred a minimum term of three and a half years (unless a government could no longer govern because it had lost the support of the House, in which case an earlier election could be called).

2013 Constitutional Advisory Panel

The Constitutional Advisory Panel recommended public consultation on a fixed election date, together with consultation on a longer parliamentary term. It identified two specific options for setting the election date:

- limiting the prime minister's discretion to set the election date, for example, to the last year of the term
- codifying the (then) current practice of holding the election on a Saturday toward the end of November.

2017 and 2020 Electoral Commission post-election reports

In both reports, the Commission invited further discussion of legislative change to provide for a fixed election date or a minimum notice period for the general election.

Is there a case for change?

Arguments against change

5.29 About 40 per cent of submitters who answered our question about setting the election date supported the status quo. These submitters were concerned about the difficulties that might arise when governments lose the confidence of the House of Representatives if the election date was fixed.

5.30 There is a view that current arrangements recognise the degree of flexibility required by the Westminster system of parliament and by MMP. For example, if a coalition government proved to be unstable, or a minority government arrangement became untenable, or an election result meant a government could not be formed, there might be a need to call an election. Although a new grouping of governing parties could be formed instead, under the status quo it would be possible to call an early election in any of these circumstances.

5.31 Current political practice, which may have become understood to be a constitutional convention, is that the prime minister announces the election date early in the last year of the parliamentary term. There is no need to fix the date in law while this practice is followed.

Arguments for change

5.32 A number of experts have argued that current arrangements favour the prime minister's party. The prime minister can choose an election date that maximises the partisan interest of their party. Some submitters were concerned about this possibility. An election called at very short notice might be unfair to other political parties who need time to prepare for the campaign. Currently, there is uncertainty over when the polling date will be and when the prime minister will make the announcement.

5.33 Submitters who wanted to change the process for setting the election date thought it would provide certainty and reduce the risk of governments calling elections at politically convenient times. The changes they suggested included:

- allowing for others besides the prime minister and governing party to be involved in the decision to dissolve parliament early
- having the prime minister retain the power but setting a minimum notice period for elections
- legislating for a minimum term
- limiting the length of the parliamentary term after an early election to the remaining time of the original term
- restricting the circumstances in which an early election can be called (for instance, after the defeat of the budget)
- having a default election date that a majority vote in the House of Representatives could move if needed.

5.34 The Electoral Commission noted in its report on the 2020 general election that it needs at least 14 weeks' notice before election day to prepare for running an election. The Commission has invited discussion on whether there should be a minimum notice period.

Our view

5.35 We considered whether to keep the status quo, or to make changes, to the process for setting the election date. We are not recommending change.

5.36 In our view, the process for setting the general election date needs to be flexible enough to work in practice while also having enough certainty so that it doesn't

create unfairness. Certainty and plenty of notice are beneficial to parties, candidates, and advocacy groups who need to build a campaign and engage with voters. Generally, providing more notice may help participation as it gives voters more time to enrol to vote and to learn about policies and candidates. However, overly lengthy campaigns may have the opposite effect, so a balanced approach is called for.

5.37 When we looked at the options for change, we considered that each option could create problems in practice. For example, if a government loses the confidence of the House, an early election should be called. If a fixed date was in place, and confidence was lost very early in the parliamentary term, we would be stuck with a government that could not govern.

5.38 We are also not convinced that the current settings create a problem. MMP allows new coalitions to form without the need to call an election. Both the Westminster system and MMP have inbuilt flexibility, but also need the flexibility to respond to changing conditions.

5.39 The current practice (followed for the past five elections) of the prime minister announcing the election date early in an election year provides ample notice for political parties, candidates, voters and the Electoral Commission.

5.40 In terms of our objectives, the status quo:

- produces effective parliaments and governments because they can effectively meet their responsibilities and exercise their functions
- is open and accountable, with checks and balances to ensure its integrity because it ensures parliament and government remain guided by public input and scrutiny.

Interaction with our other recommendations

5.41 Setting the election date affects:

- when by-elections no longer need to be held if an electorate seat vacancy arises (**Chapter 6**)
- the regulated period for spending on election advertising (**Chapter 14**)
- the timing for boundary determination (**Chapter 17**)
- the Māori electoral option. Māori electors can currently change rolls up until three months before a general election. Without a fixed time for calling an early election, an election could be called for less than three months to run – removing this option for Māori voters. However, our recommendation to allow the exercise of the option up to and including on election day, will address this issue (**Chapter 7**).

What do you think about our recommendation on setting the election date and why?

6. Vacancies in Parliament

Grounds for vacancies

The Panel recommends:

R12. Changing the ground for non-attendance so that a Member of Parliament's seat becomes vacant once they have been absent from parliament without the leave of the House for three months.

R13. Removing mental incapacity as a ground to remove an Member of Parliament.

R14. Retaining the remaining grounds for when an Member of Parliament's seat becomes vacant, including the grounds of citizenship and for criminal convictions.

6.1 Under electoral law, there are 14 circumstances in which a Member of Parliament's (**MP**) seat may be vacated. The most common reason for vacancies in both electorate and list seats is MPs resigning from parliament. This ground covers resignation for any reason, such as retirement from politics, illness, taking up other employment, or public pressure.

6.2 The other grounds cover a variety of situations, including death, 'mental disorder', non-attendance, conviction of a serious crime, an MP's election being declared void, and certain changes to citizenship, allegiance, or employment. A few of these grounds warrant further explanation, which we do below.

6.3 An MP may also be required to vacate their seat if they cease to be a parliamentary member of the political party from which they were elected. We discuss this rule separately, in the next section.

6.4 In this section, we discuss whether any of the grounds for vacancies should be changed.

Earlier recommendations

2020 Electoral Commission post-election report

While it did not make any direct recommendations on vacancies, the Commission stated that it would be opportune to review provisions referring to 'mental impairment' for voter registration. This reasoning could also apply to the mental incapacity grounds for MPs to vacate their seat.

Disqualification for non-attendance

6.5 An MP's seat is vacated if they fail to attend the House for an entire session of parliament, without the permission of the House. When this ground was introduced, a session of parliament usually lasted for a calendar year. However, since 1993, sessions have lasted for the whole term of parliament (that is, for three years).

6.6 This ground does not affect MPs who attend the House but who do not otherwise carry out their responsibilities.

Is there a case for change?

Issues identified

6.7 The current ground has flexibility – an MP can seek the permission of the House to be absent, for example for serious illness or for parental leave. As a result, disqualification on attendance grounds has been extremely rare; occurring twice – once in 1862 and once in 1918.

6.8 In practice, there are other constraints that ensure attendance, including party discipline, public pressure, and salary deductions (which occur after an MP has been absent for more than three sitting days in a calendar year).

6.9 The shift to sessions lasting the whole term of parliament has made this rule completely ineffective. However, it is still undesirable for an MP to be absent from the House for an extended period and yet retain their seat. If this happens, it could erode public confidence in our democracy, particularly if the MP was representing an electorate.

Our view

6.10 The current non-attendance ground is effectively redundant because it allows an MP to be absent for an entire term of parliament before they must vacate their seat.

6.11 Although the other ways to ensure an MP's attendance (salary deductions, party discipline, and public pressure) should be sufficient in most cases, a better ground would be to require an MP to vacate their seat if they have been absent from the House without permission for a set time. We think a three-month period of absence would be appropriate.

Mental incapacity

6.12 An MP vacates their seat if they become 'mentally disordered' (under the Mental Health (Compulsory Assessment and Treatment) Act 1992). The Panel is not aware of any instances where the ground has been used.

6.13 The law requires the Speaker of the House to be informed if an MP is subject to a compulsory treatment order or an inpatient order. The Speaker will inform the Director-General of Health, who must, together with a medical practitioner named by the Speaker, visit and examine the MP and report on whether the MP is 'mentally disordered'. If so, a second report is prepared after six months. If the second report concludes that the MP is still 'mentally disordered', both reports are laid before the House of Representatives and the seat becomes vacant.

Is there a case for change?

Issues identified

6.14 The ground and the process aim to protect MPs who are unable to carry out their duties on mental health grounds. It protects representation by allowing the seat to be vacated and filled by another representative.

6.15 However, the language used in this ground is outdated. Though consistent with wording in the Mental Health (Compulsory Assessment and Treatment) Act 1992, that Act is under review by the Ministry of Health and is expected to be repealed and replaced.

6.16 The process invades privacy and has also become outdated. It requires the Director-General of Health to personally visit and examine the MP, but as the Director-General of Health no longer needs to be a qualified medical practitioner, this process is not appropriate.

6.17 The current law has a very high threshold. It is extremely rare for anyone to be subject to a compulsory treatment order or an inpatient order for six months or more, even in the event of serious mental illness. The ground is unlikely to ever be met in the present day.

6.18 In practice, this ground is unnecessary. It is likely that either the MP would resign, or that other measures would be put in place through party processes, given the full vacancy process under this provision takes longer than six months.

Our view

6.19 Our view is that this ground is out-of-date and therefore not fit for purpose. It only applies to very serious cases of mental illness and the process it requires is no longer appropriate. The general grounds for absence are sufficient, especially if our recommendation regarding those grounds is adopted.

Citizenship

6.20 Candidates must be New Zealand citizens to stand for and be elected to parliament. An MP loses their seat if they lose their New Zealand citizenship, as well as if they:

- become a citizen or subject of a foreign state (unless by birth right or marriage)
- make a declaration of allegiance to a foreign state, or
- apply for a foreign passport (renewing an existing one is permitted).

6.21 By comparison, candidates can stand for parliament and be elected as an MP while holding dual or multiple citizenships.

Is there a case for change?

Issues identified

6.22 Different foreign citizenship rules apply to candidates than they do to sitting MPs. The law is more lenient for candidates than it is for sitting MPs. As people can move between the status of candidate and MP, the differing rules create interesting scenarios, including:

- a person can stand as a candidate for parliament while they hold dual citizenship, but they must vacate their seat if they apply for citizenship in another country after being elected as an MP
- if they vacated their seat because they had applied for citizenship in another country, they would then be qualified to stand again. For example, they could stand for that seat in any subsequent by-election (if it is an electorate seat) or at the next general election
- a sitting MP would also disqualify themselves if they applied for a new foreign passport, but, if re-elected, would be able to renew that passport without losing their seat.

6.23 An MP's actions in seeking citizenship (or a passport or other rights associated with citizenship) can be seen as inconsistent with the oath of allegiance they take when they are sworn in. In contrast, there is greater transparency and opportunity

for public scrutiny where a candidate has dual citizenship. Voters could, for example, choose not to vote for that candidate if they were concerned about dual allegiance, but would have no such ability where a sitting MP sought citizenship of another country.

Our view

6.24 The current MP citizenship grounds should remain. Although stricter than the requirements for candidates, we consider this ground is appropriate for MPs and consistent with the oath of allegiance MPs take.

6.25 It is appropriate for an MP to lose their seat if they lose their New Zealand citizenship. Loss of citizenship only occurs when it was fraudulently obtained or when citizenship of another country is acquired, and the person acts in a way that is contrary to Aotearoa New Zealand's interests.

Criminal convictions

6.26 Currently, an MP's seat becomes vacant if they are convicted of a crime punishable by imprisonment of two years or more (that, is a category 3 or 4 offence under the Criminal Procedure Act 2011), or if found by the High Court to have committed a corrupt practice under the Electoral Act.

6.27 Corrupt practices are deliberate acts that seek to unduly influence election outcomes (for example, bribery). They are punishable by a term of imprisonment of up to two years or a fine of up to $40,000 (or $100,000 for candidates, party secretaries or registered promoters when relating to election expenses). The level of penalty is lower than for category 3 and 4 offences. We discuss corrupt practices further in **Chapter 18**.

Is there a case for change?

Issues identified

6.28 The current ground – which requires the offence to carry a maximum penalty of two years' imprisonment – may not be broad enough. For example, an MP found to be in contempt of court cannot be removed from parliament, because this offence is not included. This situation happened in 2004, when the High Court found a sitting MP to be in contempt of court.

6.29 On the other hand, the ground does not distinguish between a maximum sentence and the sentence actually imposed by the court. A vacancy is created when an MP is convicted of a serious offence where the maximum penalty is two years' imprisonment or more, regardless of whether a light sentence or one at the higher end of the scale is imposed.

Our view

6.30 We consider that MPs should be held to a high standard, and we are interested in whether you think the current standard is high enough. The criminal conviction ground applies to serious crimes – where the penalty is two years or more in prison. This rule means that MPs convicted of more minor offences can remain in parliament. Equally, if an MP is found guilty of a serious offence but a court discharges them without conviction, their seat will not be vacated. Further, the law is not clear about whether the vacancy arises on conviction, or once all appeals have been exhausted. This is a matter that could be addressed when the Electoral Act is redrafted.

6.31 Our view is that MPs should continue to lose their seat if they are found to have committed a corrupt practice. It is appropriate for breaches which undermine the integrity of the electoral system to carry both a criminal law consequence and an electoral system-level consequence. This ground acts as a deterrent to candidates and MPs, helping to preserve the integrity of our electoral system.

6.32 We note that if an MP is convicted of committing a serious crime, it is likely they would face pressure from the public or their party to resign in any case.

Interaction with our other recommendations

6.33 Our recommendation regarding grounds for voter eligibility will create different rules for voters compared to MPs (allowing all prisoners to vote, including those convicted of category 3 and 4 offences). We consider this difference appropriate given the special responsibilities of MPs.

What do you think about our recommendations on vacancies in parliament and why?

Do you think the current criminal conviction standard is set high enough?

Electoral integrity (party-hopping) rules

The Panel recommends:

R15. Repealing the restriction on Members of Parliament remaining in parliament if they cease to be a member of the party from which they were elected.

6.34 Mixed Member Proportional (**MMP**) has seen a number of MPs change party during the term of a parliament, including to form new political parties. Legislation in place between 2001 and 2005 and since 2018 provides for an MPs seat to become vacant if they cease to be a parliamentary member of the political party for which they were elected. These provisions have been the subject of much commentary and debate.

Earlier recommendations

2013 Constitutional Advisory Panel

The Constitutional Advisory Panel noted that between 2005 and 2013, only a small number of MPs left their parties. It concluded that this meant the proportionality of parliament (the key reason for electoral integrity legislation) was not under threat.

Is there a case for change?

Arguments against change

6.35 Some submitters who talked about the current provisions were in support of them. These submitters considered that the independence of MPs is less important than their accountability to voters through their political party, particularly because of the central role of political parties under MMP. A few submitters thought that the provisions could be better drafted.

6.36 Some submitters thought that MPs elected from a party are obliged to continue to serve that party for the term of parliament and this is the expectation of voters.

6.37 An argument made in favour of the current rules is that they intend to promote public confidence in the integrity of the political system by ensuring the proportionality of parliament is not significantly altered by MPs changing their political affiliations after an election. Consequently, voters, through their party vote at the last election, can continue to determine the share of seats each party gets in parliament throughout the parliamentary term.

6.38 A number of academics and politicians consider the current rules provide flexibility. An MP's seat does not automatically become vacant if they leave their party. Therefore, parties that do not support the vacancy process do not have to use it and others can use it as a 'last resort' only. Flexibility minimises the potential for vacancies or by-elections as a result of these rules.

Arguments for change

6.39 Most submitters who talked about the current provisions were opposed to them and wanted them to be abolished. These submitters considered that the rules privilege political parties over voters, weaken accountability, undermine public trust and democratic principles, and prevent MPs from acting in an independent and principled way.

6.40 Many submitters thought that electorate and list MPs should be treated differently. They considered electorate MPs should stay on in parliament, because they had a local mandate from voters, but that the same local mandate did not apply to list MPs who should therefore have to leave parliament if they left or were expelled from their party.

6.41 Restrictions on 'party hopping' may not be necessary. Some academics consider the electoral system functioned well between 2005 and 2018 when 'party hopping' was permitted. Defections of MPs to form new parties were few and were resolved at the resulting by-election or next general election by voters. The majority of defecting MPs were not re-elected; those that were had obtained voters' support for leaving their party.

6.42 In addition, some academics argue that the party-hopping regimes have not been effective. For example, when the Alliance Party split under the 46th Parliament (1999 – 2002), the defecting MPs were the majority of the parliamentary party, so agreement by two-thirds of the party could not be reached. It can also be unclear whether the 'reasonable belief that proportionality has been distorted' threshold has been met.

6.43 Repealing the rules would mean that an MP who ceases to be a member of their party could stay in parliament as a member of another party or as an independent MP. Some submitters were in favour of allowing MPs to exercise their individual judgement and conscience, reflecting that an MP may choose to defect for a multitude of reasons, some of which could be seen as a principled or necessary departure.

6.44 It has been noted that the current rules give a lot of power to parties and their leaders to stifle debate and dissent, either directly, by forcing a dissenting MP from parliament, or indirectly by influencing MP behaviour. An MP might feel unable to express contrary views to the views of the party, even where the views they are expressing are supported by their constituents. This impact impinges on MPs' right to freedom of association and expression.

6.45 Some academics have argued that party defection or disloyalty is a political problem and that it is not appropriate to have set rules. In 2003, in *Awatere Huata v Prebble*, the courts were faced with making a decision on a situation where a party wanted a member expelled from parliament, while the member claimed to still represent the party. This drew the Courts into inherently political matters, even though New Zealand's constitution places importance on keeping the parliament and the courts separate.

Our view

6.46 We considered retaining, adjusting, or abolishing the 'party hopping' rules. We also considered retaining the rules for list MPs only.

6.47 Our initial view is that the rules should be repealed. The rules limit an MP's freedom of association and expression, which are fundamental rights in any democracy and under our New Zealand Bill of Rights Act. The freedom of MPs to dissent also provides an important constitutional check on political parties and the government.

6.48 This check is particularly powerful given that Aotearoa New Zealand's parliament is supreme. The governing party could conceivably attempt to enact extremist laws that fundamentally violate a particular group's human rights, or to undermine the status of Māori as the Crown's Tiriti o Waitangi / Treaty of Waitangi (Tiriti / Treaty) partner. In these scenarios, individual MPs' ability to defect becomes a potent and powerful safeguard against parliamentary supremacy that we think should be retained. Māori MPs could also see the ability to defect as an exercise of their tino rangatiratanga as guaranteed by te Tiriti / the Treaty.

6.49 Currently, the provisions create uncertainty in instances where MPs leave or are suspended or expelled from their party. Their existence can create confusion and potentially has a chilling effect on free speech. Repeal would create clarity for all involved.

6.50 Repeal would also recognise the inherently political nature of internal party disputes and keep them out of the Courts.

What do you think about our recommendation to repeal the restriction on MPs remaining in parliament if they cease to be a member of the party they were elected from and why?

Process for filling vacancies

The Panel recommends:

R16. Keeping the current rules for filling vacant electorate seats and list seats, including the process for a seat that is vacated within six months of a general election.

6.51 The process for filling vacancies depends on whether it's an electorate seat or list seat, as well as how close to the next election the vacancy arises.

6.52 By-elections are held to fill electorate seat vacancies, which a sitting list MP can choose to stand in as a candidate. List seat vacancies are filled from the party list. The Electoral Commission checks that the next candidate on the list is still a member of the party and whether they agree to be an MP. If necessary, the Electoral Commission moves on to the next person on the party list. If there is no one left on the list, the seat remains vacant until the next election.

6.53 If either an electorate or list seat vacancy arises within six months of a general election, a 75 per cent majority of parliament can decide not to fill the vacancy. No decision is required if the vacancy arises after parliament has been dissolved.

Earlier recommendations

2012 Electoral Commission Review of MMP

The Commission:

- recommended list MPs should continue to be able to contest by-elections
- did not support electorate vacancies being filled from the party list.

Is there a case for change?

Arguments against change

Electorate seats

6.54 Since the first MMP election in 1996, there have been 14 by-elections to fill vacancies. Although by-elections come at a cost, if the seat remained vacant this would leave an electorate without representation in parliament.

6.55 About half of the submitters who responded to our question on vacancies supported keeping the status quo. Submitters who supported by-elections generally considered the connection between electorate MPs and their constituents to be meaningful. They saw by-elections as an important means of continuing this relationship and ensuring that constituents continued to have representation in parliament.

6.56 There is an increasing trend of electorate MPs retiring from parliament during the six-month period before the general election. In each case the House has resolved to not hold a by-election. This process could be seen as the six-month rule working well and saving taxpayer funds.

List seats

6.57 In every instance that a list seat has become vacant, there has been another person on that party's list able to fill the vacancy.

Arguments for change

Electorate seats

6.58 Although there have been 14 by-elections during the 27 years of MMP, by-elections have been more frequent in some parliaments than in others: four were held during the 49th Parliament (2009 – 2011) and three during the 51st Parliament (2014 – 2017).

6.59 Some submitters who answered this question considered that MPs should always complete the full parliamentary term, apart from in exceptional circumstances. Several of these submitters suggested that disincentives could be put in place, such as not filling list seat vacancies, or requiring by-elections to be paid for by the vacating MP or their party.

6.60 Some submitters thought that by-elections were a waste of taxpayers' money and that electorate seats should remain vacant if an MP left. Some submitters also thought that leaving seats vacant would incentivise MPs to stay on.

6.61 By-elections for electorate seats could end, with seats filled from the party list instead. This is a process used in some other countries and was suggested by some submitters. Parties could be required to consider local representation when filling a seat from the list.

6.62 By-elections come at a considerable cost – each by-election costs around $1.2 million, though the cost varies depending on the electorate – and can change the proportionality of parliament. For example, the National party's win in Hamilton West in 2022 gave it one more seat and Labour one less seat than it won at the 2020 general election. A few submitters noted that allowing by-elections, while restricting party-hopping (discussed above), applied an inconsistent approach to proportionality throughout the parliamentary term.

6.63 In some cases, a change to the proportionality of parliament can shift the balance of power. In such situations, by-elections can give voters in the vacated electorate disproportionate influence over the makeup of parliament, even though turnout at by-elections tends to be about half the turnout at general elections.

List seats

6.64 In recent years, several list MPs intending to step down at the next election have resigned in the final year of the term and been replaced from the party list. This trend could be viewed as making way for a candidate who is expected to have an ongoing interest in a parliamentary career, but if the rules were changed MPs would be incentivised to stay on.

6.65 Most submitters supported the current way that vacant list seats are filled from the party list, but other submitters considered that list seats should remain vacant if an MP resigns.

Our view

6.66 We recommend leaving the process for filling vacancies unchanged.

6.67 We do not favour leaving either type of seat vacant, except within six months of a general election, if the House agrees. Filling vacant electorate and list seats supports parliamentary effectiveness and provides voters with representation. It would result in some voters not being represented by an electorate MP and it

could have a major impact on parliamentary effectiveness and government stability. For example, a government with a majority of only one MP could lose the confidence of the House through a single vacancy. These impacts seem severe where a seat is vacated involuntarily, such as if an MP dies or becomes unwell.

6.68 Although by-elections can be unpopular, removing them is also likely to be unpopular. By-elections fill an important democratic function, ensuring voters elect their preferred candidate as their local representative. Representatives with sufficient links to the electorate are especially significant for Māori electorate vacancies, where relationships and whakapapa links are important considerations.

6.69 We consider the status quo is consistent with our review objectives. The current rules are practicable and enduring, and able to produce effective parliaments and governments. Retaining the current rules upholds and promotes the legitimacy and integrity of New Zealand's democratic electoral system.

Interaction with our other recommendations

6.70 If the length of the parliamentary term is changed to four years (discussed in **Chapter 5**), we consider that the six-month period in which vacancies do not have to be filled could remain the same.

What do you think about our recommendation to keep the current process for filling vacancies and why?

Part 3

Voters

This part covers:

- voter eligibility (**Chapter 7**)
- enrolling to vote (**Chapter 8**)
- voting in elections (**Chapter 9**)
- counting the vote and releasing results (**Chapter 10**)
- improving voter participation (**Chapter 11**)

7. Voter Eligibility

The Panel recommends:

R17. Lowering the voting age to 16.

R18. Extending the time that New Zealand citizens can spend overseas without losing the right to vote to two electoral cycles.

R19. Extending the time that permanent residents must spend in Aotearoa New Zealand before gaining the right to vote to one electoral cycle.

R20. Keeping the time that permanent residents can spend overseas without losing the right to vote at 12 months.

R21. Clarifying the use of the term 'permanent resident' for electoral purposes to avoid confusion.

R22. Granting all prisoners the right to vote.

7.1 Voter eligibility determines who can vote in general (and local) elections. A person must first enrol to be eligible to vote.

7.2 To be eligible to enrol, a person must be 18 years or older, a New Zealand citizen or permanent resident, and have lived in Aotearoa New Zealand continuously for at least one year at some time in their life. For electoral purposes, a permanent resident is someone who resides in Aotearoa New Zealand and can stay here indefinitely. This differs from the definition for immigration purposes, where a permanent resident is someone who holds a permanent resident visa.10

7.3 Some people who would otherwise be eligible to register are disqualified if:

- they are a citizen living overseas who has not been in Aotearoa New Zealand within the last three years

[10] When using the term 'permanent resident', this report refers to the electoral definition.

- they are a permanent resident living overseas who has not been in Aotearoa New Zealand within the last 12 months
- they are in prison serving a life sentence, preventive detention, or a sentence of three years or more
- they have committed a crime but are not in prison for reasons relating to mental health or intellectual disability (for example, because they have been found unfit to stand trial or they have been committed to a hospital or secure facility upon conviction). In these situations, a person loses the right to vote if they are detained in a hospital or secure facility for more than three years
- they have been found to have committed an electoral offence which places them on the Corrupt Practices List.

7.4 A key focus for our review is how to improve participation and accessibility in the electoral system. This objective needs to be balanced with ensuring the rules are clear, fair and support the transparency and integrity of elections.

7.5 The right of citizens to vote is a fundamental right, protected by the law. This right is built on the idea that democratic governments serve with the consent of those they govern. When considering voter eligibility, our starting point is that all citizens should have the right to vote unless there is a strong case to limit that right. This approach also supports our objective of encouraging participation.

7.6 The basis for limiting voting rights has changed over time. Previous eligibility rules based on owning property, race, sex, or being a British subject have been removed. The remaining restrictions on citizens relate to a person's age, the time they have spent away from Aotearoa New Zealand, and whether they have been found to have committed a serious criminal offence. We assess whether these still form a reasonable basis for limiting voting rights.

7.7 Aotearoa New Zealand is unusual in extending voting rights to permanent residents. We have considered whether the current rules take account of the difference in voting interests for citizens, who have a fundamental right to vote, and permanent residents, who are granted voting rights as a result of living here. Taken together, our recommendations seek to appropriately reflect these claims by easing the voting restrictions for citizens and modestly tightening the requirements for permanent residents.

7.8 We note that candidate eligibility is generally based on voter eligibility. We consider candidate eligibility in **Chapter 12**. Voter eligibility for general elections also applies to local elections, so the changes we propose in this section would extend to local elections unless the government chose to make separate rules.

7.9 In **Chapter 1**, we also discuss our recommendation that voter eligibility provisions should be entrenched.

Earlier recommendations

1986 Royal Commission on the Electoral System

The Royal Commission recommended:

- the voting age should be reviewed by parliament from time to time, taking account of public opinion (it also noted there was a strong case for lowering the voting age to 16)
- prisoners who have been sentenced to a term of three years or more should not be allowed to vote
- patients in psychiatric hospitals who have, following criminal proceedings, been detained for three years or more should not be allowed to vote.

It did not propose changes to the requirement to live in Aotearoa New Zealand for one year, the overseas disqualification, the Corrupt Practices List disqualification, or the right of permanent residents to vote (although it suggested that permanent residents should be able to stand as candidates).

2011, 2014, 2017 & 2020 Justice Select Committee reports

In its interim report on the 2020 election, the Justice Select Committee recommended holding a public debate on whether 18 remains the best age for enfranchisement and the role of civics education. It also previously discussed the voting age and youth participation rates in its reports on the 2011, 2014 and 2017 elections.

2020 Electoral Commission post-election report

The Commission:

- recommended further public and political debate on the voting age
- suggested that references to ‘permanent residents’ should be replaced with a clearer definition
- considered the overseas voting eligibility criteria should address situations where people have been prevented from returning to Aotearoa New Zealand by circumstances outside their control, such as a pandemic.

2022 Review into the Future of Local Government

The draft report of the Review into the Future of Local Government recommended that the voting age for local body elections should be lowered to 16.

The voting age

7.10 A minimum voting age is used as a proxy for whether voters are mature enough to understand and exercise the right to vote responsibly. Setting the voting age will always be somewhat arbitrary. There are a range of voting ages around the world – for example, the voting age is 16 in Scotland and Austria, while it is 21 in Singapore and 25 in the United Arab Emirates.

7.11 Our law sets different minimum ages for different purposes. In Aotearoa New Zealand, the voting age was originally set at 21. It was lowered to 20 in 1969 and to 18 in 1974, which it remains today. The voting age is no longer linked to the legal age of majority, which is currently 20 years old.

Is there a case for change?

7.12 The age at which people should be allowed to vote has been the subject of recent debate in many countries, including in Aotearoa New Zealand. The topic attracted a lot of attention from submitters to this review. More people commented on the voting age than on any other topic.

Arguments against change

7.13 Almost half of submitters thought that 18 was still the appropriate age for people to gain the right to vote. Submitters in support of the current voting age generally argued that 18 aligns with when a person becomes an adult and takes on other legal responsibilities. Some submitters noted that many people leave home at 18 to begin full-time work and paying taxes.

7.14 Some supporters of the current voting age think that people younger than 18 do not have the ability, education, or life experience to make such an important decision. They think young people may not have enough knowledge or interest in politics to make an informed choice and could be more easily influenced by their parents, teachers or the media.

7.15 A few submitters also doubted whether lowering the voting age would improve participation outcomes if young people were not motivated to vote.

Arguments for change

7.16 Forty per cent of submitters wanted to lower the voting age to 16. Very few submitters proposed a voting age lower than 16 or higher than 18.

7.17 Supporters of lowering the voting age noted that young people have already begun to take on a range of responsibilities and to participate in society by 16. Supporters of a lower voting age noted that, like all voters, 16- and 17-year-olds

may have different levels of political knowledge and interest but are still capable of voting.

7.18 Many submitters who supported a lower voting age considered that it might improve democratic participation. They thought allowing people to vote from 16 could help to build life-long voting habits and pointed to positive participation outcomes in other countries that have lowered the voting age. Some submitters referenced overseas evidence that young people may be more likely to vote when they are still at home and at school. Young people who are still at home and at school may have better opportunities to learn first-hand from the voting habits of their parents, families and schoolmates than when they are navigating the big life changes that come with leaving home.

7.19 Those submitters who supported a lower voting age also thought it supports intergenerational fairness. This was because young people will have to deal with the consequences of the long-term challenges facing our society and our planet. Giving them a voice means they can help shape our response to these challenges.

7.20 Some submitters noted that the current voting age may negatively impact the representation of communities with proportionately younger populations, such as Māori. For example, we note that with a voting age of 18, about 78 per cent of Aotearoa New Zealand's Pākehā population is eligible to vote, compared to 63 per cent of Māori. Therefore, some argued that lowering the voting age would help to enable Māori participation, upholding te Tiriti o Waitangi / the Treaty of Waitangi (**te Tiriti / the Treaty**). During engagement with Māori communities, we also heard about the importance of instilling voting habits in rangatahi Māori when many are still at home, at school and within their community, given their high rates of mobility.

7.21 Other submitters pointed out that similar arguments hold for Pasifika populations, who are also proportionately younger than other populations, with 61 per cent being able to vote with a voting age of 18. We heard that in some communities there can be flow-on benefits when young people get involved with voting, as they can encourage and motivate older generations to participate too.

7.22 After our first round of consultation closed, the Supreme Court found the current voting age to be unjustified discrimination under the New Zealand Bill of Rights Act 1990 (discussed below). This unjustified discrimination has a disproportionate impact on Māori (as the Māori population is significantly younger than the non-Māori population).

Our view

7.23 As we have noted, the right to vote is a fundamental right, recognised and protected by law. Universal suffrage, which means that every citizen should have the right to vote without unreasonable restrictions, is affirmed in international law through the International Covenant on Civil and Political Rights. The United

Nations Convention on the Rights of the Child also affirms that children who are capable of forming their own views have the right to express those views freely in all matters affecting them.

7.24 In Aotearoa New Zealand, the New Zealand Bill of Rights Act 1990 guarantees the right to vote for citizens aged 18 and older. We do not see any reason to consider raising the voting age, which would be a clear breach of this right. The New Zealand Bill of Rights Act 1990 also protects the right to freedom from discrimination, including discrimination against those aged 16 and over on the basis of age. Under the New Zealand Bill of Rights Act 1990, any limit on these rights must be reasonable and justified in a free and democratic society.

7.25 In 2022, Make It 16 Incorporated took a case to the Supreme Court arguing that the current voting age breaches this right to be free from age-based discrimination. The Supreme Court determined that the current voting age is inconsistent with the right of 16- and 17-year-olds to be free from discrimination based on age. It found that this inconsistency had not been justified, based on the evidence submitted to the court, but left open the possibility that it could be justified in the future.

7.26 Having reviewed the evidence available to us, we recommend that the voting age should be lowered to 16. We are convinced by the evidence that 16-year-olds are just as capable of making informed decisions about how to vote as 18-year-olds. As such, there is no justification for denying them the right to vote. In our assessment, the risks (which we consider to be small) of giving the vote to some young people who may not be ready to exercise that right are outweighed by the potential benefits of enfranchising those who are.

7.27 Lowering the voting age supports our objectives of an electoral system that is fair and encourages participation. It would mean that more people could participate in elections. If 16- and 17-year-olds were given the right to vote, they would make up about 3 per cent of the eligible voting population.

7.28 Lowering the voting age could have wider benefits on increasing participation. Studies overseas have shown that voting when newly eligible is an important factor in becoming a life-long voter. We note there is some evidence from Austria and Scotland's independence referendum that shows higher turnout rates among 16- and 17-year-olds compared to people in their late teens and early twenties.[11] While this limited evidence is from countries with different populations and histories to ours, it is still encouraging.

7.29 Keeping the voting age at 18 could be viewed as a proportionately greater unjustified age discrimination against Māori making it an inequity under te Tiriti /

[11] Aichholzer, J. & Kritzinger, S. (2020). Voting at 16 in Practice: A Review of the Austrian Case. In: Eichhorn, J., Bergh, J, eds. *Lowering the Voting Age to 16*. Palgrave MacMillan.; Electoral Commission (UK), 2014. *Scottish Independence Referendum: Report on the referendum held on 18 September 2014*.

the Treaty. The eligible voters of a given population – and those who turn out to vote – get to choose who represents them. A greater proportion of the Māori population is aged 16 or 17, relative to non-Māori. These young people are currently represented through the votes of those who are eligible to vote. This means there are proportionately fewer votes to represent the entire Māori population.

7.30 Letting 16- and 17-year-olds vote also means that the perspectives of young people on issues that affect them – now and into the future – are more likely to be reflected and represented in parliament.

Other considerations

7.31 Some young people in Aotearoa New Zealand have shown strong civic engagement and participation through campaigns such as the School Strike 4 Climate and Make It 16. But we are aware that many of our young people face barriers to voting and more work is needed to support them to participate.

7.32 Voting is an inherent right, so the decision to lower the voting age should not be conditional on other changes. We do, however, see the benefits in lowering the voting age in parallel with other changes to the electoral system that increase equity in the participation rates across groups. As discussed below in **Chapter 11**, these changes include strengthening civics education, improving community engagement, and reducing other barriers to participation, particularly in communities with relatively lower turnout rates. Together, these changes give the best chance of empowering young people to exercise the right to vote fully and meaningfully.

7.33 The Crown's responsibility to uphold te Tiriti / the Treaty makes this essential for rangatahi Māori. If they are not supported and encouraged to participate, then there is a risk that current inequities could continue.

7.34 The voting age is an entrenched provision of the Electoral Act, meaning it can only be changed by public referendum or by 75 per cent of parliament. Previous changes to the voting age have been made with the unanimous support of parliament.

7.35 We do not think that a public referendum should be held on this issue. While the voting age is a matter of public interest and broad debate should be encouraged, changes to the voting age have not been subject to a referendum previously. We consider it appropriate and consistent with historical precedent for the voting age to be determined by parliament.

Interaction with our other recommendations

7.36 In **Chapter 5**, we recommend a referendum is held on the term of parliament. If the term of parliament were extended to four years and the voting age were to stay at

18, some people would not be able to vote for the first time until they were nearly 22. In our view, a longer term would make lowering the voting age even more important.

Voting rights for overseas citizens

7.37 An estimated 1 million New Zealanders live abroad. Citizens who live overseas can vote, but they are disqualified unless they return to Aotearoa New Zealand every three years. Parliament has temporarily extended this timeframe to six years for the 2023 election only, due to the impact of COVID-19 on travel. There are some exemptions to this rule for diplomats and Defence Force members serving overseas and their families.

Is there a case for change?

Arguments against change

7.38 About a quarter of responses to our question about other voter eligibility rules besides the voting age supported the current law.

7.39 Some submitters thought that those living abroad who have not visited Aotearoa New Zealand in the past three years would not be as connected with what is going on here. They argued that such people would not be directly affected by the outcome of elections, so they should not be able to unduly affect election outcomes. They believed that it's fairer to voters who live in Aotearoa New Zealand for there to be limits on the right to vote for those living overseas.

Arguments for change

7.40 Most of the submitters who commented on the rules for overseas voters recommended extending the time overseas voters remain eligible to vote before they must return to Aotearoa New Zealand. A small number of submitters thought that the rule should be more restrictive.

7.41 Some submitters argued that the current rule is an unreasonable limit on the right of citizens to vote. If a person is a New Zealand citizen, then they should be able to participate in elections, no matter where they live. This position reflects the symbolic importance of being able to vote to a person's sense of belonging to their home country. Aotearoa New Zealand also benefits in many ways from the links its overseas citizens provide to the wider world. Some submitters emphasised the importance of this issue given that around 1 million New Zealanders are overseas.

7.42 Some other submitters thought the current rule may also unfairly privilege the wealthy and disadvantage people who are unable to return to Aotearoa New Zealand regularly, whether for financial, family or health reasons.

7.43 Some submitters discussed the impacts of the COVID-19 travel restrictions. COVID-19 travel restrictions illustrated how citizens abroad can still be affected by government policy decisions made within Aotearoa New Zealand

7.44 Some other arguments that could justify change include:

- it's now easier for New Zealanders living overseas to stay connected – by keeping in touch with family and friends digitally or by following local news and politics online. Given these changes, the current rule may be an arbitrary way to assess a person's connection to Aotearoa New Zealand
- many Māori live overseas, and the current disqualification may not reflect the more enduring connection they have with Aotearoa New Zealand based on whakapapa and being tangata whenua.

Our view

7.45 In our view, the current overseas disqualification is too restrictive. Again, we start from the position that there should be a strong justification for any limit on the voting rights of citizens.

7.46 People have more ways than ever before to stay connected to Aotearoa New Zealand while overseas. We are not convinced that a person's connection to their home country is likely to fade enough after three years to justify losing their voting rights. It seems entirely reasonable that a citizen overseas would continue to be invested in and affected by government policies beyond a single electoral cycle.

7.47 The current rule may also be unfair to people who, for many valid reasons, may not be able to return home regularly. The right to vote should not depend on the ability to afford international airfares. We also heard about the emotional impact experienced by overseas citizens who felt cut off from their home community by the COVID-19 travel restrictions. Having and exercising the right to vote is an important way that people can express their membership of a community.

7.48 From a te ao Māori perspective, connections to whenua for tangata whenua are powerful and draw from deep, intergenerational histories. With this perspective in mind, losing the right to political participation after only three years away from Aotearoa New Zealand seems too limiting. Māori voters living overseas may not always be able to return regularly based on their personal circumstances.

7.49 We considered whether this restriction should be removed entirely, giving overseas citizens the right to vote no matter how long they have been away. We concluded, however, that returning home is still an essential way of showing a

commitment to Aotearoa New Zealand. While people may be able to keep up with family and current affairs from a distance, coming back allows people to reconnect in a deeper way with the people, the land and the nation.

7.50 We recommend that overseas citizens should only lose the right to vote after they have been abroad without returning for two electoral cycles, rather than three years. This period would be six years if the term of parliament remains at three years, or eight years if the term of parliament is extended to four years.

7.51 This extended timeframe would address some of the inequities in the current rule and future-proof for international crises and disasters like COVID-19. From a practical perspective, the number of people who have been away for longer than this time and who still want to vote may be relatively small. And if a person was disqualified for being away for longer than two electoral cycles, it wouldn't be permanent – their voting rights would continue to be restored as soon as they returned to Aotearoa New Zealand.

Other considerations

7.52 To be eligible to enrol, a person must have lived in Aotearoa New Zealand continuously for at least one year at some point in their life. This rule applies to people who are born overseas but who are New Zealand citizens by descent as well as to migrants.

7.53 We think it is important that a person has experience living in Aotearoa New Zealand before gaining the right to vote. It would be difficult to create and maintain a strong connection to the country without having lived here for a meaningful length of time, even if a person has family connections and visits regularly.

7.54 We considered possible adjustments, such as the length of time required to live in Aotearoa New Zealand or when in a person's life it must occur. Ultimately, however, we concluded that the current rule is working well and that there is no strong case for change.

Interaction with our other recommendations

7.55 We discuss the term of parliament in **Chapter 5**. If the term of parliament was extended to four years after a public referendum, the timeframes for our recommendations would be extended because they are based on electoral cycles.

7.56 Our proposed changes to political donations would mean that only registered electors would be able to make donations. These proposals are discussed in **Chapter 13**. As a result, any changes to overseas voter eligibility would have flow-on impacts for the regulation of overseas donations.

Voting rights for permanent residents

7.57 For electoral purposes, and in this report, a permanent resident is defined as someone who resides in Aotearoa New Zealand and can stay here indefinitely. This definition is broader than the definition of permanent resident in the Immigration Act 2009, which defines a permanent resident as someone who holds a permanent resident visa.

7.58 Aotearoa New Zealand is one of the few countries in the world that lets permanent residents vote. This policy was introduced in 1975, when the eligibility requirement to be a British subject was removed. It arose in part so that British subjects from other countries who were already living here but who were not citizens would not lose their right to vote. Since then, immigrants to Aotearoa New Zealand have come from a much wider range of countries.

7.59 Like citizens, permanent residents must live in Aotearoa New Zealand continuously for at least one year before gaining the right to vote. Permanent residents who become eligible to vote are disqualified if they spend more than 12 months overseas without returning to Aotearoa New Zealand. Parliament has temporarily extended this timeframe to four years for the 2023 election due to the impact of COVID-19 restrictions.

Is there a case for change?

Issues identified

7.60 Only a few submitters commented on voting rights for permanent residents. Views were mixed. Some submitters questioned whether:

- the right to vote should be restricted to citizens only
- the requirement for a permanent resident to be in New Zealand for one year before being able to vote is too short
- allowing non-citizens to vote creates a risk of other countries trying to influence election outcomes in their own interests through their overseas citizens.

7.61 Other submitters noted the positives of allowing permanent residents to vote, including that:

- it is fair because permanent residents are subject to our laws and taxes and contribute to the community even if they aren't citizens, so they should be able to be represented in parliament
- it encourages social integration and political participation

- many immigrants decide to live in Aotearoa New Zealand permanently but choose not to become citizens for different reasons – for example, because their country of birth doesn't allow dual citizenship.

7.62 There are also issues with the definition of permanent resident in the Electoral Act because it differs from the definition in the immigration system. This has created confusion. The Electoral Commission has recommended using a clearer definition, such as 'resident for electoral purposes'.

Our view

7.63 We consider it reasonable for any permanent resident who lives in Aotearoa New Zealand and has the right to stay here indefinitely to be eligible to vote, so long as they meet the other eligibility requirements. Granting a person the right to stay in Aotearoa New Zealand without limitation essentially invites them to make their life here. If permanent residents are paying taxes, living under our laws, and participating in our community in other ways, then they should also be able to have a say about what happens here.

7.64 Our diverse migrant communities make valuable contributions to Aotearoa New Zealand, and we see no compelling reason to remove their right to electoral participation.

7.65 We agree that the current terminology is confusing. We recommend that the term 'permanent resident' in the Electoral Act is replaced with a clearer term, such as 'resident for electoral purposes' or 'electoral resident', while keeping the same definition. The Electoral Commission has also recommended this change.

7.66 While we consider that permanent residents should continue to be eligible to vote, we also think that the bar is set too low for how long a permanent resident must live in Aotearoa New Zealand before becoming eligible to vote. In our view, one year is not long enough for permanent residents to establish a sufficient connection to Aotearoa New Zealand for voting purposes. (It is a different case for citizens by descent born overseas, who are likely to have pre-existing ties and family history.)

7.67 Research has also indicated that voting is not a high priority for migrants in the first few years of settling in a new country, though data are limited.[12]

7.68 In our view, eligibility should be based on having spent one full electoral cycle (either three or four years, depending on the term of parliament) in the country. This timeframe would require a person to demonstrate a commitment to living in Aotearoa New Zealand long-term. It would also mean that their vote, once gained,

[12] Fiona Barker & Kate McMillan (2017) Factors influencing the electoral participation of Asian immigrants in New Zealand, *Political Science*, 69:2, 139-160.

would be based on a longer period of experience living here and acquired knowledge. This change would better reflect the difference in voting interests for permanent residents relative to citizens, while continuing to allow permanent residents to participate in our political community.

7.69 While we recommend extending how long citizens can spend overseas without being disqualified, we think it should remain at 12 months for permanent residents. Permanent residents are given the right to vote on the basis that they actually reside in Aotearoa New Zealand and can stay here indefinitely. If they subsequently choose to live elsewhere, then their entitlement to vote no longer holds. If a permanent resident returned to live in Aotearoa New Zealand (as opposed to simply visiting the country) after more than 12 months away, their right to vote would be restored as soon as they re-established their residence here, so long as they had previously met the requirement to live here for one electoral cycle.

Interaction with our other recommendations

7.70 It's important that people who come to live in Aotearoa New Zealand have access to the information and education they need to exercise the right to vote meaningfully. Our recommendation for stronger civics education led by and for communities (discussed below in **Chapter 11**) could help to ensure that happens.

7.71 We discuss the term of parliament in **Chapter 5**. If the term of parliament was extended to four years after a public referendum, the timeframes for our recommendations would be extended because they are based on electoral cycles.

Voting rights and criminal offences

7.72 There are three situations when a criminal offence may prevent someone from being eligible to vote.

7.73 The first situation relates to prisoners. The rules for prisoner voting have changed many times since the 1850s, from all prisoners being able to vote, to no prisoners being able to vote, and several positions in between. Currently, prisoners are not allowed to vote if they are sentenced to imprisonment for life, preventive detention or prison for three years or more.

7.74 Second, in some cases, a person who has committed a crime may not be in prison on mental health grounds or due to an intellectual disability. This situation may occur if a person has been found unfit to stand trial, acquitted on the legal grounds of insanity, committed to a hospital or secure facility upon conviction, or is in prison and requires compulsory care or treatment. In these situations, a person loses the right to vote if they are detained in a hospital or secure facility for more than three years. This disqualification essentially provides for consistent treatment with other offenders.

7.75 Finally, anyone whose name is on the Corrupt Practices List is disqualified from voting for three years. A person is placed on the Corrupt Practices List if they have been found guilty of a serious electoral offence, such as voter impersonation or bribery. We discuss the Corrupt Practices List in **Chapter 18**.

Recent history of prisoner voting in Aotearoa New Zealand

7.76 In 2010, Parliament voted to remove the right to vote for all sentenced prisoners. In 2015, the High Court declared that a blanket ban on prisoner voting was an unjustifiable limitation on the rights protected by the New Zealand Bill of Rights Act 1990. The High Court did not rule on whether the current disqualification, based on a sentence of three years or more, is inconsistent with the New Zealand Bill of Rights Act 1990. The blanket ban introduced in 2010 was reversed in 2020.

7.77 The Waitangi Tribunal also considered the complete restriction of prisoner voting rights in 2020. In its report on Wai 2870, He Aha I Pērā Ai?, it found that the ban seriously breached Tiriti / Treaty principles of active protection and equity. The Waitangi Tribunal reached this finding because the ban disproportionately affected Māori, who are overrepresented in the prison system as a result of systemic bias and social and economic disadvantage. It also found that disenfranchisement has a wider impact than its effect on individual prisoners, impacting on their whānau and communities.

7.78 The Waitangi Tribunal recommended all restrictions on prisoner voting should be removed as 'all Māori have a Treaty right to exercise their individual and collective tino rangatiratanga by being able to exercise their vote in the appointment of their political representatives'.[13]

Is there a case for change?

Arguments against change

7.79 The current rule removes the right to vote from more serious offenders sentenced to three years or more in prison. Some submitters thought this was fair and noted that most prisoners in Aotearoa New Zealand can still vote. For the year ended 30 June 2022, nearly 90 per cent of prison sentences were for three years or less.

7.80 Other submitters thought that removing the right to vote was a fair consequence for criminal activity irrespective of the seriousness of the offence. Some people considered prisoners to be 'outside of society' while in prison, so they should not have a say in how society is run.

[13] Waitangi Tribunal, 2020. *He Aha I Pērā Ai? The Māori Prisoners' Voting Report*, Wellington: Legislation Direct, page 34.

Arguments for change

7.81 Voting is a basic human right. Many submitters supported decreasing, or entirely removing, restrictions on prisoner voting rights. While imprisonment involves the loss of some basic rights, most obviously freedom of movement and association, submitters in favour of change generally thought there was no justification for why the loss of voting rights should be a further part of any punishment. These submitters saw the current restrictions on prisoner voting rights as a violation of human rights, and inconsistent with the New Zealand Bill of Rights Act 1990.

7.82 Many of these submitters also noted that prisoners are affected by government decisions and continue to have a stake in the future of the country. They thought that voting may help prisoners to stay connected to their sense of citizenship and community while serving their sentence. These people consider that losing the right to vote may compound civic disengagement and negatively affect rehabilitation and reintegration into society.

7.83 Those submitters that supported change cited a range of arguments to support their position, including that:

- upon release, re-enrolment rates may be low among prisoners, resulting in longer-term impacts on voting habits
- tying the right to vote to sentence lengths can also result in unfair and arbitrary outcomes, as two people convicted of the same crime can receive different sentences depending on the circumstances
- restrictions on prisoner voting due to the disproportionate impact on Māori is a breach of te Tiriti / the Treaty, as noted by the Waitangi Tribunal and others.

7.84 A few submitters suggested keeping restrictions on prisoner voting but targeting them to prisoners serving prison sentences for particular offences. Other submitters supported removing or further reducing voting rights for prisoners.

Our view

7.85 The New Zealand Bill of Rights Act 1990 provides for the right of citizens to vote. Voting is an inherent right that should not be removed when a person is in prison without strong justification. The law has generally moved away from the concept of voting as a privilege and by extension the need for a person to prove their moral worth to be able to vote. What society seeks to achieve by sentencing a person to prison is fundamentally different from what it seeks to achieve through voting in elections, which uphold the principles of participation and representation. On that basis, the loss of voting rights should not generally be used as an additional form of punishment.

7.86 The current rule is also unfair. People may receive different sentences for the same crime, depending on a range of circumstances, which means that some people could have their right to vote affected while others don't.

7.87 Prisoners and their families continue to be affected by government decision-making, both during and after their sentences. It is therefore important that prisoners can still exercise the right to political participation.

7.88 Giving all prisoners the right to vote could support additional positive outcomes. Enrolling and voting could be an educative experience for prisoners and could contribute to their rehabilitation and reintegration by making them feel that they have a stake in the future of our society. It could also help to establish positive voting habits that could be shared intergenerationally. These potential benefits could be enhanced through greater civics education and community engagement with prisoners.

7.89 Critically, the current rule disproportionately impacts Māori. The Waitangi Tribunal heard evidence that, because of systemic bias and social and economic disadvantage, Māori are sentenced to prison at a higher rate than non-Māori, are more likely than non-Māori to be given a custodial sentence, less likely to be granted leave for home detention, and more likely to be denied parole. From a Tiriti / Treaty perspective, we consider it crucial to address the impact of these inequities on voting rights.

7.90 We considered whether specific crimes, such as treason, should be treated differently because of the damage they seek to inflict on society. We also discussed sentences where a person is essentially removed from the community permanently. We concluded, however, that the rationale set out above still held in these circumstances.

7.91 On that basis, we recommend that all prisoners should have the right to vote. This approach is most consistent with the protection of basic civil rights and supports our objectives of fairness and encouraging participation.

7.92 The related disqualification for people with mental or intellectual disabilities who have committed criminal offences should likewise be removed. These members of our communities also have rights to political participation, as affirmed by the United Nation Convention on the Rights of Persons with Disabilities, and they could benefit from being connected to society by participating in elections. We also note the importance of people detained in hospitals or secure facilities having access to ways of enrolling and voting to ensure they can exercise their right to vote.

7.93 As discussed in **Chapter 18**, we think a different approach is justified for people on the Corrupt Practices List because corrupt practices specifically target the integrity of the electoral system.

What do you think about our recommendations on voter eligibility and why?

8. Enrolling to Vote

The Panel recommends:

Compulsory enrolment

R23. Retaining compulsory enrolment.

R24. Retaining voluntary voting.

Māori electoral option

R25. Allowing the Māori electoral option to be exercised at any time up to and including election day for general and local elections, while retaining the current prohibition ahead of by-elections.

R26. Allowing anyone of Māori descent to be registered simultaneously on one roll for general elections and a different roll for local elections.

R27. Improving education and engagement about the Māori electoral option.

8.1 Before a person can vote, they must enrol in an electorate. This is done by filling out an enrolment form, either online, by post, or in person. Since the 2020 election, enrolment can happen any time up to and including election day. People can only be enrolled in one electorate at a time and must enrol in the electorate that they have most recently lived in for at least a month.

8.2 Good enrolment processes protect the integrity of the voting process and the wider electoral system. Enrolment is a way to check that people are eligible to vote and registered in the right electorate. It also provides a way to detect if people are abusing the voting system – for example, by voting multiple times.

8.3 The principles underpinning enrolment – that it is accurate, open and accountable, while also protecting privacy – are enduring, while the methods and process involved may change over time.

8.4 In this section we discuss whether changes should be made to the enrolment process, including whether it should remain compulsory to enrol, or become automatic or more digitised. We also discuss the Māori electoral option.

Earlier recommendations

2011 & 2014 Electoral Commission post-election reports

In these post-election reports, the Commission recommended allowing voters of Māori descent to change roll type once each electoral cycle.

2014 Justice Select Committee

The Justice Select Committee recommended allowing voters of Māori descent to change roll type once each electoral cycle.

2017 & 2020 Electoral Commission post-election reports

In its 2017 post-election report, the Electoral Commission recommended that voters of Māori descent should be able to exercise their choice of roll at any time.

After the 2017 and 2020 elections, the Commission made recommendations relating to automatic enrolment and digital enrolment services. For example, it recommended:

- considering whether a new enrolment could be actioned by matching information held by other government agencies ('data-matching') and whether new enrolments or enrolment updates could be confirmed electronically
- being able to use electronic communications for its enrolment update campaign and extending the current data-matching provisions to include email addresses and phone numbers.

These changes would allow the Commission to encourage enrolment by text or email. The proposal to extend the data-matching provisions to include email addresses and phone numbers were supported by the Privacy Commissioner in 2021, as part of a regular review of these provisions.

Compulsory enrolment

8.5 Enrolment is compulsory for everyone who is eligible, except for New Zealand citizens and permanent residents living overseas who can choose to enrol. It is a criminal offence to knowingly and willingly fail to enrol, though in practice the offence is not prosecuted.[14]

Is there a case for change?

Issues identified

8.6 About 40 per cent of submitters who answered our consultation question about the enrolment process supported the status quo. Very few submitters raised concerns with compulsory enrolment. At the 2020 election, 94 per cent of estimated eligible voters were enrolled. This is the highest enrolment rate since 2008.

8.7 The idea behind compulsory enrolment is that it helps to boost enrolment so that more people are able to vote. Having a compulsory process is thought to help ensure the electoral roll is accurate and complete, which enables electoral officials to prevent and detect electoral manipulation. Enrolment information is also used for other purposes, such as jury selection, political campaigning and health and social science research.

8.8 It is possible that compulsory enrolment may encourage people to enrol who would not do so otherwise, even if it is not enforced. The low penalties for failing to enrol and the light touch approach to enforcement mean it is not punitive in practice. The thinking is that a more punitive approach could inadvertently discourage participation.

8.9 We heard from a few submitters who suggested enrolment should be voluntary. These submitters took the view that enrolling to vote should be a choice. The right to vote is a right to be exercised freely rather than an obligation to be enforced. Some people may find the requirement to enrol to be an imposition by the government on their freedom to make that choice.

8.10 Other people have also noted that being enrolled also doesn't mean that a person will vote, so compulsory enrolment may not result in higher turnout rates. Some submitters called for greater enforcement of compulsory enrolment.

[14] The maximum fine is $100 for the first conviction and $200 for any subsequent conviction.

Our view

8.11 We recommend retaining compulsory enrolment. In our view, every eligible voter has a civic duty to participate in elections, and requiring people to enrol to vote is a reasonable step for the state to ask its citizens and those given the right to reside here permanently. Compulsory enrolment also has other benefits. It contributes to having complete and accurate electoral rolls, which supports the effective administration of elections, the calculation for the Māori electorates, and the integrity of the electoral system.

8.12 In addition, we considered whether compulsory enrolment should be better enforced. There are good reasons for not enforcing compulsory enrolment, both practically and on principle. The nature of the criminal offence for not enrolling makes it difficult to prosecute. Strict enforcement may negatively impact people's experience of the electoral system. The symbolic power of the law means there is value in making enrolment a legal requirement even if it is not strictly enforced. Removing the requirement to enrol to vote could also have unforeseen effects on way elections are run.

Voting is not compulsory

8.13 Although enrolment is compulsory in Aotearoa New Zealand, it is not compulsory to vote. In some countries that have compulsory voting, like Australia, people are only required to attend a polling place, and they can choose to cast an informal ballot.

Is there a case for change?

Issues identified

8.14 A few submitters questioned the logic of having compulsory enrolment without having compulsory voting, as is the case currently. However, we already have comparably high voter turnout without voting being compulsory. Voter turnout in the 2020 election was 82 per cent of enrolled electors.

8.15 Some people see voting as a civic responsibility that comes with the rights of citizenship. Voting is important to ensure that government is based on broad and equal representation of its citizens. Some consider that by making participation mandatory, compulsory voting can support the legitimacy of election results and our democratic system more broadly. Others think it may also help to reduce inequities experienced by communities with lower turnout.

8.16 On the other hand, some people think that compulsory voting infringes on democratic freedoms. They argue that people should have the right to choose not to vote. Some people may have good reasons for not wanting to vote – for

example, they may not trust the government, or they may not like any of the candidates or parties.

8.17 International evidence shows that voter turnout is higher in countries that have compulsory voting. Submitters who supported voting being mandatory considered it would improve participation, citing Australia as an example. However, in other countries that have compulsory voting, people can often choose to submit a blank or informal ballot. Introducing compulsory voting could result in more informal ballots and more poorly informed or random votes.

Our view

8.18 We consider that requiring people to vote may be a step too far, as it constrains freedom of choice. Compulsory enrolment does not infringe freedoms to the same extent, especially if our recommendations for increased privacy of roll information are adopted. From the perspective of te Tiriti o Waitangi / the Treaty of Waitangi (**te Tiriti / the Treaty**), compulsory voting may represent an overstep of kāwanatanga by mandating Māori participation in this sphere.

8.19 Compulsory voting is often promoted as a way to improve voter turnout. However, it would be a large shift from our current approach of encouraging participation. Voter turnout in Aotearoa New Zealand has improved over recent elections, and we do not think current participation rates justify such a big change to our electoral system and our political culture.

Interaction with our other recommendations

8.20 In **Chapter 18**, we recommend an overhaul and consolidation of electoral offences in line with three key principles. This review would include whether the offences and penalties attached to compulsory enrolment are still fit for purpose.

8.21 In **Appendix 1: Minor and Technical Recommendations**, we pick up on earlier recommendations about enrolment from the Electoral Commission.

What do you think about our recommendations on compulsory enrolment and voluntary voting and why?

Māori electoral option

8.22 The Māori electoral option allows people of Māori descent to choose whether to enrol on the general roll or the Māori roll. Only people of Māori descent can enrol on the Māori roll and vote in the Māori electorates.

8.23 The Māori electoral option plays an important role in determining the number of Māori electorates. The number of Māori electorates reflects the choice that Māori electors make between the Māori and general rolls. For example, if more Māori electors choose to be on the Māori roll, there may be more Māori electorates, and if more Māori electors choose to be on the general roll, there may be fewer Māori electorates.

8.24 The 1986 Royal Commission on the Electoral System noted that[15]

> *[a]lthough they were not set up for this purpose, the Māori [electorate] seats have nevertheless come to be regarded by Māori as an important concession to, and the principal expression of, their constitutional position under the Treaty of Waitangi. To many Māori, the seats are also a base for a continuing search for more appropriate constitutional and political forms through which Māori rights (mana Māori in particular) might be given effect.*

8.25 Similarly, the Waitangi Tribunal subsequently commented that[16]

> *the Māori [electorate] seats have come to be regarded by many Māori as the principal expression of their constitutional position in New Zealand. They have been seen by Māori as an exercise, although a limited one, of their tino rangatiratanga guaranteed to them under the Treaty of Waitangi.*

8.26 Before April 2023, Māori could only choose which roll to be on when they first enrolled and during a four-month period every five to six years (aligned to the timing of the national census). Parliament has recently changed the law. The Māori electoral option can now be exercised at any time up to three months before election day for a general or local election, or after the notice of vacancy has been published ahead of a by-election in that particular electorate.

8.27 The Electoral Commission is required to send information to Māori electors about how to exercise the Māori electoral option ahead of general and local elections (but before the enrolment update campaign). The Electoral Commission's first information campaign under the new rules began in April 2023.

8.28 In recent years, many Māori wards have been established at the local government level. If a person of Māori descent is on the Māori roll, then they must vote in their

[15] The Royal Commission on the Electoral System, 1986. *Report of the Royal Commission on the Electoral System: Towards a Better Democracy*, Wellington, page 86.

[16] Waitangi Tribunal, 1994. *Maori Electoral Option Report*, Wellington, page 11.

local Māori ward. Currently, a person of Māori descent cannot be on different rolls for general and local elections at the same time – they can either be on the Māori roll for both or the general roll for both.

Is there a case for change?

8.29 As noted above, parliament recently changed the rules for the Māori electoral option. We take these new rules as our starting point for considering whether further changes are needed.

Issues identified

8.30 The recent law change sought to address the most commonly raised issue relating to the Māori electoral option by providing greater flexibility on when the option can be exercised. This issue had been regularly identified as a substantial barrier to participation. The law change will also allow eligible voters to change rolls between general and local elections.

8.31 Many submitters to our review supported these changes and did not raise further issues. We note, however, that the bill was still under consideration by parliament when our engagement closed, so submitters in our first round of engagement did not have an opportunity to comment on the final law as enacted. As the law has just come into effect, it is too early to gauge its impact.

8.32 The main change to the bill in its final stages was to extend the period in which the option cannot be exercised to the three months before general and local elections. Proponents of this change argued it was necessary to prevent tactical roll-switching. This approach responds to concerns that voters might change rolls in order to vote in electorates where a contest is considered tight. For by-elections in particular, a person could become eligible to vote in an election that they would not have been eligible for otherwise by switching rolls. Concerns about tactical roll-switching to influence the outcome of a close election are theoretical rather than based on evidence.

8.33 However, the limit on changing between rolls in the three-month period before general and local elections may mean some people are unable to exercise the Māori electoral option. Recent statistics show that many more Māori electors seek to exercise the option immediately before an election, when voter awareness is high, than at other times. For example, 24,000 people attempted to exercise the option in 2020 (the most recent election year), compared to about 6,000 people in a non-election year. In this way, barriers to participation will persist.

8.34 In addition, some people may want to be on one roll for general elections and another for local elections. As more local bodies create Māori wards, voters of Māori descent will have more occasion to exercise the option ahead of local elections. The current rules restrict them from being on different rolls for different

elections simultaneously, meaning they would have to change their roll choice ahead of each election. This creates an additional administrative barrier to voting.

Our view

8.35 While the recent law change helps to address a long-standing issue for Māori voters, we don't think it goes far enough. We recommend that Māori be able to choose which electoral roll they would like to be on throughout the voting period for general and local elections. The period just before an election is when people are most likely to be engaged in their choice of roll. Based on the evidence available, the current exceptions would prevent people from exercising the option exactly when they are most likely to do so.

8.36 We think the risks of tactical roll-switching are very small and unlikely to have any significant impact. We also consider that any negative impacts are outweighed by the benefits of allowing Māori voters to exercise their roll choice at any time. That said, we do think there is a case for keeping the close-out period before by-elections, given it could enable people to vote in elections that they would otherwise not be eligible for.

8.37 To be as effective as possible, the greater flexibility to exercise the Māori electoral option should be accompanied by improved education and engagement. People need to be aware of and understand the option, and how it affects the number of Māori electorates, to be able to exercise it meaningfully. Removing the pre-election restrictions would also mean engagement could be done as part of enrolment update campaigns.

8.38 We also recommend that people of Māori descent should be able to be on one roll for general elections (for example, the general roll) and a different roll (for example, the Māori roll) for local elections if they choose. With the growth of local Māori wards around the country, this choice will become increasingly relevant for Māori voters.

8.39 There may be many reasons why voters of Māori descent may want to be on different rolls for national and local elections. The electoral rolls already record a person's general electorate and local ward, and so they should be able to capture their roll choice for each. We consider that allowing them to make separate roll choices for national and local elections, rather than having to update their roll choice between elections, will remove an administrative barrier. In this way, the Crown can uphold its Tiriti / Treaty obligations to actively protect Māori citizenship rights and participation by ensuring Māori have the freedom to choose rolls.

Other considerations

8.40 During engagement, we heard suggestions that Māori should be able to enrol in the rohe where they whakapapa to instead of where they currently live. Some

Māori may hold a stronger connection to their tūrangawaewae and may want to have a say in who represents that community. Likewise, some Māori may leave their rohe and want to remain on the Māori roll but may feel that doing so infringes on the rights of mana whenua in the area where they reside.

8.41 We think this option is an interesting proposal to give effect to te Tiriti / the Treaty, but our view is that there are complex matters of tikanga as well as practical administration that would need to be worked through. We see this as an area that could benefit from further exploration by people with expertise in tikanga and electoral administration in the future.

8.42 We also heard from people who thought that Māori should be automatically enrolled on the Māori roll if they have not stated which roll they want to be on. These submissions were premised on the idea that Māori would be enrolled on the general roll by default unless they 'opt out' in favour of the Māori roll.

8.43 People of Māori descent are given the option to choose between rolls when they first enrol. The enrolment form has been updated so that it is not possible for a person to identify as Māori when enrolling and then not choose a roll. We therefore think this issue has been addressed at an operational level. We also discuss automatic enrolment more generally below and our view that it is important that people of Māori descent get to make a choice about which roll they want to be on.

Interaction with our other recommendations

8.44 In **Chapter 11**, we recommend funding for community-led initiatives to support voter engagement and participation. These initiatives could include enrolment outreach efforts and education about the Māori electoral option.

8.45 We have also recommended lowering the voting age to 16. This would mean 16- and 17-year-olds of Māori descent would get to choose whether to go on the Māori roll or the general roll when enrolling. Their roll choice could affect the calculation of the Māori electoral population, which is used to determine the number of Māori electorates.

What do you think about our recommendations on the Māori electoral option and why?

Modernising enrolment services

8.46 Currently, a person must complete and send an enrolment form to the Electoral Commission either by post or online, including when they move address. Under some circumstances, this process may be a barrier to participation.

8.47 People can enrol or update their enrolment details online with valid proof of identity. The number of people using digital services for enrolment has rapidly increased in recent years, driven by changing preferences and the decline of post.

8.48 While digital enrolment services have grown, many enrolment processes are still required by law to be conducted by post. The Electoral Commission must provide written notice by post confirming a person's registration or any changes to their enrolment details. It must also do an enrolment update campaign before every general election, where it contacts each enrolled voter to check their details are correct before voting begins. This campaign must be done by post.

Is there a case for change?

Issues identified

Automatic enrolment

8.49 Automatic enrolment would allow public officials to enrol an eligible person with no action or consent required by that person. It can be implemented in a range of ways, including through data-matching. The Electoral Commission already uses data-matching with information held by other government agencies to identify and encourage eligible people to enrol or to update their enrolment details. However, it cannot automatically take these actions on their behalf.

8.50 Many submitters who commented on enrolment supported automatic enrolment. In some ways, automatic enrolment can be seen as a logical extension of compulsory enrolment. If enrolment was automatic, people would no longer have to enrol themselves. Removing this barrier could improve enrolment rates, particularly for highly mobile populations – for example, students and people experiencing housing insecurity – as well as people who have low literacy or limited digital access.

8.51 Māori also tend to be a highly mobile population. We heard through engagement that keeping enrolment details up to date can be challenging and may be a contributing factor in Māori enrolment rates. Automatic enrolment could alleviate some of this burden and ensure that more Māori are enrolled with up-to-date details.

8.52 However, automatic enrolment raises risks relating to consent, privacy and data protection, as information people have provided for other purposes could be used

to enrol them without their agreement. Some may feel that this approach is overreach by the state.

8.53 Automatic enrolment would also impact how people exercise the Māori electoral option (discussed above). Anyone who is of Māori descent decides when they first enrol whether to register for the general roll or Māori roll. If people are enrolled automatically, there is no clear way to ensure that those who are eligible for the Māori electoral option get the opportunity to make their choice before being enrolled. It also raises issues relating to Māori data sovereignty more broadly and whether Māori have appropriate oversight of their data that is held by the Crown.

8.54 Introducing automatic enrolment would create many other implementation issues to work through. For example, some people have multiple addresses, and it could be difficult to determine which address should be used for enrolment purposes.

Digital enrolment services

8.55 The Electoral Commission has questioned whether more enrolment correspondence – in particular, enrolment confirmations and the enrolment update campaign – can be sent digitally to provide more modern services. People increasingly expect and prefer digital services, which are also more efficient. They reduce paper, printing and postal costs and provide an alternative to a diminishing postal service.

8.56 Submitters did not comment on this topic in detail, but several expressed a general preference for more online enrolment services and less reliance on post. Others noted that some people still rely on post.

8.57 The enrolment process is an important way of protecting the accuracy and integrity of the electoral rolls. The main challenge with using digital correspondence for enrolment purposes is the need to verify residence. A person needs to be registered in the electorate where they currently reside to elect electorate Members of Parliament (**MPs**).

8.58 Sending enrolment correspondence by post – whether an enrolment confirmation or as part of the enrolment update campaign – seeks to confirm that the person lives at the address where they have registered. If the correspondence cannot be delivered, the person is placed on the dormant roll. Some communities that are highly mobile may be disproportionately impacted by this approach.

8.59 While many people now prefer digital services, there are communities that don't have regular or reliable internet access. Enrolment services still need to meet the needs of these communities to support access and participation.

Our view

Automatic enrolment

8.60 On balance, we do not recommend adopting automatic enrolment. While we acknowledge the potential benefits to participation, we are concerned about the use of personal data for enrolment purposes without free and informed prior consent. Automatic enrolment could also constrain the exercise of the Māori electoral option. There are several technical issues that would need to be worked through to ensure the accuracy of the rolls would be maintained.

8.61 With other changes to make enrolment as easy as possible, such as same day enrolment and voting, we think the risks relating to consent, data protection and implementation outweigh the benefits. Enrolment, when done by an individual or with support, also has an educative function which may be lost if it is done by the state rather than keeping people responsible for enrolling themselves.

8.62 We do, however, think there are other opportunities to improve enrolment outcomes. We recommend an all-of-government approach to encourage and support people to enrol, including when accessing other government services. For example, this could include providing enrolment forms at government offices or having a tick-box option on other government forms to share a person's details with the Electoral Commission to receive more information about how to enrol.

Digital enrolment services

8.63 All enrolment processes must balance accessibility, protection of privacy, and the integrity of the system. Given changing preferences, we think it is inevitable that enrolment processes will become increasingly digital, while preserving paper-based options for those who need it. Adapting to changing preferences will help ensure the electoral system is practicable and enduring. From a future-proofing perspective, there is value in embedding a technology neutral approach in electoral law.

8.64 That said, we have found issues with developing a more fit-for-purpose approach to verifying residence for enrolment purposes. The diminishing use of post means that this method may become more ineffective over time, particularly as there is no guarantee that the Electoral Commission will be notified if enrolment correspondence cannot be delivered to someone who has moved. Alternative approaches, such as allowing a person to provide proof of residence in other ways, could create significant administrative barriers that may discourage or even prevent people from enrolling.

8.65 Any changes to this process also need to be consistent with the approach taken to verifying same-day enrolments, which have enabled improved participation. There may also be equity issues for some communities, such as Māori, that would need to be examined before any changes were proposed.

8.66 We consider that these are important questions that need careful consideration and debate. There needs to be a balance between ensuring the electoral rolls are accurate, particularly that people are enrolled in the correct electorate, and having enrolment processes that are easy and accessible. We are interested in your views on whether and how a person's residence should be verified when enrolling and during the enrolment update campaign.

Interaction with our other recommendations

8.67 Many enrolment processes use personal data, which means there need to be robust methods in place to protect privacy. The Electoral Commission must handle personal information in accordance with the Privacy Act 2020. Data-matching provisions are also regularly reviewed by the Privacy Commissioner.

8.68 We are particularly aware of the need to have appropriate oversight and monitoring of the use of Māori data collected or accessed for enrolment purposes. Increased data use, while seen as convenient by some people, can result in harm and mistrust in some communities if not done with the appropriate safeguards. We discuss this in **Chapter 3**, in regard to Māori data sovereignty.

8.69 In **Chapter 16**, we recommend restricting current levels of access to the electoral rolls. These changes would help ensure that enrolment data are adequately protected consistent with privacy principles.

What do you think about our recommendations on modernising enrolment services and why?

9. Voting in Elections

The Panel recommends:

In-person voting

R28. **Requiring advance voting to be provided for a minimum period of 12 days.**

R29. **Including standards in electoral law for polling places to ensure they are widely available and accessible, including during advance voting.**

R30. **Repealing the requirement to state your name to be issued a ballot.**

R31. **Repealing the ability of a scrutineer to question voters about their identity and whether they have voted.**

Special voting

R32. **Future-proofing special voting provisions by:**

- **a. Allowing anyone voting outside their electorate to cast a special vote at any time during the voting period.**
- **b. Removing postal voting as an option for overseas voters.**
- **c. Considering how to scale up voting methods for people who cannot vote in person as postal services decline.**

Administering the vote

R33. **Making it a criminal offence to harass electoral officials.**

R34. **Applying one set of rules to prevent voter interference for the entire voting period.**

R35. **Aligning restrictions on election day with those of the current advance voting period for the wearing of lapel badges, rosettes and party colours.**

Emergencies and disruptions

R36. Vesting emergency powers in the Board of the Electoral Commission, not just in the Chief Electoral Officer.

R37. Adding a new general power for the Electoral Commission to extend the time available for any electoral processes or deadlines where they are disrupted by an unforeseen or unavoidable disruption that could impact the proper conduct of an election.

R38. Adding a new ability for parliament to be reconvened after it has expired or dissolved in the event of a catastrophic emergency or disaster with ongoing impacts on the proper conduct of the election.

R39. Making amendments to the Constitution Act to ensure the continuity of executive government in the event of an adjourned election.

9.1 Electoral law sets the rules for when, where and how people can vote in elections. The New Zealand Bill of Rights Act 1990 affirms the right to vote by secret ballot.

9.2 Voting in Aotearoa New Zealand usually occurs over a two-week period, finishing on election day. Most voting takes place in person at polling places around the country. More people are now choosing to vote before election day, known as advance voting.

9.3 A voter who is voting in the electorate in which they are enrolled and whose name is on that electorate's printed electoral roll casts an 'ordinary vote'. At the polling place, once a voter's name has been marked off on the electoral rolls, they are issued a ballot paper. The voter then goes behind a voting screen alone, marks their ballot in secret by ticking their party and electorate votes, folds it in half, and places it in the appropriate ballot box.

9.4 'Special voting' is available for people who are not on the printed electoral rolls or who cannot vote in person in their electorate. These voters must complete and sign a declaration form alongside their ballot paper. Different methods of voting are available for different kinds of people casting special votes, such as disabled voters and overseas voters.

9.5 Online voting is out of scope of this review.

Earlier recommendations

2011 Justice Select Committee

The Justice Select Committee recommended that government consider commissioning a review of existing regulations applying to social media on election day to determine whether they were workable.

2011 and 2014 Justice Select Committee

Following the 2014 election, the Justice Select Committee recommended that the government improve accessibility to advance voting places by increasing their numbers and opening hours and provide greater consistency between advance voting places and voting places on election day. It proposed a 12-day advance voting period.

In its 2011 and 2014 post-election reports, the Justice Select Committee also recommended a review of the law to determine whether it adequately provides for emergencies and disruptions.

2011, 2014, 2017 & 2020 Electoral Commission post-election reports

The Commission has made many recommendations to improve voting services in its recent post-election reports. These recommendations are often operational improvements to modernise services, and many of these have been implemented over time. It has also made recommendations to improve the accessibility of voting.

The Commission made recommendations relating to advance voting in its reports on the 2014, 2017 and 2020 elections. It has previously proposed setting a minimum advance voting period of either 12 days or 17 days.

In its 2017 and 2020 reports, the Commission noted that the election day campaign rules are inconsistent with the rules during advance voting, and likely to be an ongoing issue given the growth in advance voting. One option proposed was for election day to have the same rules as advance voting. However, the Commission also recommended that all voting places and their environs should be campaign-free, including prohibiting the wearing of party lapel badges or rosettes in all voting places.

The Commission thought the treating offence should be reviewed to see whether it was still fit for purpose, especially given the consequences of offending and uncertainty about its application. The Commission considered the offence may set such a high threshold that it does not regulate behaviour that the public and parliament think ought to be regulated and vice versa.

In its 2020 post-election report, the Commission considered it timely to review the scrutineer provisions and look at whether parties should be able to choose to either have scrutineers appointed by the electorate candidate or by the party secretary. It

considered it would also be beneficial for the scrutineer provisions to be consolidated to make it easier for parties and candidates to understand them. They are currently scattered throughout the legislation.

The Electoral Commission has regularly recommended the review of the emergency provisions in the Electoral Act, including in its 2020 post-election report, to ensure they provide adequate resilience.

In-person voting

9.6 Voters generally must vote at a polling place unless they have a valid reason why they cannot vote in person. The Electoral Commission decides on the number and location of polling places. The only legal requirement is that on election day at least 12 polling places in each electorate must be accessible for physically disabled people.

9.7 Advance voting has become an important feature of our electoral system. In the 2020 election, about 68 percent of voters used advance voting. While there are many provisions in the Electoral Act that govern voting on election day, there is little in the law to regulate advance voting. The Electoral Commission decides when advance voting will begin on an election-by-election basis, which has varied between 12 and 17 days before election day.

9.8 In this section, we consider whether there should be more legislative recognition of advance voting and the legal requirements for polling places.

Is there a case for change?

Issues identified

Advance voting

9.9 Voters now expect to be able to vote ahead of election day at a time and location that suits them. Almost 70 per cent of voters in the last election used advance voting. Flexibility over when to vote makes it easier for people to vote around their work schedules and other commitments.

9.10 A small number of submitters who commented on advance voting thought that voting should mainly take place on election day, reflecting its traditional importance.

9.11 The law has only minimal provisions for this widely used form of voting and requirements are not consistent with election day requirements. The Electoral Act provides for polling places to be open from 9am to 7pm on election day. For the

advance voting period, the only requirement is to have one office in each electorate that can issue advance votes. The days and hours these offices are open are at the discretion of the Returning Officer. The law does not set a period during which advance voting must be available. Therefore, access to advance voting is largely reliant on the operational decisions of the Electoral Commission.

9.12 We heard during engagement that access to advance voting can be uneven – for example, for rural communities and people with non-standard work hours.

9.13 Providing advance voting services across the country requires more staff and polling places, resulting in higher election costs.

Polling places

9.14 The Electoral Commission seeks to put polling places in locations that are convenient, easy to access and relevant to the communities they serve. However, there are no specific requirements in legislation about where polling places must be located.

9.15 It is challenging to find thousands of polling places around the country that meet requirements. Venues must be available for the voting period, accessible, conveniently located, big enough to accommodate voting booths, comfortable and safe. While it is desirable to use the same polling places during advance voting and on election day, this approach isn't always possible in practice. Different electorates also have different requirements and venue options. Maintaining flexibility is critical to managing the needs of voters, costs and staffing requirements efficiently.

9.16 Being too prescriptive about polling place requirements could affect the Electoral Commission's discretion to determine appropriate locations and hours. Where it is difficult or inefficient to have polling places, the Electoral Commission can offer mobile, takeaway or postal voting instead.

9.17 However, many submitters commented on the location of polling places. We heard that polling places are less consistently and widely available in rural areas than in urban areas. People also commented on the need to have polling places in locations that are culturally relevant or serve as community hubs, such as on marae, or that increase access for groups with additional barriers, such as near community mental health centres. Additional legal requirements may help to ensure equitable access.

9.18 Several submitters thought that all polling places should be accessible and that the minimum requirement of 12 accessible polling places per electorate sends the wrong signal, even if it is regularly surpassed. In practice, most polling places are already either fully accessible or accessible with assistance.

Our view

Advance voting

9.19 Given the rapid growth of advance voting, we think there is a strong case that this shift should be better reflected in the law and that the rules for advance voting and election day should be more consistent. This would support our objectives of encouraging participation and promoting fairness.

9.20 Strengthening the provisions for advance voting may help to ensure there is equitable access to advance voting in terms of polling places and hours of operation. This may be particularly important for shift-workers and rural communities.

9.21 A key mechanism to strengthen the legislative provisions is to create a minimum period during which advance voting must be provided. We are aware of the risks of limiting the flexibility to adapt voting services to changing circumstances and the challenges of providing an adequate and consistent service nationwide. Even so, some basic protection of access to advance voting is justified to ensure that voter expectations are met.

9.22 In recent elections, the advance voting period has varied between 12 and 17 days. Deciding on an appropriate length for a minimum voting period needs to balance accessibility and cost-effectiveness. While a longer voting period provides the greatest opportunity for participation, it also results in higher costs, staffing requirements and venue needs.

9.23 On balance, we recommend that there should be a minimum period of 12 days required for in-person advance voting. We think this timeframe is sufficiently long enough to meet voter expectations without creating unreasonable resource demands. We emphasise, however, that this period would be a minimum requirement, and it would not prevent the Electoral Commission from deciding to extend the advance voting period. Special votes that can be cast in advance, such as postal and dictation votes, could be offered over a longer timeframe, as they are presently.

9.24 We discuss the availability of polling places and their hours of operations during the advance voting period in our recommendations on polling places (below).

9.25 Formalising the advance voting period may require flow-on changes in other areas. For example:

- advance voting is technically a form of special voting, though regulations permit these votes to be treated like ordinary votes. We recommend that, as far as practicable, electoral law should be updated so that there is no distinction between advance votes and ordinary votes cast on election day. The law would instead reflect a ‘voting period’. There will need to be some

exceptions to this approach, such as providing for the preliminary count of advance votes to begin early

- currently, employers must allow workers to have paid time off on election day if they are not able to vote outside of their work hours. This provision is based on a presumption that voting mostly takes place on election day. It seems unlikely that a person would have no opportunity to vote before election day if there are at least 12 days of advance voting. For that reason, we think the provision could be removed. We are interested in hearing views on whether this provision is still fit for purpose given advance voting trends, and if not, how it should be changed.

9.26 More certainty around the provision of advance voting may also support better planning for staff, polling places, and funding requirements. It may help political parties to plan their campaign strategies based on when people are likely to vote.

Polling places

9.27 In general, the Electoral Commission seeks to make polling places widely available and accessible. We do, however, see value in setting clearer standards and expectations for polling places in electoral law, based on what we heard from submitters about the importance of polling places. From a future-proofing perspective, this approach would protect the continued provision of in-person voting, which is fundamental to our electoral system, even if other voting methods emerge. Equitable access to polling places is also a key factor in enabling participation.

9.28 Setting standards would provide clear direction to the Electoral Commission on what it needs to take account of when choosing polling places, while preserving its flexibility to determine how those standards should be met. It would help voters and communities to better understand how polling place locations are determined and to have an avenue to challenge those decisions if they feel they are not consistent with the legislative criteria.

9.29 We considered whether there should be more prescriptive requirements in the law, such as a minimum number of polling places in each electorate. We concluded that this approach would be impractical, given that what is reasonable and adequate will vary across electorates (for example, in large or rural electorates). Strict requirements could also constrain the Electoral Commission's ability to adapt voting services to respond to disruptions and to meet community needs – for example, through mobile voting services. And, as we have seen with the requirement for at least 12 accessible polling places per electorate, setting minimum requirements can send the wrong signal to communities about what level of service is considered acceptable.

9.30 The standards set in law would not need to be exhaustive, but they should clearly indicate the principles the Electoral Commission must have regard to when

choosing polling places. At a minimum, we think the standards should require the Electoral Commission to provide polling places that offer reasonable access to anyone who wants to cast a vote in-person during advance voting or on election day (or other voting methods where polling places are not practicable). This requirement would embed a more consistent approach across advance voting and election day while still being flexible about how it is delivered.

9.31 Additional standards could give direction on accessibility outcomes – for example, placing an obligation on the Electoral Commission to have regard to:

- maximising the accessibility of polling places for disabled people (which would replace the minimum requirement for 12 accessible polling places per electorate)
- providing adequate access for people with non-traditional work schedules
- providing equitable access that considers the needs of different communities that may have barriers to participation, including consideration of locations of community or cultural relevance.

9.32 We understand that the Electoral Commission has previously consulted political parties and sought input from Māori communities on polling place locations. We encourage the Electoral Commission to consult more broadly, particularly with leaders in communities that may have specific requirements or lower participation rates. This could be one way that the Electoral Commission gives effect to the new objectives that we have recommended for it of facilitating equitable participation and giving effect to te Tiriti o Waitangi / the Treaty of Waitangi.

Other recommendations

9.33 The Electoral Act requires a person to verbally state or confirm their name before being issued a ballot so electoral officials can find them on the electoral rolls. If someone cannot give their name verbally, either because they cannot understand English or they have a disability, they should be allowed to indicate by gesture or be assisted by a person accompanying them.

9.34 This requirement is intended to prevent fraud by requiring a person to confirm their identity verbally. We heard from disability organisations that it can be a barrier to participation for disabled people, who may be unable to or find it difficult or stressful to state their name. This requirement may also be challenging for people who speak English as a second language, have heavy accents or speech impediments, have names that are difficult to pronounce, or are gender diverse. While the law provides for non-verbal alternatives, we believe the effectiveness of this requirement in preventing fraud may be limited, compared to other safeguards in the voting process.

9.35 Similarly, a scrutineer can require an electoral official at a polling place to ask voters certain questions about their identity and whether they have already voted.

These questions must be answered in writing. This provision is not used in practice, and we do not consider that this requirement is an effective safeguard against fraud. There are risks that it could be abused to target or intimidate certain kinds of voters. The requirement to respond in writing is also problematic for accessibility reasons.

9.36 We propose that both of these requirements are repealed.

9.37 In **Appendix 1: Minor and Technical Recommendations**, we adopt recommendations made to us by the Electoral Commission relating to scrutineers and we recommend allowing children under the voting age into voting booths with their parent or caregiver.

Interaction with our other recommendations

9.38 We have suggested changes related to advance voting in the provisions for emergencies and the vote count to support a more consistent approach. These are discussed in the following sections.

What do you think about our recommendations on in-person voting and why?

Special voting

9.39 A 'special declaration vote' (or special voting) is available to a range of voters who are not able to vote in the 'ordinary' way. This may be because they cannot vote in-person at a polling place at all, or because they cannot vote at a polling place in the electorate in which they are enrolled, or because their name is not on the printed electoral roll. In these ways, special voting increases the accessibility of elections and supports improved participation.

9.40 At the same time, special votes are more difficult to cast as the voter must also complete a declaration form and have it witnessed. Electoral officials must check the declaration accompanying every special vote to ensure the person is enrolled and eligible to vote, which can be time and resource intensive.

9.41 Special votes have grown in recent years due to a trend towards enrolling closer to election day. Special votes made up 17 per cent of the vote in the 2020 election, or over 500,000 votes.

Is there a case for change?

Arguments against change

9.42 Many submitters thought that current voting methods were working well. Special voting provides accessible voting methods for a range of voters.

9.43 Changes in recent years have sought to improve special voting processes. For example, people can now enrol and vote on the same day, including on election day, and special vote declarations can be treated as an application to enrol. New voting services have been introduced, such as telephone dictation voting for visually impaired voters and upload/download voting for overseas voters.

9.44 While special votes are more time-intensive to process and count, advances in technology may reduce this administrative impact over time. The Electoral Commission has proposed work to enable digital roll mark-off, which would enable anyone who can be marked off a 'live' electronic roll to be issued an ordinary vote. This change could help to reduce the number of special votes cast and to speed up the preliminary count. It is discussed more under the section on Counting the vote later in this part of the report.

Arguments for change

9.45 We heard varying views on special voting during engagement. For example, some people thought that special voting is too permissive and can be manipulated more easily than ordinary voting. Others considered it essential to improving accessibility and proposed broader eligibility.

9.46 Some people thought that the use of postal or takeaway votes should be more limited, as they considered there was a greater risk of fraud for votes not cast in the presence of electoral officials. People also thought that the use of special votes should be minimised as far as possible to manage the work required to process and verify special votes, and the impact on the vote count, as special votes can be received up to 13 days after election day. The future of postal voting has also been questioned in the context of declining postal services.

9.47 We also heard calls to expand the use of special voting, including allowing more people to access postal voting. Submitters commented on a range of situations where a person may want to vote but finds voting in person stressful or uncomfortable. Examples include:

- people who have anxiety or other mental health issues
- people whose legal names may not be perceived to match their gender expression
- people who may have issues with sensory overload, such as neurodivergent people

- people who prefer to avoid highly populated areas due to health risks.

9.48 Many submitters commented on the opportunities afforded by online voting, but online voting is out of scope of this review.

Our view

9.49 Special votes are an important way to provide for equitable participation in elections because they reduce barriers. They are also likely to continue to change over time, as new technologies allow for better services and more streamlined processing. With that in mind, we have reviewed the provisions for special voting with an eye to how they can be future-proofed.

9.50 First, we considered eligibility. Our view is that the current ground allowing anyone to cast a special vote if they would otherwise incur 'hardship or serious inconvenience' is broad enough to cover many of the situations outlined above that may make voting in person challenging. It may be helpful, however, for the Electoral Commission to provide more guidance on who may access special voting under this ground and how they can do so.

9.51 Special voting is also allowed for anyone who intends to be absent from their electorate on election day. In practice, we think it is now commonplace for people to vote outside their electorate even if they will be there on election day, given the greater flexibility offered by advance voting. We can see no compelling reason why this provision needs to be tied to election day. We recommend that anyone should be able to cast a special vote if they are voting outside their electorate, regardless of whether it's during advance voting or on election day.

9.52 We also considered special voting methods. Postal services are in decline, with increasing costs, less frequent services and more delays. The decline in postal services is likely to impact communities unequally, and for some people, postal voting may be the only option available to them. Over time, we think it likely that the use of postal voting will also decline, but it should continue to be offered so long as it remains viable to avoid disadvantaging those who rely on it.

9.53 The one exception to this approach may be overseas voters. The timeframes for international postal services mean it is increasingly difficult for overseas voters to receive and return their ballots by the deadline, creating a risk that their votes won't be counted. The number of overseas voters still using postal voting is small, and there are viable alternative voting methods available. Given the risks of accidental disenfranchisement, we recommend removing postal voting for overseas voters.

9.54 The gradual decline in postal voting also raises the question of what will ultimately replace it. Planning to support this transition needs to begin far in advance. A limited form of electronic voting is already available for overseas and remote voters, who can download a ballot paper and upload it to a secure

Electoral Commission site, and visually impaired voters who can access telephone dictation voting. We understand there are challenges in scaling up these services significantly due to administrative, resource and security issues.

9.55 In light of these constraints and the decline of post, we consider more work is needed on developing voting methods for people who cannot vote in person that can be delivered at an appropriate scale. This work is particularly important for ensuring ongoing access to voting services for disabled voters, and as such there should be a focus on continuous development and improvement of these voting methods.

Interaction with our other recommendations

9.56 Some of our recommendations to improve accessibility, discussed below, relate to special voting, such as voting by people on the unpublished roll and telephone dictation voting.

9.57 In **Chapter 2**, we discuss the use of primary and secondary legislation. We think that the allocation of provisions for advance, ordinary and special voting across primary and secondary legislation is an example of an area where the appropriate balance should be revisited for greater consistency.

9.58 In **Appendix 1: Minor and Technical Recommendations,** we propose adopting a number of recommendations made by the Electoral Commission in its report on the 2020 general election to clarify and modernise the special voting provisions.

What do you think about our recommendations on special voting and why?

Administering the vote

9.59 Electoral officials are appointed by the Electoral Commission and administer the voting process. They play an important role in safeguarding the security and integrity of the voting process.

9.60 There are rules and offences in place to protect the voting process from interference or manipulation. Some of these rules differ between the advance voting period and election day:

- **during the advance voting period**, election advertising is not allowed inside or within 10 metres of the entrance to advance polling places when they are open. People (other than electoral officials) are allowed to wear and display

ribbons, streamers, rosettes or other items of a similar nature in party colours inside a polling place. These people also may wear a party lapel badge

- **on election day**, there are restrictions on publicly displaying or publishing material that is intended, or is likely to influence voters about whether to vote or who to vote for. Restricted material includes any party name, emblem, slogan, or logo, ribbons, streamers, rosettes, or items of a similar nature in party colours. However, people (other than electoral officials) are allowed to wear and display ribbons, streamers, rosettes or other items of a similar nature in party colours inside a polling place. These people also may wear a party lapel badge. The expression of certain personal political views online is also prohibited. For example, someone cannot post on social media about who to vote for.

9.61 Electorate candidates can appoint scrutineers to observe voting and the vote count to check that the rules are being followed correctly. Scrutineers are not allowed to communicate directly with voters and must declare that they will not infringe the secrecy of the vote.

Is there a case for change?

What we heard

9.62 Few issues with administering the vote were raised through engagement or in previous reports. Of the submitters who talked about potential improvements, most suggested that some form of identity verification should be introduced at the point of voting to manage the risks of fraud. We have not recommended this option based on the negative impacts that voter identification requirements can have on participation, as has been seen in other countries.

9.63 Other submitters commented on the advance voting and election day rules with many arguing that the restrictions around advertising and campaigning on election day are no longer relevant, due to the rise of advance voting.

9.64 Most of these submitters called for the election day rules to be aligned with the rules for advertising and campaigning near advance voting places. Many other submitters called for the current election day rules to be extended over a longer period, such as for the entire advance voting period, or for the regulated period.

9.65 A few submitters talked about rules that treat internet content and other media differently on election day. These submitters called for these rules to be reviewed given the rise of advance voting, with the aim of creating equivalent rules over different media platforms.

Issues identified

9.66 The issues we have identified focus on the provisions for preventing voter interference and offences during the voting period.

Preventing voter interference

9.67 The restrictions on electoral advertising are inconsistent across the voting period, with greater restrictions on election day than during advance voting. As advance voting has become the predominant form of voting in recent elections (for example, 68 per cent of votes in 2020), most votes have been cast when fewer advertising restrictions were in place without any significant issues. It is clear from voter behaviour that the idea of a single polling or election day has become less important and less central to elections.

9.68 The rules do not account for the rise of social media. For example, it is currently an electoral offence to post on social media about who you voted for on election day in a way that might influence how someone else votes.

9.69 Submitters indicated that the rules also present issues for media advertising post-election news items and events, such as election night coverage.

9.70 The rules also do not always meet public expectations about what should be allowed, for example when lapel pins can and cannot be worn, and whether rosettes can include party names.

Offences

9.71 Electoral officials can have anyone removed who is obstructing or disrupting the voting process and can order the arrest of anyone who they reasonably suspect of interfering with ballot papers or boxes. There is no offence for harassing an electoral official.

Our view

Preventing voter interference

9.72 We think that the continued distinction between the advance voting period and polling day is no longer fit for purpose.

9.73 Given that the public now opt to vote throughout the voting period, there appears to be little justification for having different rules in place for different voting periods. In the interest of a simple, clear and consistent approach, we recommend one set of rules apply from the beginning to the end of voting.

9.74 Current rules on election day behaviour impose significant restrictions on freedom of speech at a time after which most voters have already cast their vote. We are unaware of any significant issues regarding the current rules during advance

voting, beyond understanding which rules apply on which days. We therefore recommend that election day restrictions should change to match those of advance voting.

9.75 This recommendation would mean that party paraphernalia would still be allowed to be worn when voting. It also resolves the issue of individuals posting on social media on polling day by allowing people to post freely, including about who they think others should vote for. However, to protect the secrecy of the ballot, we think it is important that people do not share photos of their completed ballot papers. To address this situation, we consider that it should be illegal for people to take photos of their ballots in polling places.

Offences

9.76 Creating an offence of harassing an electoral official recognises that electoral officials may be the target of attempts to obstruct, undermine or interfere with the conduct of elections, as well as violent threats. It would provide a safeguard if election environments become more contested and disruptive in the future. It would also be more consistent with protections in place for voters.

Interaction with our other recommendations

9.77 In **Chapter 18**, we recommend a review of all offences and penalties in the Electoral Act. That recommendation will ensure a consistent approach across the Act, including for the creation of the new harassment offence we recommend here.

9.78 We have made recommendations relating to scrutineers in other parts of this report, including access to the electoral rolls in **Chapter 16**.

What do you think about our recommendations on administering the vote and why?

Emergencies and disruptions

9.79 Natural disasters, a contagious disease outbreak, or other unforeseen events can disrupt an election. These kinds of disruptions can make it very hard for people to vote in an election, for political parties and candidates to share information with voters and for the Electoral Commission to run an election properly and count the vote.

9.80 The current Electoral Act contains tools to help manage the impact of a disruption on an election – known as the 'emergency powers'. These emergency powers can

be used for any disruption, as long as it is unforeseen or unavoidable and one that prevents people from voting or poses a risk to the 'proper conduct' of an election. The Chief Electoral Officer can delay voting on election day or implement alternative voting processes, either during the advance voting period or on election day.

9.81 The Chief Electoral Officer acts alone when exercising these powers – the other members of the board of the Electoral Commission have no role. Before exercising these powers, the Chief Electoral Officer must have regard to the need to ensure:

- the safety of voters and electoral officials
- that the election process is free from corrupt or illegal practices, and
- that the election process is concluded in a timely and expeditious manner.

Is there a case for change?

Issues identified

9.82 The Chief Electoral Officer's powers are significant, although subject to the criteria above. The Chief Electoral Officer does not need to consult anyone when first exercising the powers. For any second and subsequent use of the adjournment power, the Electoral Act requires consultation with the prime minister, leader of the opposition and people or organisations who can give information about scale and duration of the disruption.

9.83 The electoral system needs to be resilient to emergencies and disruptions, including those of a catastrophic nature and at times when parliament has been dissolved. The issues that arise when considering the emergency powers are:

- **flexibility**: to enable the Electoral Commission to depart from standard practice when a disruption occurs that might otherwise undermine the integrity of an election. For example, there is no current power to extend the time available for electoral processes or deadlines specified in the Electoral Act
- **safeguards**: to ensure any departure from standard practice is proportionate to the negative impacts on electoral participation and that any measures to manage a disruption ensure the integrity of electoral system is maintained
- **accountability**: by ensuring decision-makers exercise their powers transparently and are accountable for those decisions
- **certainty**: by ensuring the election process is concluded in a timely and expeditious manner.

Our view

9.84 A general election is a major logistical undertaking. The Electoral Commission carries out significant mitigation planning to cater for a range of potentially disruptive scenarios. The emergency powers in the Electoral Act are measures of last resort and were modernised and reformed in 2020 (before the outbreak of COVID-19). Although they were not required during the 2020 election, when Aotearoa New Zealand was dealing with COVID-19, the pandemic did lead to recommendations for review of the emergency powers.

9.85 To strengthen accountability and ensure robust decision-making, we consider the Electoral Commission's board should have the power to activate the emergency provisions – rather than the Chief Electoral Officer alone. This ensures that the decision is informed by the range of expertise on the Board, which is ultimately accountable to parliament for how it administers the electoral system. This change is consistent with almost all other powers and functions of the Electoral Commission.

9.86 Currently, the emergency powers only relate to the advance voting period and election day. However, other electoral events could be impacted by an emergency, such as parties' ability to file nominations on time or the ability of the Electoral Commission to finalise the vote count by the deadline in the writ.

9.87 To provide additional flexibility, we recommend that the board of the Electoral Commission has a new general power to extend the time available for electoral processes or deadlines specified in the Electoral Act. We recommend the same safeguards apply to this new power as they do currently for the ability to adjourn polling.

9.88 Together, these emergency powers should be sufficient to manage all but the most catastrophic of disruptions to an election.

Catastrophic disasters when parliament has been dissolved

9.89 However, we can imagine rare, but possible, scenarios where a catastrophic disaster causes widespread and long-lasting disruptions to daily life in Aotearoa New Zealand. A geomagnetic storm, for example, could render the electricity grid and telecommunications systems inoperable for months. If such an event occurred close to an election, it could severely impact parties' ability to campaign, voters' ability to access information and vote, and the Electoral Commission's ability to administer the election and count the votes.

9.90 There may be no safe or practical way the election can be conducted fairly in such circumstances. If this occurs before parliament comes to an end for the election, parliament can meet to debate and vote on the appropriate response to the upcoming election. This ensures greater transparency and accountability over a decision that goes to the heart of our democracy.

9.91 However, this will not be possible if parliament has been dissolved or expired and the general election is underway. There is no ability for parliament to sit in these scenarios. Under the status quo, decisions on how to manage the election after a catastrophic disruption will fall to the Electoral Commission and its emergency powers. These powers include adjourning polling for up to seven days at a time indefinitely.

9.92 We do not consider it appropriate to rely on the Electoral Commission's emergency powers in such catastrophic scenarios. We therefore suggest that there should be a last resort power to reconvene an expired or dissolved parliament.

9.93 Reconvening parliament after it has expired or dissolved is a constitutionally significant step. We consider this power necessary so parliament can meet to consider a bespoke procedure for the upcoming election – including, potentially, extending the term of parliament until it is safe to hold an election through emergency legislation.

9.94 We did not receive detailed submissions on this topic. We therefore seek your feedback on how parliament could be reconvened and what the appropriate safeguards over this power should be.

9.95 We identified two options: parliament could be reconvened by the governor-general upon the prime minister's advice, or parliament could be required to reconvene automatically by the repeated use of the Electoral Commission's emergency powers. These two powers are not mutually exclusive and could be combined.

Option 1: Power to reconvene parliament in the event of a catastrophic emergency

9.96 Under this option, there would be a new power to reconvene parliament in the event of a catastrophic emergency. Legislation would provide that the governor-general must reconvene the previous parliament as soon as reasonably practicable if advised to by the prime minister. Before advising the governor-general to do so, the prime minister must:

- consult with all parliamentary party leaders, the Electoral Commission, and any other agency that holds relevant information as to the nature of the disruption and its impact on the proper conduct of the election
- be satisfied that the impacts of the emergency or disruption will undermine the proper conduct of the election and cannot be sufficiently mitigated
- publish reasons for their decision.

Option 2: Parliament automatically reconvenes if polling repeatedly adjourned

9.97 Parliament could automatically be reconvened if the Electoral Commission adjourns polling more than once under its emergency powers. Compared to option

1, this approach removes the prime minister from the process, ensuring it is seen to be free of political bias.

9.98 On the other hand, this option essentially vests the power in the Electoral Commission, which cannot be held to account in the same manner the prime minister can (that is, through the ballot box).

9.99 This option will not allow parliament to be reconvened until after a second adjournment of polling day – it may be readily apparent much earlier than this that parliament should meet to consider options for managing the upcoming general election.

A hybrid option

9.100 We think there are advantages of a hybrid option that merges options 1 and 2. Under this approach:

- there would be a discretion to reconvene parliament as set out in option 1; and
- if that discretion is not invoked, and the Electoral Commission adjourns polling more than once, parliament could be automatically reconvened to consider the appropriate response to the emergency.

9.101 This hybrid approach provides a backstop in case the prime minister is unwilling or unable to invoke the discretion, but the circumstances are such that the Electoral Commission is unable to fairly hold the election.

Continuity of government

9.102 In the event of an extended disruption to a general election, ministerial warrants could eventually expire given the limitations of the transitional provisions in section 6 of the Constitution Act 1986. We recommend that consequential amendments are made to ensure the continuity of executive government in the event of an adjourned election.

What do you think about our recommendations on emergencies and disruptions and why?

10. Counting the Vote and Releasing Results

The Panel recommends:

R40. Enabling the preliminary count to be conducted electronically.

R41. Requiring the release of the preliminary results in legislation.

R42. Allowing a person's vote to be counted if they have voted in advance and die before election day.

10.1 All votes in parliamentary elections are counted by hand in Aotearoa New Zealand. There are strict rules around the security of the ballots during counting.

10.2 Electoral officials at each polling place complete a preliminary count of the votes received by each party and candidate on election night after voting has closed. Advance votes can be counted from 9am on election day. By custom, the preliminary results are announced by the Electoral Commission progressively on election night, with most results released by 11.30pm.

10.3 Special votes are counted later, because they can come in up to 13 days after election day. They require extra scrutiny and administration before they can be counted – to check each person has completed their declaration form correctly and is eligible and enrolled to vote.

10.4 After the preliminary count, electoral officials 'scrutinise the roll' to identify any voters who may have voted more than once and complete the official count. In some circumstances, ballots can be disallowed from the official count – for example, if a person voted but was not eligible to be enrolled, or if a special vote was received after the deadline. In the two previous elections, the number of disallowed votes has decreased, due in part to improvements in enrolment services such as the use of special declaration forms as an enrolment application on election day.

10.5 When the official count is complete, the Electoral Commission declares the official results, meaning the number of votes received by each candidate and each party in each electorate. This normally happens 2-3 weeks after voting closes. The official count varies from the preliminary results released on election night as it includes special votes.

Earlier recommendations

2017 Electoral Commission post-election report

The Commission recommended change to allow a person's vote to be counted if they voted in advance but died before election day.

2020 Electoral Commission post-election report

The Commission recommended a legislative amendment to allow the preliminary count to be undertaken either manually or by electronic means, to facilitate a long-term programme to work towards digital roll mark-off, issuing and counting.

Is there a case for change?

Issues identified

10.6 Most submitters thought that the current processes and methods for counting the vote work well. The Electoral Commission raised the following issues in its submission to the review.

Electronic vote counting

10.7 Special votes are complex to administer and process. Verifying special votes has become more time- and resource-intensive as the number of special votes has grown with more people enrolling closer to and on election day.

10.8 The Electoral Commission is considering digital roll mark-off as a way of speeding up the process and reducing the impacts of processing special votes. Digital roll mark-off would allow anyone who can be marked off the roll electronically to be issued an ordinary vote, regardless of which electorate they are enrolled in. This could lower the number of special votes, which could reduce the difference between the preliminary results and official results.

10.9 Digital roll mark-off would require the preliminary count on election night to be conducted electronically. This is because each polling place could be issuing ballots for all electorates in Aotearoa New Zealand, so manually counting votes

would be impractical. The law already allows for an electronic early count of advance votes on election day.

10.10 Some submitters also supported electronic vote counting to remove the possibility of human error. Electronic vote counting would also speed up the release of preliminary results as it allows vote counting to be carried out faster. There are concerns, however, that electronic counting could be expensive and would require additional time and skill to implement for each election. It also raises the potential for less transparency in the count process and concerns about the integrity of the results.

Release of preliminary results

10.11 While the Electoral Act has several provisions concerning the preliminary count of votes, it does not explicitly require the release of the preliminary results. The preliminary results are of high interest to voters, parties, candidates and the media. The Electoral Commission submitted to the review that this customary practice could be better reflected in legislation while still retaining flexibility in case of delays or disruptions.

Our view

Electronic vote counting

10.12 Digital roll mark-off would create many benefits. It could help to make voting easier, reduce the administrative costs of processing special votes, speed up the release of the preliminary results, and reduce the costs of printing and distributing ballot papers.

10.13 We recommend that the law should enable the preliminary vote to be counted electronically. We note that electronic vote counting is not a new process in Aotearoa New Zealand. Electronic scanning technology is already used for referendums and has been proven to be effective and reliable.

10.14 There are risks in electronic vote counting, but we consider that these can be managed. The electronic scanning technology used is not online, which means the risks of tampering or hacking are low. The official count could still be done manually to ensure that any variations in how ballots are marked that cannot be read by the scanning software are reviewed by an electoral official.

Release of preliminary results

10.15 We support creating a legal obligation on the Electoral Commission to release preliminary election results as soon as reasonably practicable.

10.16 The release of preliminary results is an important part of election night. While the practice of releasing them on election night is widely expected, it is currently

reliant on the Electoral Commission's discretion. Requiring the release of the results in the law will formalise and future-proof the process to be followed. The provision should be high-level enough to allow for emergencies, disruptions or other delays.

Other changes

10.17 We agree with the Electoral Commission that a person's vote should be counted if they have voted in advance and die before election day. Currently, if a person votes on election day and then dies that same day, their vote is counted. We consider that the same approach should apply across the voting period. This change is consistent with the other changes we have recommended in previous sections to standardise the rules across advance voting and election day voting.

Interaction with our other recommendations

10.18 The vote count directly links to situations where a recount has been called, which is discussed in **Chapter 18**.

10.19 The counting of the vote could also be impacted by emergencies and disruptions. Our recommendations in this area have been dealt with in **Chapter 10**.

10.20 In **Appendix 1: Minor and Technical Recommendations**, we recommend the processing of special votes should be able to start earlier.

What do you think about our recommendations on counting the vote and releasing the results and why?

11. Improving Voter Participation

The Panel recommends:

R43. Developing a funding model to support community-led education and participation initiatives, with this model also providing for 'by Māori for Māori' activities.

R44. Allowing people to include preferred names in addition to their legal name for enrolment and voting purposes.

R45. Allowing people on the unpublished roll to cast an ordinary vote.

11.1 Voter participation is central to a healthy democracy. Higher voter participation gives a greater authority and legitimacy to elected governments as election results represent a broader cross-section of society.

11.2 Like other established democracies, voting participation rates in Aotearoa New Zealand have declined over recent decades (albeit with a small increase at the last two elections). There are also real differences in voter participation rates between different groups in society.

11.3 Barriers to participation vary, from not knowing how or where to vote, or finding the process too difficult or hard to access, to having low trust in governments or thinking that voting won't make a difference. We consider ways to encourage voter participation for those who may have specific needs when voting, or groups that traditionally have low turnout.

11.4 To understand why voting is important, people need to know enough about our system of government, our democratic processes, and the rights and responsibilities of citizens. Civics education covers all these topics. In addition, citizenship education develops the skills and knowledge needed to participate in their community effectively.

11.5 Civics and citizenship education can encourage participation and support people to be better informed in their choices about how they exercise their political

rights. They can help to build a healthy democratic culture. We recommend more civics and citizenship education is undertaken across all parts of our society and set out our views below on how this should happen.

11.6 The Electoral Commission plays an important role in these areas. We also heard the value that community-led initiatives can have in supporting outreach and education.

11.7 There are many factors that influence voter participation that are beyond the scope of electoral law, such as political disengagement and trust in government. We have focused our recommendations on addressing barriers to participation and areas where the electoral system can help to foster a democratic culture of participation.

Earlier recommendations

Both the Justice Select Committee and the Electoral Commission have recommended a range of changes over the years to improve participation and accessibility. Many of these have been implemented by successive governments.

2011 & 2014 Justice Select Committee

In its 2011 post-election report, the Justice Select Committee recommended:

- the Electoral Commission liaise with the Ministry of Education on the feasibility, including resourcing implications, of incorporating ongoing comprehensive civics education into the New Zealand school curriculum
- supporting the Commission to expand public civics education programmes.

In its 2014 post-election report, the Justice Select Committee recommended:

- that the government explore the further development and coordination of ongoing, independent, civics education
- making promoting voter enrolment a whole-of-government priority with government agencies working together to facilitate enrolment.

2013 Constitutional Advisory Panel

The Constitutional Advisory Panel:

- recommended developing a national strategy for civics and citizenship education in schools and in the community, including the unique role of te Tiriti o Waitangi / the Treaty of Waitangi (**te Tiriti / the Treaty**)
- recommended assigning responsibility for the implementation of the strategy

- noted the implementation of the strategy could include the co-ordination of education activities; resource development, including resources for Māori medium schools; and professional development for teachers and the media.

2014 & 2017 Electoral Commission post-election reports

Following the 2014 election, the Commission recommended that promoting voter participation should become a national strategic priority with multi-party support. In its reports on the 2014 and 2017 elections, it also commented on the diversity of its workforce, including the number of staff who speak te reo Māori.

In its report on the 2017 election, the Commission recommended allowing people on the unpublished roll to cast an ordinary vote, rather than a special vote.

Our view

The role of the Electoral Commission in voter participation

11.8 Much of the Electoral Commission's work seeks to improve participation. The Electoral Act tasks the Electoral Commission with facilitating participation in parliamentary democracy and promoting understanding of the electoral system.

11.9 The Electoral Commission delivers these objectives in several ways. It runs a large-scale education and information campaign before each general election to increase awareness, enrolment, and participation. It has teams across the country engaging directly with communities, particularly those that are less likely to vote, to inform them about the electoral process and encourage them to take part. It develops civics education resources for schools and adults and runs the Kids Voting / Te Pōti a Ngā Tamariki programme. It also makes recommendations to the government on making voting services more accessible for people with different needs.

11.10 In **Chapter 15**, we discuss our proposed changes to the role and functions of the Electoral Commission. These include amending the law so that the Electoral Commission is required to facilitate equitable participation and to give effect to te Tiriti / the Treaty. We also recommend diversifying the skill set and expertise on the Electoral Commission's board to reflect these functions.

11.11 In our view, these changes will cascade through the way the Electoral Commission works to continue improving participation outcomes – for example, through its workforce, staff training, service delivery, and engagement and outreach. Delivering these functions effectively will also require the Electoral Commission to have strong relationships with diverse communities to understand their needs, particularly those with low engagement or barriers to participation. We encourage

the Electoral Commission to consider how best to regularly engage with and seek input from these communities – for example, by setting up advisory groups.

11.12 We also support the Electoral Commission continuing its current educative work, such as developing resources for schools, adults and communities. We consider there is a place for broader civics and citizenship education – for example, education on our democratic rights and duties, our constitution, how laws are made and the roles of our different branches of government – which we discuss below.

Civics and citizenship education

11.13 Civics and citizenship education aims to improve voters' understanding of elections by providing context of the wider democratic system it sits within. Done well, it can improve civic participation and voter turnout,[17] helping to meet our objective of encouraging electoral participation.

11.14 Many submitters who discussed the voting age also talked about civics and citizenship education. Some submitters who supported lowering the voting age to 16 years thought that it should be done in conjunction with the adoption of civics and citizenship education for high school students. (We discuss this point in our recommendations on the voting age in **Chapter 7**.) Other submitters thought civics and citizenship education was important for people of all ages.

Civics and citizenship education in schools

11.15 While Aotearoa New Zealand does not have a standard civics education curriculum, it is a topic within the social sciences curriculum. The social sciences curriculum focuses on educating students about how to contribute to and participate in society as critically informed, ethical, and empathetic citizens. It covers important aspects of participation and representation.[18]

11.16 Currently, schools have the flexibility to design their own curriculum in line with the national framework. The Electoral Commission has developed teacher resources aligned to the different levels of the social sciences curriculum. The Ministry of Education also includes a Civics and Citizenship Teaching and Learning Guide in its School Leavers' Toolkit, which is an optional resource.

11.17 Civics and citizenship education is critical to empowering our young people to get engaged and participate in our political and electoral system. In our view, that means it needs to have a prominent place in schools and the curriculum, and

[17] Wood, B. E., Taylor, R., Atkins, R. & Johnston, M. (2018). Pedagogies for active citizenship: Learning through affective and cognitive domains for deeper democratic engagement. *Teaching and Teacher Education*, Volume 75, pages 7-8.

[18] The social sciences curriculum was recently refreshed. The new curriculum will take effect from 2027, though *Aotearoa New Zealand's histories* will be taught from 2023.

educators need to be well-supported to teach it. The Ministry of Education has the lead role in this space, though the Electoral Commission and other experts are well equipped to provide input. We encourage these agencies to continue with their efforts to deliver civics and citizenship education in schools.

Community-led education and outreach

11.18 Civics and citizenship education is not just for students. Everyone in our society should have access to the information and education they need to participate in elections and exercise their right to vote meaningfully.

11.19 Reaching a wide range of communities is key to effective civics and citizenship education. Achieving this reach requires drawing on local knowledge and relationships to educate communities in a way that is relevant to them. Formal education is an important part of the equation, but participation is also driven by encouraging friends and whānau to vote and taking part in conversations about how democracy works and how people can get involved. Community and civil society groups are often best placed to make these connections but are not adequately resourced to do so.

11.20 For this reason, we recommend a community-led funding model focused on civics and citizenship education and voter participation. This model would embed a bottom-up approach that empowers community groups to take the lead with appropriate support and resources. The funding could be used to support community education initiatives as well as efforts to improve participation – for example, through enrolment drives or get out the vote initiatives. The funding model's design will need to be politically neutral so that the funding can't be used to try to persuade voters to vote for a particular party or candidate.

11.21 We also recommend that this model provide specific funding for 'by Māori for Māori' voter participation and engagement activities. These would be delivered by iwi, hapū, and/or other Māori organisations. This helps to uphold the guarantee of tino rangatiratanga provided to Māori in te Tiriti / the Treaty. Given the legacy of historic breaches of Māori electoral rights, funding levels for these programmes should recognise the finding of the Privy Council that 'especially vigorous' remedial action from the Crown may be required if the issue arises from the Crown's breach of te Tiriti / the Treaty (which we have set out in **Chapter 3**).

11.22 To avoid any conflict with its obligation to maintain political neutrality, we do not think the Electoral Commission should allocate this funding. Other agencies within government with the expertise and the reach into specific communities could deliver the funding. The Electoral Commission could still retain its role in facilitating engagement with communities and providing educative resources.

11.23 We are interested in your views on how funding for community-led education and outreach could be delivered effectively and impartially and which government agencies may be best placed to administer any such funding.

Addressing barriers to participation

11.24 For most voters, although not all, voting in Aotearoa New Zealand is considered to be relatively easy and accessible. The Electoral Commission and the Justice Select Committee undertake reviews after each election to identify any issues or opportunities for improvement. This process has resulted in better and more accessible voting services over time.

11.25 In this section, we comment on some of the remaining barriers to participation we have heard about through engagement and the efforts to address them. Achieving equity of participation is likely to require different measures for different groups and communities. We note that the barriers people face can be complex and overlapping – for example, members of the rainbow community who may be more likely to experience homelessness, or Māori with disabilities.

Participation by Māori voters

11.26 The right to participate in elections is guaranteed by Article 3 of te Tiriti / the Treaty, as full citizenship rights include those of political participation and representation. This guarantee means the Crown must actively protect Māori rights of equal participation during democratic election processes.

11.27 Māori participation at elections is lower than non-Māori participation. In the 2020 general election, 73 per cent of voters of Māori descent voted, compared to 83 per cent for non-Māori voters. Turnout in the Māori electorates was 69 percent. As for all groups of voters, there are a range of reasons why Māori may choose not to enrol or vote. These reasons may include low levels of trust in government, economic inequality, and past inequity or experiences in the electoral system.

11.28 As we outline in **Chapter 3**, there is a long and troubling history of electoral laws that made it difficult, and sometimes impossible, for Māori to participate in the electoral system. Over time, some of the inequities that Māori face in the electoral system have been addressed, and changes have been made to support participation. We are aware, however, that barriers remain. Some of our recommendations relating to voter eligibility and the Māori electoral option, discussed above, seek to help address these. Funding for community engagement led by and for Māori may also support the exercise of Māori rights.

11.29 Complaints to the Electoral Commission during the 2017 election, as well as what we heard through community hui during engagement, indicates that casting a vote is not always a positive experience for Māori. We have heard about the frustrations that Māori voters can sometimes experience in polling places, from electoral officials who cannot pronounce their names correctly to assumptions about which roll they are on. While having separate ballot boxes for different electorates and

rolls is currently necessary to enable the preliminary count to be completed on election night, voters on the Māori roll can find having to cast their ballot in a separate box to voters on the general roll an exclusionary experience.

11.30 These experiences are devaluing and can discourage participation. These issues are also largely operational matters for the Electoral Commission, involving staff training and service delivery. Since 2017, the Electoral Commission has worked to build relationships within local Māori communities around the country in order to develop initiatives to improve the voting experience for voters of Māori descent. We encourage the Electoral Commission to continue with this important work.

11.31 We consider that these kinds of issues are best addressed by this review at the governance level, specifically by our recommendations to better reflect te Tiriti / the Treaty in the Electoral Commission's objectives and board composition (covered in **Chapter 3** and **Chapter 15**). Our intent is that these changes would have flow-on effects within the Electoral Commission that will ensure that these kinds of issues are addressed and avoided in the future and that voting services are delivered with input from Māori.

Participation by disabled voters

11.32 Article 29 of the United Nations Convention on the Rights of Persons with Disabilities guarantees disabled people the right and opportunity to vote and be elected on an equal basis with others. Submitters to this review noted that a diverse range of barriers to participation exist for disabled people.

11.33 The Electoral Commission has taken steps to improve accessibility for disabled voters. A range of voting methods is available for disabled voters, including assisted voting, takeaway and postal voting, and telephone dictation voting. The Electoral Commission also provides election information in a range of accessible formats.

11.34 These efforts to improve accessibility should continue. In particular, we endorse further work on:

- expanding on the pilot trialled in the 2020 election to have New Zealand Sign Language interpreters available at select polling places in-person or by video
- continuing to improve the delivery of telephone dictation voting. While telephone dictation services have been a positive development for visually impaired voters, submitters noted that the process of requesting the service and voting can be complex, and it still entails some limits on the secrecy of the vote.

11.35 In earlier sections of this report, we have discussed other recommendations to improve participation for disabled voters. These recommendations include repealing the requirement to state or confirm your name to be issued a ballot,

changing the requirements for accessible polling places, and working on the continuous development of voting methods for people who cannot vote in person.

11.36 In addition, we expect that our proposed changes to the Electoral Commission's objectives and board composition, discussed in **Chapter 3** and **Chapter 15**, will mean that the perspectives and experiences of disabled communities will be consistently incorporated into the Electoral Commission's work.

11.37 We are also aware that there is limited data available about voter turnout in disabled communities. More research should be done by the Electoral Commission and other agencies to better understand voting trends and barriers.

11.38 A key issue we heard about from disabled communities during engagement was the lack of accessible election materials. Our recommendation to address this issue is discussed in **Chapter 11**. While many submitters from disabled communities proposed online voting, this topic is out of scope of this review.

11.39 Many disabled community groups told us that online voting would reduce barriers to participation. Online voting is outside of the scope of this review, but we have made several other recommendations that should help improve participation for disabled voters.

Participation by speakers of languages other than English

11.40 The Electoral Commission makes information about elections available in multiple languages. It also seeks to employ electoral officials who speak the languages commonly used in the communities they work in. Interpreters can also be made available at polling places, though resource constraints are a practical limitation. A few submitters suggested that election materials should be available in more languages to support participation by people who do not speak English as a first language.

11.41 We considered whether ballots themselves should be made available in other languages. We think, however, that this approach would create logistical issues with processing ballots.

11.42 We endorse the Electoral Commission's efforts to ensure its workforce has diverse language skills to better serve different communities. We encourage the Electoral Commission to consider how technology could be used to make voting information available in more languages at polling places – for example, through QR codes.

11.43 Voters from diverse ethnic communities may also benefit from more community-led engagement and outreach, as discussed above.

Participation by rainbow communities

11.44 During engagement, we heard that members of rainbow and takatāpui communities can be uncomfortable using their legal name for enrolment and

voting purposes, especially if that name is not seen to match their gender expression.

11.45 One rainbow advocacy group recommended including a person's preferred name as an option on enrolment forms and on the electoral rolls, in addition to their legal name. This change would allow rainbow and takatāpui voters to be identified by the preferred name that they use in day-to-day life, which may reduce barriers to voting for community members.

11.46 A legal name may be required at enrolment to verify a person's identity and eligibility. At a polling place, however, a person only needs to provide enough information that they can be located and marked off on the electoral rolls. A preferred name could also be used for this purpose, so we recommend this change.

Participation by people receiving care in residential facilities

11.47 The Electoral Commission provides enrolment and voting services to people receiving care in residential facilities, such as aged care facilities, hospitals, and mental health in-patient units. While most care homes and hospitals work with the Electoral Commission to accommodate these services, we have heard some anecdotal examples of difficulties accessing these facilities. In addition, while anyone who wants to vote and is eligible should be able to do so, electoral officials do need to consider the advice of staff in these facilities about what is appropriate (for example, that in-person voting may not be possible in secure wards or ICU wards).

11.48 We are interested in better understanding any issues with voting services in residential facilities and opportunities for improvement. We seek your feedback on this question.

Participation by rural and remote communities

11.49 Currently, there are legislative provisions for people living in remote locations who have no access to polling places. People voting from Tokelau, Campbell Island, Raoul Island, Ross Dependency, vessels, offshore installations, remote islands administered by the Department of Conservation, and remote locations overseas can vote by upload/download, post or dictation.

11.50 Remote voters within Aotearoa New Zealand can apply to cast a special vote on the basis that it would not be practicable to vote at a polling place without incurring hardship or serious inconvenience.

11.51 We heard through engagement that rural communities do not always have adequate access to polling places during the voting period. Our recommendation to set standards for polling places in the law would help to address this issue.

People on the unpublished roll

11.52 People with concerns relating to their personal safety can apply to enrol on the unpublished roll. People on the unpublished roll must cast a special vote because their name and address do not appear on the printed electoral rolls. Given some may have serious concerns about personal safety, they may find completing the special declaration form distressing, given the sensitivity of their personal details. Casting a special vote is also more difficult and time-consuming.

11.53 We agree with the Electoral Commission's recommendation that the law should be changed to allow unpublished electors to cast an ordinary vote. This change would require some personal details to be included on the printed electoral rolls. The Electoral Commission has suggested that unpublished electors could be marked off the roll using their name and another unique identifier other than their address – for example, their date of birth.

11.54 Other issues relating to access to the electoral rolls and privacy concerns are discussed in **Chapter 16**.

Affordable and accessible transport

11.55 We heard from disability organisations that affordable and accessible transport, whether public or private, can be a barrier to reaching a polling booth. We can see how this barrier could affect other communities as well.

11.56 We considered the option of providing access to free or discounted transport options on election day, as the final day that people have the opportunity to vote. We note, however, that with more than two-thirds of people voting in advance at the last election, this approach may have a high cost while benefitting a diminishing proportion of voters. We also looked into existing services to subsidise transport costs, such as the Total Mobility Scheme, SuperGold cards, and the new Community Connect programme. The availability of these services as well as postal and takeaway voting provide options for voters for whom transport may be an issue. Any gaps in these services may be best addressed as a transport issue rather than through electoral law.

Interaction with our other recommendations

11.57 These recommendations focus on barriers we heard about that affect particular groups or communities. Many of our recommendations discussed elsewhere in **Part 3**, covering voter eligibility, enrolment and voting methods, also support broader participation outcomes.

What do you think about our recommendations to address barriers to participation and why?

Part 4

Parties and Candidates

This part covers:

- standing for election as a candidate or political party (**Chapter 12**)
- political finance (**Chapter 13**)
- election advertising and campaigning (**Chapter 14**)

12. Standing for Election

Party regulation

The Panel recommends:

R46. **Strengthening requirements by providing the Electoral Commission with the power to either refuse to register, or to de-register, a party:**

- **a. whose rules do not meet the existing statutory requirement to follow democratic procedures when selecting candidates, but only after**
- **b. the party has been notified and given an opportunity to amend its rules to comply with its statutory obligations.**

R47. **Requiring a registered party to submit a list of party candidates at each general election to remain registered.**

R48. **Strengthening the current requirement that a party has 500 current financial members before it is eligible to register by:**

- **a. requiring those 500 members to be enrolled to vote, and**
- **b. enabling the Electoral Commission to audit any registered party for compliance with this ongoing requirement.**

R49. **Requiring a party secretary to confirm by statutory declaration that the process for ranking list candidates complied with the party's candidate selection rules.**

R50. **Extending the period before an election in which parties cannot be registered to the start of the regulated period (usually three months before election day).**

R51. **Prohibiting unregistered parties from becoming component parties of registered parties.**

12.1 Political parties play a vital role in Aotearoa New Zealand's democracy. Although they are mainly private organisations, they play a central role in the contest of parliamentary elections and so exercise significant public power, as well as receive state funding. This has long been the case but is particularly true under Mixed Member Proportional (**MMP**). There is a need, therefore, to regulate some aspects of political parties.

12.2 Any regulation needs to be carefully justified. It must not unduly impinge on the rights affirmed in the New Zealand Bill of Rights Act 1990 to freedom of association, expression, or peaceful assembly. It must not unduly restrict the ability of parties to organise themselves, determine policy, select candidates, and contest policy in ways which reflect their widely differing sizes, ethos, and organisational approaches.

12.3 Political parties that want to contest the party vote must first register with the Electoral Commission. To register, a party must pay a fee of $500, and have 500 current financial members who are eligible to enrol as electors. Each registered party must have a party secretary. Party secretaries are responsible for the party's compliance under the Electoral Act. Registered parties have the following obligations:

- **reporting requirements**: party secretaries have obligations to report certain donations, loans and expenses
- **candidate selection**: each party selects candidates based on their own rules, but the Electoral Act requires parties provide for 'democratic procedures' when selecting candidates
- **internal rules**: party secretaries must provide the Electoral Commission with copies of membership rules and rules for candidate selection
- **membership**: to remain registered, parties must be able to show they have 500 eligible members. Party secretaries are required to give statutory declarations each year confirming this requirement has been met.

12.4 Unregistered parties are not subject to the obligations that apply to registered parties. Unregistered parties can stand candidates in electorate seats, but they are not able to contest the party vote directly. However, if they become a component party of a registered party then they gain access to the allocation of list seats, without being subject to normal finance and expenses disclosure requirements.

Earlier recommendations

2012 Electoral Commission Review of MMP

The Commission recommended that:

- parties should continue to be responsible for the selection and ranking of candidates on their party lists
- parties should be required to give public assurance, by statutory declaration, that they have complied with their rules in selecting and ranking their list candidates
- in any dispute relating to the selection of candidates, the version of the party's rules that was supplied to the Commission at the time the dispute arose is the version that should be applied.

2014 Electoral Commission post-election report

The Commission recommended:

- that if a party secretary resigns, a new party secretary must be appointed, and the Commission advised within twenty working days, or the party's registration may be cancelled by the Commission
- introducing a discretion to refund the bulk nomination deposits in certain circumstances if one candidate in the bulk nomination refuses to file a return of expenses and donations.

2017 Electoral Commission post-election report

The Commission recommended a deadline (eight weeks before writ day or the default day for the start of the regulated period) for party registration applications to ensure certainty for applicants.

2020 Electoral Commission post-election report

The Commission recommended:

- adding a statutory deadline at the start of the regulated period for party registration applications, to ensure certainty for applicants
- that parliament review the existing umbrella and component party provisions to consider whether any changes were needed.

Is there a case for change?

What we heard

Party registration

12.5 Most submitters who responded to our question about the rules for party registration were satisfied with the current rules. Submitters discussed the registration requirements and had differing views on issues such as the minimum numbers of financial members needed to become registered, and the registration fee.

12.6 Some submitters thought that all political parties should be registered to protect the integrity of elections, and to ensure that all parties are treated equally. Other submitters discussed the obligations of registered parties, including whether there should be more disclosure to assist the public.

Candidate selection

12.7 We also heard that some people don't feel represented by the candidates that are selected for parties. Although the diversity of parliament has increased, there are some communities that remain underrepresented.

12.8 Another issue that submitters raised was parties' responsibilities when selecting candidates, particularly the requirement to follow democratic procedures.

Our view

12.9 Overall, we think the Electoral Act strikes the right balance in regulating political parties. The rules reflect the public interest in having information about parties' public-facing functions, without unduly restricting the rights and freedoms of those people who choose to participate politically through parties.

12.10 However, we consider improvements can be made to clarify how the current rules work in practice and how they can be administered. These changes will help to future proof the law, and increase transparency and public confidence.

Registration and compliance

12.11 We recommend strengthening certain requirements relating to party registration, and compliance with their candidate selection rules. We recommend:

- that the Electoral Commission should have the power to either refuse to register, or to de-register, a party if its rules do not meet the statutory requirement to follow democratic procedures when selecting candidates.

We propose that before the Electoral Commission refuses to register, or moves to de-register, a party, the party would be notified and given an opportunity to amend its rules to comply with its statutory obligations

- that a registered party must submit a party list of candidates at each general election in order to remain registered. The sole purpose of registration is to enable parties to contest the party vote, and in order to be registered, a party secretary must make a statutory declaration that the party intends to do so. We consider it inconsistent that there are registered parties that don't then actually contest the party vote
- to be eligible to register with the Electoral Commission, a party must have 500 'current financial members' that are actually enrolled as electors (and not just eligible to enrol). This recommendation reflects the compulsory nature of enrolment in Aotearoa New Zealand
- that the Electoral Commission has the power to audit whether registered parties continue to have 500 eligible members, to ensure compliance with the rules
- clarifying that the existing requirement on parties to follow democratic procedures when selecting candidates also applies to the party's ranking of list candidates
- that party secretaries confirm (by statutory declaration) that the candidate selection process for list candidates complied with the party's candidate selection rules, to provide public assurance that this has been done
- to contest the party vote, political parties must apply to be registered before the start of the regulated period (that is, three months before election day). This change will assist the Electoral Commission to effectively and efficiently administer the election.

12.12 In **Appendix 1: Minor and Technical Recommendations**, we recommend further changes to regarding party regulation.

Component parties

12.13 We also recommend closing the loophole that enables an unregistered party to become a component party of a registered party. By doing so, they gain access to the allocation of list seats, without being subject to the normal finance and expense disclosure requirements that apply to registered parties. This situation is neither fair nor transparent. We recommend addressing it by preventing unregistered parties from becoming a component party of a registered party.

Representation

12.14 One of the objectives of this review is to ensure that Aotearoa New Zealand has an electoral system that produces a representative parliament. In 1986, the Royal Commission expressed the view that parties have a responsibility to ensure that parliament reflects the diversity in society.

12.15 While the representativeness of parliament has increased since MMP was introduced, some populations continue to be significantly underrepresented, such as disabled communities. Some submitters were concerned about a lack of representation from communities they were part of. We hear these concerns.

12.16 To address this, we considered whether parties should be required to meet certain quotas or diversity targets. While effective to increase diversity, on balance, we consider that requiring quotas is too significant a restriction on parties' rights to operate in a way that reflects their own values. We also note that many parties already have internal rules that aim to address diversity concerns. Ultimately, we believe this matter is best left to the voters. We are, however, particularly interested in hearing from submitters, including parties, on this issue.

12.17 Increasing diversity and representation across leadership and public-facing roles is an issue that is wider than the scope of this review. However, we hope that some of the other changes we have recommended, and the recently established Election Access Fund / Te Tomokanga — Pūtea Whakatapoko Pōtitanga (the Election Access Fund) (discussed further below), will have the effect of encouraging increasing diversity in candidate selection.

What do you think about our recommendations on party regulation and why?

Candidate eligibility

The Panel recommends:

R52. Broadening candidate eligibility, in line with our voter eligibility recommendations, to include:

a. 16- to 17-year-olds

b. citizens living overseas for two electoral cycles

c. all prisoners.

12.18 Under MMP, there are two types of candidates: electorate candidates and list candidates. The Electoral Act provides that a person may be both. This is known as dual candidacy.

12.19 Any New Zealand citizen who lawfully is enrolled to vote is eligible to become a candidate for election. Permanent residents for electoral purposes, while eligible to vote, may not stand as candidates. The right of every citizen to stand as a candidate is protected under the New Zealand Bill of Rights Act 1990 and may only be limited to the extent that is reasonably justified in a free and democratic society.

12.20 The Electoral Act places some limits on the right of citizens to stand as candidates, based on their right to vote, as outlined in **Chapter 12**. A citizen currently is **not** able to enrol to vote, and so may not stand as a candidate in Aotearoa New Zealand, if they:

- are on the Corrupt Practices List
- are a prisoner serving a life sentence, preventive detention, or a sentence of imprisonment of three years or more
- are detained, in limited circumstances relating to criminal offences, under mental health or intellectual disability legislation for three years or more
- are under 18 years old

- have not visited New Zealand within the last three years.[19]

12.21 Because candidate eligibility is based on voter eligibility, arguments for and against changing who may vote are relevant to who may be a candidate for election. We considered such arguments in **Chapter 7**, and we do not repeat them here.

Earlier recommendations

1986 Royal Commission on the Electoral System

The Royal Commission considered that:

- anyone who qualified as a voter should also be able to stand as a candidate. It considered that the factors that led to New Zealand accepting the right of permanent residents to vote also supported the right of permanent residents to stand for parliament
- prohibiting dual candidacy was undesirable in principle and unworkable in practice.

2012 Electoral Commission Review of MMP

The Electoral Commission agreed with the Royal Commission that dual candidacy should be continued.

Is there a case for change?

Issues identified

12.22 The Electoral Act extends voting rights to non-citizens while confining candidacy to citizens residing in Aotearoa New Zealand. Rights under the New Zealand Bill of Rights Act 1990 are engaged for citizens living overseas. These rights may only be limited to the extent that is reasonably justified in a free and democratic society.

12.23 The attendance requirements for the House create a practical constraint on the ability of, for example, someone serving a long-term prison sentence to act as a Member of Parliament (**MP**) if elected.

[19] The requirement to have been in New Zealand within the last three years does not apply to the diplomatic corps or members of the Defence Force who are on duty outside New Zealand, or members of their families.

12.24 Voters retain the decision about whether, on their merits, a candidate is worthy of being elected. The rules for candidate eligibility, however, directly impact the possible choices for voters – and shape the representativeness of the parliament that can be created.

12.25 Submitters to the review commented on:

- **voting age**: some said that if the voting age is lowered, then the candidate eligibility age should also be lowered. Some other submitters noted that 16- and 17-year-olds may be prevented from becoming candidates and MPs because of other commitments, such as attending school
- **previous convictions**: most submitters who discussed prisoner eligibility thought that any prisoners serving a sentence of imprisonment for any offence should be disqualified from becoming a candidate. Other submitters believed that only serious convictions should disqualify a person. A few submitters said that past criminal convictions should not be a bar to standing as a candidate
- **permanent residents**: Most of the submitters who discussed permanent residents supported extending the right to stand as a candidate to permanent residents.

Electorate candidate's place of residence

12.26 Electorate candidates currently do not have to be enrolled in the electorate they are standing in, nor do they have to live there. Some submitters to the review thought that candidates should be required to live in the electorate that they are wanting to represent.

Dual candidacy

12.27 Some submitters to the review considered dual candidacy should be banned, so that a candidate may either be included on a party list or stand as an electorate candidate, but not both. This suggestion reflects a concern that unsuccessful electorate candidates are entering parliament 'through the back door' – via party lists.

Our view

Candidate eligibility

12.28 We considered whether there are any reasons why our recommendations for expanding voter eligibility should not be carried over into candidate eligibility. We think as a matter of principle that New Zealand citizens who are eligible to vote should also be eligible to stand as candidates. Ultimately, voters, through elections, are best placed to decide who should be an MP.

12.29 We discussed the practical difficulties with permitting 16- and 17-year-olds, overseas citizens, and prisoners to be eligible for election to parliament. We considered reasons for more clearly splitting candidate eligibility from voter eligibility, as has been the case for permanent residents. We were not persuaded that any of these considerations were sufficient to limit the political participation rights of citizens. We note that our recommended changes to the non-attendance ground (to three months) in **Chapter 6** largely counteract any concerns about individuals being elected who cannot then participate in parliamentary proceedings.

12.30 We strongly support the idea that a citizen's voter eligibility and candidate eligibility are linked, so that any change to one should be consistently applied to the other. The electoral system should have strong participation levels and candidates that represent our communities.

12.31 Our reasons for extending voter eligibility therefore apply to 16- and 17-year-olds, prisoners, and overseas citizens who have been away for up to two electoral cycles being eligible to stand as candidates. This extension could increase diverse representation in parliament. It also supports our objectives of fairness and encouraging participation.

12.32 We do not consider permanent residents should be able to stand as candidates. We think that it is reasonable to say an individual acting as a lawmaker for society should be a full citizen of the country. Citizenship demonstrates an additional commitment to Aotearoa New Zealand.

Electorate candidate's place of residence

12.33 A significant part of the political contest as an electorate candidate is proving your connection to the electorate and your ability to represent the people who live there. There is no legal requirement for candidates to say anything about where they are living. There may be good reason for nominating a candidate who does not currently reside in the electorate, for example, if they have a strong connection to the electorate.

12.34 Voters can decide for themselves whether a candidate is fit to represent them. If a candidate's place of residence is an issue, we can expect that their opponents will raise it during the campaign.

Dual candidacy

12.35 The ability of candidates to stand both in an electorate and on the party list if they wish is a beneficial feature of MMP. Dual candidacy can enrich the political contest and supports representation. It allows parties to stand strong candidates in marginal or unwinnable electorates.

12.36 We have not heard any strong arguments for change. We agree with the recommendations of the 1986 Royal Commission report and the 2012 Electoral Commission MMP review. We support continued dual candidacy.

Interaction with our other recommendations

12.37 In **Appendix 1: Minor and Technical Recommendations**, we recommend further changes to make candidate nominations processes fairer, more efficient and effective.

Barriers to participation

Is there a case for change?

Issues identified

12.38 Barriers to participation can arise for a diverse range of candidates, including disabled candidates and those from lower socio-economic backgrounds.

12.39 Barriers for candidates are similar to those arising for voters, and include financial and time costs, not fully understanding the electoral system, and non-inclusive political cultures, among other things. These barriers can be unfairly amplified because of factors such as ethnicity, gender, socio-economic background, sexual orientation, and disability.

12.40 Reducing barriers would support people from underrepresented groups to stand as candidates. It may therefore increase the diversity of candidates and the representativeness of parliament.

Our view

12.41 We considered whether the Election Access Fund / Te Tomokanga — Pūtea Whakatapoko Pōtitanga (the Election Access Fund) (discussed in **Chapter 13**, below, and currently limited to disabled people) could be extended to other groups who may face barriers to becoming candidates. We considered whether a similar, separate fund (or funds) should be set up for specified groups, beyond disabled communities. Any fund would require sufficient resourcing.

12.42 Given the Election Access Fund is still relatively new and has not yet been used, we decided against extending its eligibility to other groups at this stage. Having a bespoke fund for disabled communities is important because they face unique barriers, low representation and high entry costs.

12.43 One of the future statutory reviews of the Election Access Fund could consider establishing additional access programmes or funds for those who face other barriers to participation, such as caregiving responsibilities.

12.44 We are also recommending a new fund to facilitate party and candidate engagement with Māori communities, in ways appropriate for Māori, discussed in **Chapter 13**, below. This fund could address barriers for candidates. Improved Māori participation in general should, in time, flow through to increased numbers of Māori candidates.

12.45 We considered whether additional resources, information, and education could be made available to assist candidates from communities who may not typically run for candidacy. The Electoral Commission provides a Candidate Handbook and other information for candidates. This Candidate Handbook, however, is not currently provided in accessible formats or translated versions. This may be an opportunity for the Electoral Commission to further assist candidates who may face barriers to standing as a candidate.

12.46 We are interested in your views on ways to address barriers for candidates from under-represented communities.

Interaction with our other recommendations

12.47 Our recommendation to change the non-attendance ground in **Chapter 6** from an entire session of parliament to a period of three months would provide a restriction on prisoners and overseas citizens serving as MPs.

12.48 In **Chapter 11**, we recommend the development of a funding model to support community-led civics and citizenship education and participation initiatives. These education initiatives might have the effect of reducing some barriers for candidates from underrepresented groups.

12.49 The Corrupt Practices List, discussed in **Chapter 18**, places a limit on candidate eligibility. The changes we recommend there will retain those limits on candidacy.

12.50 Our recommendation to limit candidate and party access to the electoral roll by no longer giving access to electors' addresses and occupations (as discussed in **Chapter 16**) could impact the ability of parties to prove a candidate's eligibility for list and bulk candidate nominations. We suggest that the Electoral Act continues to require that a party secretary statutorily declare that the candidates are eligible to be nominated. Party secretaries would need to be provided with the means to confirm candidate eligibility by the Electoral Commission.

What do you think about our recommendations on candidate eligibility and why?

13. Political Finance

13.1 Political finance is fundamentally important to the electoral system. Money is used by parties and candidates for a wide range of activities, including developing policy, communicating with the public, and campaigning. Making donations and providing loans is a form of political expression and electoral participation, allowing people to support parties and candidates of their choosing. The right to do so is protected by the New Zealand Bill of Rights Act 1990.

13.2 However, there are risks to electoral integrity and public confidence in the electoral system if some people are able to unduly influence parties and candidates through making donations or loans. Even the perception that such undue influence exists can undermine the perceived trustworthiness of our democratic processes.

13.3 We have been asked to consider how political financing currently takes place in Aotearoa New Zealand, including the appropriate balance between private and public funding sources. The present regulatory framework is complex and can be difficult to understand. It attempts to balance a number of competing objectives including transparency, privacy, freedom of expression and preventing wealth from exercising an undue influence on election outcomes and politicians.

13.4 Taken together, our recommendations seek to achieve a fair balance between private and state funding, in an attempt to reduce the risk of undue influence, and to make the political finance system more transparent and equitable.

13.5 We have been mindful that supporting a political party, including financially, is protected as a form of freedom of expression and association under the New Zealand Bill of Rights Act 1990. Any limitations on these important rights need to be justified.

13.6 We have kept in mind the risks to public confidence in the electoral system if some people have more access to, or can unduly influence, parties and candidates through political financing. Even the perception of uneven access or undue influence can undermine trust that elections provide a fair way of choosing our law-making representatives.

13.7 We discuss private political funding through donations and loans first, followed by state funding.

13.8 We recommend only allowing those individuals who are enrolled to vote to donate or lend to those individuals who are enrolled to vote, limiting the amount that a

registered elector can donate or lend, reducing the amount that can be donated anonymously, and other changes to increase transparency.

13.9 We also recommend replacing the state funding currently provided through the broadcasting regime (discussed in **Chapter 14**, below) with fairer and more effective forms of state funding for registered parties. These forms include per-vote and base funding, tax credits, a new fund – Te Pūtea Whakangāwari Kōrero ā-Tiriti / Treaty Facilitation Fund, and an expanded Election Access Fund.

Private funding

The Panel recommends:

R53. Permitting only registered electors to make donations and loans to political parties and individual candidates.

R54. Spending on election advertisements that requires authorisation from a party or candidate should be treated as a donation.

R55. Limiting the total amount a registered elector may give by way of donations and loans to each political party and its candidates to $30,000 per electoral cycle.

R56. Reducing the amount that can be donated anonymously to $500.

R57. Abolishing the protected disclosure regime.

R58. Increasing the frequency of disclosing donations and loans in election year and lowering the thresholds for when disclosure must be made.

R59. Requiring the disclosure of all donors and lenders who give more than $1,000 to a political party or candidate, but only requiring that donor and lender names are made public.

R60. Expanding the definition of donation to include a range of fundraising activities.

R61. Reducing administration by only requiring donor details to be recorded for donations above $200.

13.10 Registered parties and candidates mostly rely on private funding sources to pay for their day-to-day activities and election campaigns, for example through membership subscriptions, donations, loans, and investments. We discuss the limited state funding currently available to parties below.

13.11 Donations and loans are regulated under the Electoral Act. Public disclosure of some private funding is required, the amount that can be donated anonymously is limited, and donations from overseas donors are restricted.

13.12 Unregistered parties do not have to comply with these requirements, and they are generally unable to contest the party vote (unless they are a component party, discussed in **Chapter 12**, above).

13.13 The public disclosure of significant donations and loans to political parties and candidates is the primary way that private funding is regulated. Below, we discuss issues such as who is eligible to make donations (individuals and organisations such as companies or trade unions), how much can be donated or lent, anonymous donations, and reporting and disclosure requirements.

13.14 When considering these issues, we have kept in mind that any limitations on the rights of freedom of expression and association under the New Zealand Bill of Rights Act 1990 must be justified.

13.15 It is clear from recent court cases, media reporting and submissions to this review that political financing evokes considerable concern, and that there may be a number of vulnerabilities in the system. We share these concerns and make suggestions that respond to them. Looking to future proof the system, we recommend changes that will reduce the risks of donation-splitting and other methods of circumventing transparency requirements.

13.16 Where possible, our recommendations attempt to simplify the regulatory framework, so that parties and candidates can focus on their core responsibilities of developing policy, engaging with the public, and contesting elections.

13.17 Our recommendations seek to balance transparency and concerns about undue influence, with political expression and privacy rights. We are conscious that with regulation comes compliance costs, and we make recommendations in **Chapter 13** to reduce the burden of these changes.

Earlier recommendations

1986 Royal Commission on the Electoral System

Political finance regulation has changed significantly since the Royal Commission's report in 1986, but some of its comments are still relevant. The Royal Commission:

- recommended that a donor's identity should be disclosed if they donated above certain limits
- was not in favour of allowing anonymous donations, as these could be used to avoid disclosure
- recommended that the Electoral Commission should be empowered to require a full audit of political parties and independent candidates as it saw fit
- did not recommend placing limits on the total amounts that parties or candidates could raise in donations, or on the size of individual donations.

2011, 2014, and 2020 Electoral Commission post-election reports

In its 2011 post-election report the Commission recommended shortening the deadline for candidate returns of donations from 70 to 50 working days after polling day.

In its 2014 post-election report, the Commission stated that a review of the audit requirements in the Electoral Act was needed. It recommended consultation with Chartered Accountants Australia and New Zealand, the New Zealand Auditing and Assurance Standards Board, and party auditors.

In its 2020 post-election report, the Electoral Commission recommended adding an overarching anti-collusion provision to the Electoral Act to aid enforceability.

2011 and 2017 Justice Select Committee post-election reports

In its 2011 report, the Committee recommended keeping the deadline for candidate returns of donations the same (in contrast to the Commission's recommendation above).

In its 2017 report, the Committee made a number of political financing recommendations when it considered foreign interference issues. Most of those recommendations are discussed in **Chapter 19**.

It also recommended that the government examine how to prevent transmission of funds through loopholes, for example, through shell companies or trusts, and that the government consulted with political parties about how best to approach the problem.

Political donations: who can donate

13.18 Parties and candidates can receive donations in the form of money, the equivalent of money, or goods and services. Donations can be made by individuals or organisations and groups such as companies, trade unions, iwi corporations, and trusts. There is no limit on how much any individual, organisation or group (other than an 'overseas person') may give by way of a donation to a party or individual candidate.

13.19 Donations of up to $1,500 can remain anonymous (or $50 for an 'overseas person').

13.20 Loans to parties or candidates are regulated, except those from a registered lender (such as a bank) at a commercial interest rate. Only a party secretary can enter into a loan on behalf of a party, and they must keep records of all loans. Loans are less common than donations, and we do not discuss them further here. The following discussion of donations includes loans (except those from a registered lender (such as a bank) at a commercial interest rate) as all of our recommendations in this area apply to both.

Is there a case for change?

Arguments against change

13.21 Some submitters expressed concern that limiting the ability to seek and receive donations may result in parties becoming less connected to their supporters and to the public.

13.22 We are aware that other arguments include:

- having few restrictions on donations and loans enables wide political participation and allows freedom of expression. Parties and candidates are free to seek donations and loans from a range of individuals, businesses and groups. In addition to individuals, various organisations and groups have a legitimate interest in the outcome of elections, as they are impacted by government policy and decision-making
- changes to donor and lender eligibility for groups and organisations might impact some parties and candidates more than others. For example, if a party historically receives most of their donations from groups that became ineligible, that change could negatively restrict their ability to campaign
- restrictions on donations and loans might mean that parties require more state funding to cover any shortfall.

Arguments for change

13.23 Some submitters suggested that certain entities should be banned from donating and lending, such as companies or trade unions. A few submitters commented that only New Zealand citizens, or people eligible to vote, should be entitled to donate.

13.24 We are aware that other arguments include:

- public opinion research suggests that the public has a low degree of trust in the way parties are funded
- academics report that there is some evidence that donors who make large donations are able to gain access to, and build relationships with, Members of Parliament (**MPs**) and Ministers. Some donors may also have an expectation of influence
- restricting the ability of some people or entities to donate may improve public trust in our political system. It could remove the perception that those who are unable to vote are able to unduly access and disproportionately influence parties and candidates
- the ability to donate is spread differently between groups in society. Those who cannot afford to donate due to having less access to resources (in particular, groups with lower intergenerational wealth and income, including some Māori or Pacific peoples), cannot express their political views in this way and this inequality is unfair.

Our view

13.25 We consider there should be changes to who can make political donations and loans. We are concerned about the reported low level of public trust in the private funding of parties. The perception of undue influence, let alone its actual existence, has the potential to damage public confidence in Aotearoa New Zealand's electoral system.

13.26 We considered whether to restrict certain entities from donating and lending, for example companies registered in Aotearoa New Zealand with majority overseas ownership, or those with large government contracts. However, in our view, this would be unlikely to sufficiently reduce public concern over undue influence.

13.27 We instead recommend that only individuals who are registered to vote should be able to donate and lend to parties and candidates. In making this recommendation, we note that many other democracies, such as Canada, have similar restrictions.

13.28 This means that all organisations and groups, including trusts, companies, trade unions, iwi, hapū, and unincorporated associations will be prohibited from making donations and loans. Money lent by a registered lender at a commercial interest

rate would continue to be permitted. Individuals who are not eligible to enrol, as well as those eligible but who have not enrolled to vote, will also be prohibited from donating.

13.29 Freedom of expression and association are rights protected by the New Zealand Bill of Rights Act 1990. They can only be limited to the extent justifiable in a free and democratic society. We consider that the impact on these rights is mitigated by the fact that organisations and groups can continue to participate in the political process as third-party promoters, by donating to third-party promoters, and by lobbying elected representatives directly. Individual members of such organisations and groups who are enrolled to vote also would remain able to donate. We think that increasing public trust in political funding, and reducing the perception that people who aren't registered to vote gain undue influence through donations are also factors in favour of this restriction of rights.

13.30 As a result of this decision, we think it is necessary to make a change to third-party advertising rules. Currently, if a person wants to publish an election advertisement that could reasonably be regarded as encouraging or persuading voters to vote for a party or candidate, that person has to seek authorisation from the party or candidate. The amount spent on the advertisement counts towards the party or candidates campaign spending limits (discussed below).

13.31 We recommend that any spending on authorised advertisements is deemed to be a donation to the party or candidate. This means that only registered electors can pay for advertisements of this kind. Ineligible donors will still be able to spend on other forms of election advertising as third-party promoters (third-party promoter rules are discussed below). Such spending would continue to count against a party or candidate's campaign spending limits.

13.32 Other transparency and compliance benefits arise from our decision, as there may be less avoidance and evasion of reporting requirements if individual registered electors are required to be identified as donors. It will not be possible for a donor to use multiple companies or trusts over which they have control to make donations, for example.

13.33 As discussed further below, we recommend that any anonymous donation to a party or candidate is limited to $500. Parties and candidates must therefore know the identity of any donor who gives more than this amount.

13.34 We also suggest that parties and candidates are required to record the details of all donors known to them who give more than $200. Such donors should be required to provide their name and address and confirm that they are on the electoral roll. This is consistent with our objective of ensuring the rules are transparent and clear, as well as practicable and efficient.

13.35 We acknowledge the risk that restricting donor and lender eligibility could increase evasion and avoidance behaviour. However, the changes we have

recommended to the Electoral Commission's investigatory powers in **Chapter 18** should reduce the risk that any such behaviour goes undetected.

Te Tiriti o Waitangi / the Treaty of Waitangi implications

13.36 We are conscious that this decision will have an impact on Māori as the Crown's Tiriti o Waitangi / Treaty of Waitangi (Tiriti / Treaty) partner:

- imposing restrictions on the ability of Māori collectives (iwi, hapū, trusts, and community organisations) to make donations could be seen to restrict tino rangatiratanga because it limits the autonomy of Māori organisations to participate politically in whatever manner they choose
- it will have a direct impact on any parties and candidates that may have received donations or loans from Māori groups
- only allowing individuals to donate may also perpetuate socioeconomic inequities. The wage gap between Māori and non-Māori means Māori have lower disposable income available to donate to political parties. As such, Māori political participation could be inequitably impacted relative to other groups.

13.37 On the other hand, the impact on Māori political participation is likely to be small. Māori collectives only donate a small amount relative to other non-individuals (for example, company and union donations). Māori groups and organisations can continue to participate in the electoral system as third parties (such as by advertising on issues important to Māori during the regulated period), or by donating to third parties.

13.38 Our current view is that the benefits of restricting the ability to make donations and loans outweigh the potential impacts. The objective of the recommendation is to increase public trust and confidence in political funding, by removing the perception that those that aren't registered electors are, or could be, unduly influencing the electoral system. We think that these potential impacts are partially mitigated by our decisions to increase state funding (discussed below).

13.39 Given the Crown's responsibility as a Tiriti / Treaty partner, we are seeking feedback on:

- how the changes might impact Māori individually and collectively as the Crown's Tiriti / Treaty partner, and as parties and candidates.
- whether submitters consider the restrictions on the autonomy of Māori groups and organisations are reasonable, having regard to the benefits of restricting donor and lender eligibility
- a funding recommendation which aims to facilitate party and candidate engagement with Māori communities, in ways appropriate to Māori – Te

Pūtea Whakangāwari Kōrero ā-Tiriti / the Treaty Facilitation Fund (discussed below).

Interaction with our other recommendations

13.40 Our recommendation to limit candidate and party access to the electoral roll by no longer giving access to electors' addresses and occupations could impact the ability for parties and candidates to check donor eligibility. As we note above, we suggest that donors and lenders are required to assert that they are on the electoral roll, and provide their name and address, when making a donation or loan. These requirements will enable enquiries to be made through the Electoral Commission if questions later arise about the enrolment status of a donor or lender.

13.41 In **Appendix 1: Minor and Technical Recommendations**, we recommend a change to clarify that free labour or services must be provided on a voluntary basis.

What do you think about our recommendations on who can donate and lend and why?

How much can be donated or lent?

13.42 There is no limit on the total amount in donations or loans a donor can make, and no limit on how much a party or candidate can receive in donations. The only exception is for 'overseas persons'. Parties can only keep up to $50 in donations from any given overseas person per year, and candidates can keep the same amount per election campaign. Below, we consider whether additional limits should be applied to other donors.

Is there a case for change?

Issues identified

13.43 During engagement, we heard widespread concern from submitters about donors being able to make large donations, and the potential for influence that could arise as a result. Public opinion research by academics suggests there may be a significant amount of public support for donors being limited to making donations in the range of $10,000 to $15,000 per year.

13.44 The act of donating engages the rights of freedom of expression and association. Donation and loan limits could restrict the extent to which an individual donor or lender can fully express their political support for parties and candidates.

13.45 The majority of submitters on the question of capping donations supported imposing a relatively low limit of $500 to $1,500. In the view of many of these submitters, not limiting donations and loans means that those that can afford to can have, or may be perceived to have, greater ability to gain access to and influence parties and candidates. This inequity of access gives rise to electoral integrity and equal participation concerns.

13.46 A limit on how much an individual may give by way of donations and loans could negatively impact the finances of some parties and candidates more than others; that is, those that typically receive large donations. On the other hand, some submitters suggested that capping donations at a relatively low level may incentivise parties and candidates to seek support from a wider range of donors.

13.47 If the limit is too high, it might not reduce public concern over undue influence by wealthy donors, or funding imbalances between parties. However, if the limit is too low, it may have a negative impact on party and candidate finances. A low limit could result in parties and candidates being unable to campaign effectively and have negative effects on participation. A low limit could also result in avoidance or evasion of the rules.

13.48 Some comparable jurisdictions have quite low individual donation limits. For example, Canada has a limit of approximately NZ$2,000 per year, and Ireland has a limit of approximately NZ$4,400 per year.

Our view

13.49 We recommend a limit of $30,000, on how much a registered elector can donate or lend to a party (and to any candidate for that party) within an electoral cycle.

13.50 Limits have been placed on the use of money for political purposes since the 1880s in various ways. The current political financing regulation already places some limits on donating (anonymous donations and overseas donations) and spending (election expenses for parties, candidates and promoters). In this way, a donation limit, while a change to the funding system, is not inconsistent with existing regulation.

13.51 In our view, capping donations and loans will counter the perception that only those who make large donations are able to access and influence the electoral system. The objective of imposing a limit on donations is to incentivise parties and candidates to seek donations from a wider supporter base, supporting our objective of increased participation and potentially more representative parliaments.

13.52 Some parties currently receive more large donations than others, and we appreciate this change is likely to have greater impact on donation revenue for those parties. However, we do not think this is a reason not to impose a limit. Our

proposals on state funding (discussed below) will go some way to mitigating any private funding shortfall.

13.53 Many other countries have restrictions on political donations, and some also have limits on loans. Having considered where limits have been set in a number of OECD jurisdictions, we note that there is a large variation. There is no clear explanation of the differences across those jurisdictions that will assist us considering where to set a limit for Aotearoa New Zealand.

13.54 On balance, we do not believe the limit should be set too low. Relatively small donations and loans do not present a high risk of undue influence. As this is a change from how elections have been funded in the past and how donor rights have been understood we are suggesting a relatively conservative approach.

13.55 We recommend that each registered elector should be limited making donations and loans of no more than $30,000 in total to each party and its candidates during an election cycle. This limit could be allocated through one donation or loan, or across multiple transactions over the electoral cycle. The $30,000 limit would apply to each party and all its candidates, so that an individual could donate up to that amount to a number of parties and their candidates.

13.56 Inevitably, any limit is arbitrary to some extent. We note that the maximum amount a candidate can spend on their own campaign is $30,000, making this a reasonable starting point for an overall limit on donations.

13.57 We acknowledge that $30,000 is significantly higher than most New Zealanders could afford to donate or lend within an electoral cycle (for instance the median annual income for households was $96,000 in 2022), but given the important role that private funding plays in the political system, we think that this amount is an appropriate cap.

13.58 We considered a number of other options, including limiting the total amount any one person could give in donations or loans, or limiting the total amount that a party or candidate could receive in donations or loans. We also considered whether to place a limit on donations from some donors or lenders where there may be influence or perceptions of influence, for example, businesses with government contracts, but decided instead to limit donor eligibility to registered electors.

13.59 We also considered a total ban on private donations, which would necessitate the full public funding of political parties. While this option would remove the risk, or

perception of undue influence, we do not think a ban is desirable, necessary, or justifiable in the circumstances.

What do you think about our recommendations on limiting donations and why?

Anonymous donations

13.60 An anonymous donation is a donation where the recipient (such as the party secretary or candidate) doesn't know, and could not reasonably be expected to know, the identity of the donor. That is, neither the public nor the recipient know the identity of the donor.

13.61 If the party or candidate knows, or could reasonably be expected to know, the identity of the donor, the donor (and the donation) isn't anonymous. Donor details must be recorded, and if the donation is above a certain amount, those details are made public. We discuss public disclosure later in the report.

13.62 Currently, a party or candidate can keep up to $1,500 of any anonymous donation they receive. Anything above that must be paid to the Electoral Commission, who then distribute it to the Crown. This approach recognises that there is limited risk in smaller donations being made on an anonymous basis when balanced against donor privacy. There are no limits on giving multiple $1,500 donations anonymously.

13.63 Larger anonymous donations to registered parties can be made through the protected disclosure regime. This regime allows a 'New Zealand person' (someone who is not an 'overseas person' under the Electoral Act) to donate more than $1,500 anonymously. These donations are made to the Electoral Commission, which then passes them on to the party. The donations are paid in a way that ensures the party does not know who the donor is. It is an offence for someone to disclose details about a donor or contributor to a donation under the protected disclosure regime.

Is there a case for change?

Issues identified

13.64 Submitters had differing views on whether anonymous donations should be allowed at all, or whether the limits should change. Some submitters suggested that all anonymous donations should be banned, while others suggested they

should only be allowed at a lower limit. A few submitters and academics argued that allowing anonymous donations is inconsistent with transparency in political funding. A few submitters suggested that all anonymous donations should be paid to the Electoral Commission, which would then distribute money to parties on an anonymous basis.

13.65 An argument in favour of allowing anonymous donations is that like the secret ballot, financial support of parties and candidates should be kept private. Some people argue that donor identity should be kept private from the public. Others go further, arguing that donations should be kept private from parties and candidates as well.

13.66 Some other countries have lower anonymous donation thresholds than Aotearoa New Zealand. In Canada, for example, only donations of CAD$20 or less can be made anonymously.

Our view

13.67 We consider the rules on anonymous donations should be changed.

13.68 When thinking about changes to private funding, we have attempted to balance transparency and concerns about undue influence with political expression and privacy rights. With this in mind, we think there is a valid role for small anonymous donations, at an amount where there is little public interest in knowing the identity of a donor and little risk of undue influence. Allowing small anonymous donations also adds flexibility for fundraising, without increased administrative compliance burdens. For these reasons, we do not recommend banning anonymous donations entirely.

13.69 Instead, we recommend reducing the amount that can be donated anonymously from $1,500 to $500. We consider that $500 balances transparency and minimises disclosure avoidance, while allowing for ‘grass-roots’ fundraising methods (such as a raffle or collection at an event) and protecting donor privacy for small donations.

13.70 We also recommend removing the protected disclosure scheme. The scheme is used very rarely, and the amounts received by the Electoral Commission are relatively small. During the 2020 general election period (July-September 2020), the Electoral Commission received $116,822.50 in protected disclosure donations. In the two years from October 2020 to the end of November 2022, no protected disclosure donations were received by the Electoral Commission. This recommendation is consistent with our objectives of openness and accountability.

13.71 We considered raising or removing the limit on anonymous donations. While these options would potentially lower compliance costs, and protect donor privacy, we do not consider they are sound options. They would result in less transparency over who is donating to parties and candidates, and we are not confident that

larger anonymous donations would be truly anonymous from the party or candidate.

What do you think about our recommendations on anonymous donations and why?

Reporting and disclosure

13.72 Party secretaries and candidates must keep records of the donations they receive, and loans they enter into. Only party secretaries can enter into loans on behalf of a party. Unless the donor is anonymous to them, they must make a record of the amount of each donation, and each donor's details.

13.73 Reporting and disclosure requirements provide transparency over how much parties and candidates receive in donations and loans, including disclosing the identity of certain donors and lenders.

13.74 The current rules adopt a tiered approach to public disclosure, with more transparency required as the amount of a donation increases. A tiered approach is taken because it is assumed that smaller donations are less likely to result in undue influence, and there is, therefore, less of a public interest in disclosing personal information.

13.75 Obligations sit with the party secretary of a registered party, but candidates are personally responsible.

13.76 Some donations and loans must be reported almost immediately. If a person donates over $20,000 in an election year (either by a single donation or cumulatively over several donations) the party secretary must report their identity and address to the Electoral Commission within 10 working days. This information is made available on the Electoral Commission's website. The purpose of this requirement is to let the public know who is providing relatively large donations to a party ahead of an election.

13.77 If a party receives a loan of more than $30,000 from the same person (either in a single payment, or cumulatively) within a year, it must report that lender's identity and address to the Electoral Commission within 10 working days.

13.78 Other donations of more than $5,000 and loans of more than $15,000 must be reported by a party in their annual return to the Electoral Commission.

13.79 Parties have an additional new obligation (introduced in 2023) to disclose their annual financial statements, including details of income, spending, assets, and liabilities.

13.80 Candidates have to provide returns after every election, including details of all donations, or contributions to donations, above $1,500 and all loans.

13.81 There are various offence provisions for failure to comply with reporting and disclosure obligations.

Is there a case for change?

Issues identified

Public disclosure

13.82 Most submitters who responded to our questions on political financing were in favour of increasing transparency and public oversight of party and candidate funding. Some submitters supported lower public disclosure thresholds. A few submitters thought that lower disclosure limits could reduce the risk of 'donation splitting', where a large donation is split into many smaller donations to hide the true identity of the donor. A few submitters considered that there should be full transparency over donations, with all donations being disclosed. On the other hand, a few submitters suggested that disclosure thresholds should be raised.

13.83 There is a view that increased disclosure of donor identity will lead to fewer donations being made to parties and candidates, as some donors do not wish to be publicly known, in case there are negative consequences for donors (for example, in work or business) if they are publicly connected to a party or candidate.

13.84 Some jurisdictions have lower disclosure thresholds than the current settings. For example, in Canada, a donor that contributes over CAD$200 is publicly disclosed. In Ireland, a donor contributing over $1,500 is publicly disclosed.

Reporting frequency

13.85 Some submitters were in favour of parties having to disclose their funding more frequently. Views varied on the frequency that should be required. A few suggested a sliding scale of reporting, with increasing frequency in an election year. A few submitters suggested disclosure should happen in real time.

13.86 Some submitters thought that donations should be disclosed before an election. Those submitters thought public disclosure after an election did not assist voters to understand potential influences on parties and candidates ahead of casting their vote.

13.87 While some particularly large donations must be reported almost immediately, meaning they can be subject to media and voter scrutiny before voting, most information about party and candidate funding is provided well after an election. This delay means that the public has little oversight in the lead up to an election.

Identifying donors

13.88 In some situations, it is not always clear to parties and candidates who the true donor is, for example at a fundraising auction. Currently, if a person donates something, such as a piece of art, for a fundraising auction, then the reasonable market value of that art constitutes a donation (unless the value was under $1,500). If a purchaser then pays more than this reasonable market value for the artwork, that additional sum also constitutes a donation. Determining that reasonable market value can be a difficult process.

13.89 There has been a lot of media reporting about the treatment of items sold at fundraising auctions, including that the purchaser of an item does not have to be disclosed as a donor if the purchase price is the same as or less than the reasonable market value. Fundraising appears to be a complicated, and poorly understood, area of the Electoral Act.

13.90 Similar confusion arises in relation to membership fees to join party groups (such as members clubs), and tickets to events such as fundraising dinners where the ticketholder gains access to senior politicians, such as MPs and Ministers.

Our view

13.91 The current disclosure regime is largely satisfactory, but we recommend some changes to increase transparency while balancing donor privacy. We also recommend some changes to recording small donations.

Party and candidate funding in an election year

13.92 There is currently insufficient public oversight over party and candidate funding in the lead up to an election. The frequency of disclosure should be increased in election years. Increasing disclosure in the lead up to an election will enable the public to identify potential influences, and potential breaches of the requirements, in advance of election day. It will be an important accountability measure.

13.93 During an election year, we recommend that parties and candidates should disclose the identity of donors who donate above $10,000 (or in the aggregate):

- at the start of the regulated period (that is, three months before election day), and
- during the regulated period, on a weekly basis.

- In coming to this view, we note that in some other democracies, such as the United Kingdom, disclosure becomes more frequent during an election period.

13.94 Making the rules less restrictive, for example by increasing the thresholds for donations and loans, or by reducing the frequency of disclosure, would reduce public transparency over the sources of private funding. We consider this loss of transparency would reduce public trust in political funding and we therefore do not recommend it.

Disclosing donors and lenders to the public

13.95 We recommend that the current disclosure threshold for donors to political parties should be reduced from $5,000 to $1,000. This reduction would reduce the risk of donation splitting, an issue that arose in a recent court case, and increase transparency.

13.96 To ensure alignment, we also recommend that the current disclosure threshold for donors to candidates should be reduced from $1,500 to $1,000.

13.97 We consider donations and loans below $1,000 have little risk of undue influence. Privacy considerations outweigh transparency considerations at this level, and we do not think it is necessary for the public to know who is making donations below $1,000.

13.98 We are mindful of potential privacy concerns associated with the current disclosure rules, which would be exacerbated by increased public disclosure.

13.99 We consider that increased transparency will support public trust in political financing and enable the public to have oversight over potential influences on parties and candidates.

13.100 To address privacy concerns, we recommend that only the donor or lender's name is made publicly available, not their address. Parties and candidates should continue to be required to report donor and lender addresses to the Electoral Commission.

Identifying donors and donations

13.101 Issues with identifying the true donor of a good or service and whether or not it is a donation can lead to confusion, and reduced transparency. We think that the rules can be clarified.

13.102 We recommend amending the definition of donation to include:

- buying a ticket to an event: the entire ticket price is a donation and the registered elector who buys the ticket is a donor. For example, this would include the registered elector who buys a ticket to a fundraising dinner where senior politicians are also present

- giving a good or service for fundraising: the entire value of the good or service is a donation, and the registered elector who gives the good or service is a donor. For example, this would include a registered elector who provides a free or discounted venue or catering for an event, or a person gifting an artwork for a fundraising auction
- buying or winning a good or service at a fundraising event: the entire value of the good or service is a donation, and the registered elector who buys or wins the good or service is a donor. For example, this would include a registered elector who is the successful bidder on a good or service at a fundraising auction
- purchasing access to a party organisation: any amount paid above and beyond the standard party membership fee is a donation, and the registered elector who pays the money is the donor.

13.103 The other recommendations we make above would still be relevant; for any donation under $1,000 the donor's identity would not have to be publicly disclosed.

Reducing the administrative burden for recording small donations

13.104 We are conscious that recording small donations can be administratively time-consuming. We recommend that parties and candidates are only required to record a registered elector's details for donations over $200. Any donation $200 or under does not need to be recorded by the party secretary or candidate. While there is some reduction in overall transparency from this approach, we think these concerns are outweighed by the positive impact of reducing the administrative burden for small donations (which are unlikely to raise concerns about undue influence).

What do you think about our recommendations on reporting and disclosing donations and why?

State funding

The Panel recommends:

R62. Increasing state funding:

a. by providing registered political parties with per vote funding on a sliding scale

b. with base funding for registered political parties

c. by providing tax credits for people who make donations of up to $1,000

d. in a new fund – Te Pūtea Whakangāwari Kōrero ā-Tiriti / Treaty Facilitation Fund – to facilitate party and candidate engagement with Māori communities

e. by expanding the purpose of the Election Access Fund to include applications by parties to meet accessibility needs in their campaigns, such as providing accessible communications and New Zealand Sign Language interpretation at events.

13.105 The government already provides some state (public) funding for electoral purposes. Currently, registered parties receive state funding for election campaigning through the broadcasting allocation. In 2020, that funding was approximately $4.1 million. There have been many issues identified with this funding, which we discuss in **Chapter 14**.

13.106 Other public funding is provided through the Election Access Fund. This fund has been established to support disabled people to stand as candidates. The purpose of the fund is to address cost barriers for disabled people that non-disabled candidates do not face.

13.107 In addition to state funding, parties that are represented in parliament receive significant funding through the Parliamentary Service. While this funding is not allowed to be used for explicit electioneering purposes (which includes communications that explicitly seek someone's party membership or vote), it does give these parties a number of electoral advantages, such as through travel allowances.

Earlier recommendations

1986 Royal Commission on the Electoral System

The Royal Commission recommended direct state funding for parties and independent candidates on a sliding scale, based on voter support. It suggested parties receive $1 per vote for each vote up to 20 per cent of the overall total, and $0.50 for each subsequent vote up to 30 per cent of the total vote (adjusted for inflation, this would be approximately $2.80 and $1.40 respectively today). Parties would not receive any funding for votes received above 30 per cent of the total vote.

It recommended that funding was distributed immediately after an election. It could be used to pay off debts incurred during the election, or for policy development or other activities before the next election.

It noted its view was that parties should meet the bulk of their financial needs from their own supporters, and discussed needing a balance between public and private funding.

Justice Select Committee and Electoral Commission

There have also been many recommendations by both the Justice Select Committee, and the Electoral Commission about issues with Aotearoa New Zealand's existing state funding through the broadcasting allocation. We set these out in the **Chapter 14** below.

13.108 In considering state funding and its balance with private funding, we are conscious of the vital constitutional role that political parties have in Aotearoa New Zealand's democracy.

13.109 We have made a number of recommendations on private funding that may change the way parties are able to raise funds. Aotearoa New Zealand's existing state funding through the broadcast allocation needs to change, which we discuss below. As a result, we think the current approach to state funding requires reform and a modest increase to the overall levels provided.

13.110 Although the transparency of donations and loans has increased over time, there have been reporting gaps, and parties have not been required to publicly release their financial statements. Because of this gap, we do not have a full understanding of parties' finances, or the costs involved in running one.

13.111 We note recent law changes will require parties to provide annual financial statements, but that information will not be available until 2024, after our final report.

Is there a case for change?

Issues identified

13.112 Currently, there is limited state funding for electoral purposes through the broadcasting allocation. In practical terms, this means that parties and candidates need to get funds from private sources to fund both their day-to-day party activities and the majority of their electoral activities (private funding is discussed above).

13.113 State funding can be contentious because it requires spending taxpayer's money on parties that individual taxpayers may not necessarily support (although this is also true of many areas of public spending). Some submitters also think less state funding is helpful because it requires parties and candidates to seek private donations, ensuring they are incentivised to engage with the public.

13.114 However, many submitters were in favour of increased state funding for parties, and some thought it could help provide a more equal playing field for parties. We received a number of submissions on the different types of state funding models that could be adopted. Public opinion research indicates that many voters may support a donation limit but understand more public funding is necessary to cover the shortfall.

Our view

13.115 It is in Aotearoa New Zealand's interests to ensure that political parties are adequately funded, given their important constitutional and representational role. Currently, the state provides some funding to parties through the broadcasting allocation. Below, we explain why we recommend a modest increase to the state funding that is currently made available for parties.

13.116 We have heard that, generally, participation in and engagement with political parties has been in decline over many decades, across many democracies, including in this country. One indicator of this long-term trend is declining party membership. This results in a risk that political parties become increasingly dependent on a small number of large donations to fund their activities. This situation is undesirable because it can give a few individuals undue influence and risks the integrity of the electoral system.

13.117 The changes we recommend to private funding aim to increase transparency and incentivise parties to seek larger numbers of small donations. As discussed above, we seek to achieve a fair balance between private and state funding, in an attempt to reduce the risk of undue influence, and to make the political finance system more transparent and equitable.

13.118 Some people think that the ability of a party or candidate to raise private funds reflects their appeal to voters. However, one of the objectives of this review is to ensure that New Zealand continues to have an electoral system that is fair. While we value and promote the ability of parties and candidates to raise funds from registered electors, we also need to take into account socio-economic inequities within Aotearoa New Zealand. The reality is that some registered electors will be able to afford to privately fund the party or candidate they support; others will not.

13.119 We recommend significant changes to the current private funding rules, including introducing restrictions on who can donate, and how much they can donate. We are conscious that these changes could result in funding shortfalls for parties, affecting their ability to fulfil their important role in the electoral system.

13.120 We recommend a modest increase in state funding is made available to parties, to supplement private funds from registered electors. In coming to this view, we have noted that in many other democracies, parties and candidates receive substantially more state funding per capita than they do in Aotearoa New Zealand.

13.121 We acknowledge that increased state funding would be a significant change to the current political financing regime. However, when considered as part of a package of political financing reforms, we think it will result in a more level playing field for parties and enable them to put more resources into their core functions and ensure greater compliance with transparency requirements.

The package of state funding models we recommend

13.122 We recommend adopting a combination of direct and indirect state funding models, involving:

- per vote funding
- base funding
- tax credits
- a new fund – Te Pūtea Whakangāwari Kōrero ā-Tiriti / Treaty Facilitation Fund
- expanded eligibility for the Election Access Fund.

13.123 We recommend that in order to be eligible for any state funding, a party must have complied with all reporting and disclosure obligations under the Electoral Act, such as filing donation, loan, and expense returns.

Per vote funding

13.124 We recommend that per vote funding is introduced on a sliding scale, with the most funding being available for an initial tranche of votes, and funding

diminishing as vote count increases. The sliding scale approach attempts to create a more level playing field between larger and smaller parties.

13.125 Per vote funding on a sliding scale was recommended by the Royal Commission in 1986. This method of funding is tied to a party's performance at previous elections and ensures that only those parties with some electoral support are eligible for funding. It is also relatively easy to understand.

13.126 Per vote funding is common in other democracies, with significant funding being available to parties in Australia and many countries in the European Union.

13.127 There are a number of potential disadvantages, including that per vote funding could run the risk of increasing the incumbency advantage of those parties that receive the largest number of votes. Parties that enter parliament also gain access to Parliamentary Service funding, and the benefits that come with it. We believe this risk can be somewhat mitigated by introducing a sliding scale, with the most funding being available for an initial tranche of votes.

13.128 We expect that the sliding scale, combined with the other state funding measures (discussed below), will lessen the incumbency advantage of per vote funding. However, we acknowledge that new parties formed between elections will not be eligible to receive any funding until the next electoral cycle (assuming they reach the eligibility threshold).

Base funding

13.129 As well as providing parties with per vote funding, we also think there is a need to provide registered parties with some base funding to support compliance with their legal obligations. These legal obligations exist to ensure disclosure over funding and expenses, and accountability for public-facing functions of parties.

13.130 We recommend introducing annual payments of $10,000 to meet registered parties' ongoing core compliance obligations, for example financial and expense reporting requirements in the Electoral Act.

13.131 We have heard that for parties, particularly smaller or newer parties heavily reliant on volunteers, compliance costs and resourcing needs are significant. We think there is merit in providing funding to make it easier for parties to meet their compliance obligations.

13.132 Base funding could be used to contribute to the cost of software to track donations, or auditing costs. This funding could help to level the playing field between smaller and larger parties and reduce financial barriers to participation, and improve compliance.

Tax credits

13.133 As well as providing parties with some direct funding, we think it is also important to incentivise voters to donate to parties and candidates. We consider that a

limited tax credit system for small donations could help to encourage registered electors to make donations. The relatively low tax credit limit might incentivise parties and candidates to seek support from a large number of donors.

13.134 For that reason, we recommend a tax credit system for political donations up to $1,000. Under this system, a registered elector could receive a maximum of 33.33 per cent tax credit on their total political donations in a year, up to a limit of $1,000. This recommendation significantly reduces the cost of the donation for the donor. We note that this credit is set at the same percentage for charitable donations.

Te Pūtea Whakangāwari Kōrero ā-Tiriti / Treaty Facilitation Fund

13.135 As we have discussed in **Chapter 3**, existing evidence indicates there are ongoing impacts of colonisation on Māori participation in the electoral system. These impacts have been exacerbated by a series of breaches of te Tiriti o Waitangi / the Treaty of Waitangi (**te Tiriti / the Treaty**), including the Crown's failure to protect Māori rights to political participation by failing to provide sufficient funding and services regarding the Māori electoral option in the 1990s, and by disenfranchising those in prison.

13.136 This is not an historic issue for Māori. During our first stage of engagement, we heard that Māori communities often get left out of political infrastructure. Parties and candidates do not always reach out to, or engage with, Māori in the ways that work for them. We heard that this can lead to inequities in the amount and type of information that Māori receive during election campaigns, with a corresponding impact on Māori voter engagement and participation.

13.137 To address these inequities, we consider it would be consistent with the Crown's obligations as Tiriti / Treaty partner to establish a fund to facilitate party and candidate engagement with Māori – Te Pūtea Whakangāwari Kōrero ā-Tiriti / Treaty Facilitation Fund. This fund is an opportunity to encourage political parties to engage with Māori communities, in ways appropriate for Māori, to hear from Māori about matters important to them and so that Māori can hear from parties and candidates in ways that work for them.

13.138 This fund could be applied to by any political party or candidate to cover spending relating to reaching Māori voters in a format that best engages those voters, such as te reo Māori translations (as an official language of Aotearoa New Zealand), or costs of hui in remote and rural areas. This will assist parties and candidates to build relationships with Māori communities through the use of te reo Māori and kanohi kitea (in-person) contact with those who may otherwise be overlooked.

13.139 We considered a range of other options for the fund's purpose, such as whether it should be aimed at reducing barriers for Māori candidates, particularly for those running in the Māori electorates. However, in our view, the fund would be more effective targeted directly at facilitating engagement with Māori, wherever they

may live. We think that providing funding to facilitate parties' and candidates' engagement could improve Māori voters' diversity of information, choice and increased confidence that their views will be represented.

13.140 As with our recommendation to develop a funding model to support community-led civics and citizenship education and participation initiatives (discussed in **Chapter 11**), we recommend the fund is administered by a body other than the Electoral Commission. We particularly encourage Māori communities, candidates and political parties to give their views on this proposed funding.

Expanding the scope of the Election Access Fund

13.141 The Election Access Fund is a relatively new fund, which opened for applications in October 2022. The Election Access Fund was established to increase the participation of disabled candidates, by reducing financial barriers for them. Through engagement, we heard that while creating the fund was viewed favourably, members of disabled communities still face challenges in participating in the electoral system. Challenges include accessing information in New Zealand Sign Language, despite its status as an official language of Aotearoa New Zealand. We recommend expanding the fund's purpose.

13.142 We recommend that parties become eligible to apply for funding to meet accessibility needs in their campaigns, such as providing accessible communications and New Zealand Sign Language interpretation at events. This recommendation will enable greater participation and hopefully increase the representation of disabled communities.

13.143 Given the expanded applicant pool, we recommend the funding currently available to the Election Access Fund is increased.

How much would state funding cost?

13.144 It is difficult to provide a complete costing of the proposed state funding model of per vote, base funding, tax credits, Te Pūtea Whakangāwari Kōrero ā-Tiriti / the Treaty Facilitation Fund and the expanded Election Access Fund. There are a number of factors that could impact potential costings, including changes in donor behaviour prompted by tax credit incentives, and changes in party and candidate behaviour as a result of our recommended changes to private funding.

13.145 As we discuss below, we recommend abolishing the broadcasting allocation. We suggest that the money previously allocated to the broadcasting allocation (around $4.1m in the last election) could be reapplied to state funding.

13.146 Below, we provide an indication of potential costs for per vote funding, and the base funding scheme.

Per vote funding

13.147 As we have noted above, in 1986, the Royal Commission recommended per-vote funding on a sliding scale. It said that if Mixed Member Proportional (**MMP**) were adopted, the entitlement for registered political parties should be based on their share of the party vote. It recommended that every registered party that received over four per cent of the party vote should:

- receive $1 per vote for every vote up to 20 per cent of the total party vote
- receive $0.50 for every vote above that, up to 30 per cent of the total party vote
- not receive any funding for votes above 30 per cent of the total party vote.

13.148 Adjusted for inflation (as at the end of 2022), this would be approximately $2.80 per vote up to 20 per cent, and $1.40 per vote up to 30 per cent.

13.149 In the table below, we set out indicative costs of a per vote funding model. We note that we have modified the Royal Commission's recommendations in the following ways:

- averaged the party vote results over the 2014, 2017 and 2020 elections (to account for recent outlier election results)
- reduced the eligibility threshold for registered parties from four per cent to one per cent (of the total party vote in the elections that the party contested). The Royal Commission's recommendation was made before MMP had been adopted. An eligibility threshold of one per cent ensures that the parties receiving funding have some electoral support. We consider that one per cent better reflects the differences in the size and support of parties in our MMP system.

13.150 As set out in **Figure 13.1**, the indicative cost of this model is approximately $5.67 million per electoral cycle. The average broadcasting allocation made available over the same period is approximately $3.86 million.

13.151 In this example of the proposed model, funding is given only to those parties that received an average one per cent of the party vote over the 2014, 2017 and 2020 election (or one per cent in those elections where they contested the party vote). Registered parties that received less than one per cent of the party vote are not considered eligible for funding.

Figure 13.1: Indicative per vote funding, based on average party vote results over the 2014, 2017 and 2020 elections, for registered parties that received one per cent of the total party vote

Registered party	Indicative per-vote funding
ACT New Zealand	$232,209
Green Party of Aotearoa New Zealand	$603,455
Māori Party	$89,655
New Conservative (formerly the Conservative Party)	$119,316
New Zealand First Party	$438,691
New Zealand Labour Party	$2,020,494
New Zealand National Party	$2,020,494
The Opportunities Party (TOP)	$149,394
Total	**$5,673,708**

13.152 Of course, this figure is indicative only. It would be subject to change, depending on the number of registered voters and voter turnout, and the election results for each party, at any given election.

Base funding

13.153 Above, we recommend that every registered party is eligible to receive annual base funding of $10,000. The total cost of the base funding would fluctuate depending on the number of registered parties. At the time of writing, there are 16 registered parties. On this basis, the total cost would be $160,000 per year.

Parliamentary Service funding

13.154 The discussion on state funding becomes further complicated when we take into account the significant state funding that parliamentary parties and MPs currently receive. This funding is provided for parties and MPs to carry out parliamentary responsibilities, including communicating with constituents and communities of interest.

13.155 Parliamentary Service funding is not within our Terms of Reference, but it is an important part of the state funding picture for parliamentary parties.

13.156 A number of submitters stated that Parliamentary Service funding is a type of state funding that places parliamentary parties at an advantage over non-parliamentary parties, and results in an incumbency advantage.

13.157 Although Parliamentary Service funding is not allowed to be used for explicitly electioneering purposes, our examination of the issue suggests it is difficult to draw a sharp line between representative functions and election-related activities, particularly in relation to advertising and communications. MPs are also able to use parliamentary travel allowances to travel to campaign events.

13.158 We note that the funding made available for MPs and parliamentary parties has increased over time. In the 2022/2023 financial year, approximately $45 million was appropriated for Parliamentary Service support to MPs and their parliamentary parties. While much of this money funds purely parliamentary activities, it appears that a portion of the funding is used for a range of activities that we consider to be election related. There is a lack of transparency over this funding because Parliamentary Service is not subject to the Official Information Act 1982. We suggest that some of this Parliamentary Service funding could be redirected to our recommended state funding model.

Interaction with our other recommendations

13.159 We have noted the connection to private funding throughout this section of the paper. We envisage the changes to be a package of political finance reform.

13.160 We also note our recommendation to remove the broadcasting allocation (discussed in **Chapter 14**, below), and that the money could be used for more general state funding purposes.

13.161 In **Chapter 18**, we recommend an overhaul and consolidation of electoral offences in line with three key principles. This work would include what offences and penalties should be attached to political financing rules.

What do you think about our recommendations on state funding of parties and why?

14. Election Advertising and Campaigning

General advertising restrictions

The Panel recommends:

R63. Permitting election advertising on election day anywhere except inside or within 10 metres of polling places (where voters and scrutineers may only display lapel badges, rosettes, and party colours on their person).

R64. Empowering the Electoral Commission to remove election billboards and hoardings from public places from the Monday after election day, with an ability to charge a party or candidate for the cost of doing so.

R65. Allowing promoter statements to use PO Box numbers or email addresses instead of a physical address.

14.1 An 'election advertisement' is an advertisement in any medium that may reasonably be regarded as encouraging or persuading voters to vote for a candidate or party, or not to vote at all. The definition does not include editorial content (such as content designed to inform), or individuals expressing their personal political views online.

14.2 The restrictions on advertising support the spending limits put in place by the Electoral Act (discussed below). Their purpose is to help create a level playing field between those contesting the election, and prevent any one voice disproportionately influencing elections through higher levels of spending.

14.3 There are currently different advertising rules for different time periods around the election and during voting. Some restrictions on election advertising apply at all times. For example, election advertisements must always clearly display the name and address of the person promoting the advertisement. Any election

advertisement promoting a specific candidate or party must also be authorised by that candidate or that party's secretary in writing.

14.4 Alongside campaign spending limits that apply during the regulated period (that is, three months before election day, discussed below), further restrictions on advertising and campaigning apply once voting has begun. As discussed in **Chapter 9**, during the advance voting period, election advertising is allowed except for inside or within 10 metres of the entrance to advance polling places when they are open. On election day, until the polls close, there is a complete restriction on publishing, distributing or broadcasting, or having visible in public places statements intended, or likely to influence any elector who to vote for, or whether to vote.

14.5 Specific restrictions on party and candidate advertising on television and radio, and restrictions on campaign spending, are addressed in subsequent sections.

Earlier recommendations

1986 Royal Commission on the Electoral System

The Royal Commission identified the guiding principle that there should be no unreasonable pressure on voters on polling day. Preventing the use of funding for political advertising on election day was one provision to preserve this principle.

2011, 2017, & 2020 Electoral Commission post-election reports

In its 2011 report, the Commission recommended that consideration be given to the extent to which electioneering on the internet and social media should be regulated, and how any regulation might be effectively managed.

In its 2017 report, the Commission recommended that the election day exemption for websites be reviewed in light of the growth of social media. It recommended that, as a minimum, the advertising of news media websites that contain election-related material was not unduly restricted.

Is there a case for change?

Issues identified

14.6 Advertising restrictions limit freedom of expression. They restrict not just the freedom of electoral participants to impart information and opinions of any kind in any form, but the freedom of voters to seek and receive that information. These

restrictions need to be justifiable limitations within the New Zealand Bill of Rights Act 1990.

14.7 The Court of Appeal has commented that the Electoral Act's definition of 'election advertisement' captures more political communication than is necessary to achieve the legislation's aims. Some political speech by individuals or groups not connected to any party or candidate, and who are not spending significant amounts, must still comply with the Electoral Act's requirements. The Court noted that this outcome unjustifiably restricts the right to freedom of expression and recommended that parliament reconsider the issue.

14.8 Preventing all forms of election advertising on election day helps to ensure that individuals are not unduly swayed when voting. This approach aligns with the Royal Commission's guiding principle that there should be no unreasonable pressures on voters on polling day. However, this restriction may no longer be relevant, given the rise of advance voting.

14.9 We heard from some submitters that the requirement to include an address as part of promoter statements could create a privacy risk for promoters and may deter their participation. These submitters pointed to recent amendments to the promoter statement requirements for local election advertising, which better protect candidate privacy. They called for a similar change to the results for parliament elections.

Our view

14.10 In recent decades, there have been significant changes to the ways that parties, candidates, and third parties advertise and campaign. The rise of the internet and social media has challenged many existing practices that focused on traditional media. Many individuals now receive a lot of advertising, including political advertising, through a range of different media and devices.

14.11 We note the concerns of the Court of Appeal about the broadness of the definition of 'election advertisement'. In some respects, the scope of the definition has proven durable by being able to adapt to the changes in election advertising, particularly the shift to the use of the internet and social media. However, it may be capturing activity parliament did not intend to capture and subjecting people to unnecessary regulation in the process. This is a question that needs to be considered, and we are interested in your feedback on this issue.

14.12 The general approach to advertising and campaigning restrictions – having low-level restrictions at all times, but with increased restrictions closer to the election – should be retained. Maintaining a low-level of regulation throughout the electoral cycle ensures there is ongoing transparency. In the lead up to the voting period, when advertising is likely to have a greater impact on the election, a greater level of restriction is required.

14.13 In **Chapter 9**, we recommend removing the distinction between the advance voting period and election day, and adopting the rules for the advance voting period on election day. This change would mean removing the general ban on election advertising on polling day. The ban on political advertising inside and within 10 metres of the entrance of polling places that currently applies during advance voting would also apply on polling day.

14.14 A consequence of our recommendation to end the election day advertising ban is that election billboards and hoardings would no longer need to be removed by election day. However, we think it is important that billboards and hoardings should still be removed promptly, and not left spread across communities after the election. To ensure this occurs, a new deadline for their removal would need to be specified in the Electoral Act. We consider this could be best achieved by empowering the Electoral Commission to remove election billboards and hoardings from public places from the Monday after election day, with an ability to charge a party or candidate for the cost of doing so.

14.15 We also considered whether changes should be made regarding promoter statements on election advertising. Retaining the ability to contact promoters is important to support identification and transparency, providing a means to ensure that appropriate approvals have been received and that spending can be tracked. There can be some flexibility, however, in the form this takes. We acknowledge that the existing requirements to include a physical address raises privacy issues for some promoters and may deter some individuals or groups from participating in elections.

14.16 As a result, we recommend that PO Box numbers and email addresses be able to be used in promoter statements in place of a physical address. This recommendation aligns with recent changes made to rules for local government elections.

Interaction with our other recommendations

14.17 These general recommendations link to our subsequent recommendations on the broadcasting regime. Given the removal of the ban on advertising on polling day, these recommendations also have implications for the regulated period for election expenses.

What do you think about our recommendations on general advertising restrictions and why?

Media-specific regulation of advertising

The Panel recommends:

R66. Abolishing the restrictions on the use of television and radio for election advertising by parties and candidates.

R67. Abolishing the process for providing funding to parties to run election advertisements on television and radio, and reallocating the funding to our package of state funding recommendations.

R68. Providing the Advertising Standards Authority with funding during election periods to support its ability to respond to complaints in a timely way.

14.18 The ways that political parties, candidates, and third-party promoters advertise and campaign in the lead-up to an election is changing. Increasingly, online media (including social media) are being used to reach voters, instead of – or in combination with – broadcast and print media.

14.19 This shift is consistent with general shifts in how New Zealanders consume media. While television continues to attract audiences for the most time per day overall, young New Zealanders now largely rely on digital platforms to access media content. In 2020, digital media attracted larger audiences than traditional media for the first time.

14.20 In this section, we consider whether the existing advertising rules that apply only to broadcast media – known as the broadcasting regime – are still fit-for-purpose. We also consider whether specific rules to regulate election advertising on the internet and social media are necessary.

Earlier recommendations

1986 Royal Commission on the Electoral System

The Royal Commission recommended:

- putting criteria in place to support the fair distribution of state funding in the political process

- retaining restrictions on paid television and radio advertisements to avoid a significant escalation in political spending.

2017 Justice Select Committee post-election report

The Justice Select Committee recommended:

- that the government examine both the broadcasting allocation criteria and the broadcasting regime to establish whether they were still fit for purpose
- that changes be made to allow parties and candidates to broadcast election advertisements on television and radio from the start of the regulated period rather than from writ day.

2011, 2014, 2017, and 2020 Electoral Commission post-election reports

In 2011 and 2014, the Electoral Commission recommended that further consideration and debate should be had on the extent to which electioneering on the internet and social media should be regulated, and how any regulation might be effectively managed.

Since 2014, the Electoral Commission has generally recommended that parliament review both the broadcasting allocation criteria and the broadcasting regime. It has noted that applying the allocation criteria is a difficult and time-consuming exercise, requiring consideration of both tangible and intangible factors, and that the outcome is almost always unpopular as parties have different views about fairness.

From 2017 onwards, the Commission has also recommended that parties and candidates be allowed to broadcast election advertisements on television and radio from the start of the regulated period.

Broadcasting regime

14.21 Specific rules apply to broadcasting 'election programmes' – advertising by registered political parties or individual candidates – on television and radio. These rules are contained in Part 6 of the Broadcasting Standards Act 1989 and are known as the broadcasting regime.

14.22 Party and candidate advertisements are only allowed to be broadcast on television and radio from writ day (a month before the election) to the day before polling day; none can be broadcast outside of this time. The same restrictions do not apply to third parties, who can promote election advertisements on television and radio at any time.

14.23 Registered parties may only broadcast election advertisements on television and radio using public funding provided to them by the Electoral Commission from a broadcasting allocation. The Electoral Commission allocates a set amount of funding to registered political parties that have requested a share. The Commission does this by considering a range of statutory criteria based on indications of the party's level of public support, as well as the need to provide a fair opportunity to each party to convey its policies to the public.

14.24 Since 2017, the funding parties receive through the broadcasting allocation can also be used for election advertisements on the internet. Any expenses parties incur in spending the broadcasting allocation do not count towards their election spending limits.

14.25 While they are not eligible to receive a share of the broadcasting allocation, candidates and third-party promoters are able to purchase advertisements using other funding sources.

14.26 Three agencies are currently involved in the regulation of election advertising on television and radio. The Electoral Commission deals with complaints about promoter statements and advertiser identity. The Broadcasting Standards Authority has jurisdiction over party and candidate advertisements on television and radio during the election. The Advertising Standards Authority has jurisdiction for complaints about the content of all other election advertising, including election advertisements broadcast on behalf of third-party promoters.

Is there a case for change?

Arguments against change

14.27 Very few submitters who directly commented on the broadcasting regime considered it should be kept unchanged.

14.28 Some of the arguments that have been made against changing the broadcasting regime include:

- the restrictions on the use of television and radio for election advertising are intended to prevent one party being able to dominate advertising on the broadcast media
- by funding political party advertisements, the broadcasting allocation helps voters to be informed about different party policies and positions. If the allocation is removed, and not replaced, this could end state funding for election campaigns
- the restriction on when party and candidate advertisements can be shown reduces the exposure of voters to year-round electioneering. Allowing the broadcasting of advertisements outside of the month before election day may be unpopular with the public.

Arguments for change

14.29 Many of the submitters who commented on the broadcasting regime considered that it should be abolished. They considered that restricting the use of television and radio for election advertising was no longer appropriate or necessary, particularly given the rise of the internet.

14.30 Many of the submitters who called for the regime to be abolished considered that the funding set aside for the broadcasting allocation should be repurposed for other public funding of election activities. A few submitters considered that the funding should be removed entirely.

14.31 A few submitters pointed out that, following the 2016 Court of Appeal decision noted above, third-party promoters can broadcast election advertisements outside of the election period, but parties and candidates cannot. Consequently, the broadcasting regime now applies only in a partial way to a narrow range of electoral participants.

14.32 Academics have noted that, while the broadcasting regime is intended to prevent one party being able to dominate advertising on the broadcast media, some of the justification for this has been undermined by the wider limits on campaign spending that can achieve the same purpose.

14.33 Some of the submitters who called for the regime to be abolished talked about its impact on smaller and newer parties. Smaller or emerging parties who fail to receive a share of the broadcasting allocation are entirely excluded from using television or radio for campaigning. This exclusion is a significant restriction on their freedom of expression and entrenches the advantage of larger and established parties. Moreover, the broadcasting allocation process, and the criteria used to award the funding, can disadvantage smaller and newer parties.

14.34 Some submitters pointed out that the rise of advance voting has reduced the amount of time parties and candidates have to communicate with the public on television and radio. The regulated period for campaign expenses is three months long, but party and candidate advertisements can only be broadcast on television and radio in the final month. This leaves only two weeks for party and candidate advertisements to be broadcast before the public starts voting.

14.35 We heard from media organisations that the broadcasting regime has not adapted to changes in media. For instance, it is unclear whether online content from television and radio broadcasters (such as livestreamed or simulcast content) is intended to be covered. There is also ambiguity and confusion regarding the roles and responsibilities of the different organisations involved in enforcing advertising rules, particularly between the Advertising Standards Authority and the Broadcasting Standards Authority.

Our view

14.36 The broadcasting regime has operated in an unsatisfactory way for many years. The evolution of web-based media and the impact of court rulings have created additional problems. In its current form, the regime has resulted in a range of inconsistencies in advertising restrictions depending on the type of media and who is funding the advertising, each of which has implications for restrictions on freedom of expression. It also creates a barrier to smaller or newer parties from being able to use television and radio at all to connect with voters. Further, the current broadcast allocation criteria also appear to unfairly favour existing and larger parties.

14.37 A key principle underpinning the broadcasting regime was ensuring some parity in access to the then-dominant communications media for election-related purposes. Given the implementation of the campaign spending limits in 1995, and the subsequent rise in online electioneering, the need for a special broadcasting regime has been both reduced and supplanted.

14.38 We recommend the broadcasting regime is abolished and that parties and candidates are free to advertise on television and radio as they wish, up to their campaign spending limits. Abolishing the regime would treat different types of media and political actors in a simple, clear and fair way, while also reducing restrictions on freedom of expression. The change will also allow parties and candidates to have more opportunities to connect with voters, including before advance voting begins, and allows them more freedom in how they seek to communicate their messages.

14.39 While the broadcasting provisions expressly required broadcasters to give equal treatment to different parties and candidates, the abolition of the provisions would not remove this requirement. This point is already addressed by the Human Rights Act 1993 which prohibits providing services in a way that discriminates on the basis of political opinion.

14.40 Abolishing the broadcasting regime will result in party and candidate advertisements being able to run at any time, although it is likely that advertising will intensify around the time of elections as it does now. Removing the broadcasting regime would also remove the requirement for complaints about party and candidate advertisements to be directed to the Broadcasting Standards Authority, with these instead going to the Advertising Standards Authority. This change is likely to increase the complaints the Advertising Standards Authority will need to process, with resourcing implications. As the ability of the Advertising Standards Authority to respond to complaints in a timely manner is a matter of public interest, we recommend that the government provide funding to the Authority during the election period.

Interaction with our other recommendations

14.41 Given the removal of the broadcasting allocation, this recommendation impacts **Chapter 13** recommendations for alternative forms that state funding could take and how they would be funded. As all television and radio advertisements during the regulated period would now count as election spending, these recommendations also relate to **Campaign Spending**, below.

What do you think about our recommendations on the broadcasting regime and why?

Online advertising

14.42 Online advertising has many advantages, including its ability to reach a wide audience at relatively low cost. This wide and low-cost reach can help to connect people and politicians, supporting participation and engagement and helping to inform voters about parties' and candidates' campaigns.

14.43 However, it also has key differences to other forms of advertising. For example, online advertising can use sophisticated algorithms and other technology to show different advertisements to different target audiences, and most online election advertising takes places on media sites that are not owned or operated within New Zealand, like Google and Facebook.

14.44 Currently, all online advertising is subject to the same regulation as other forms of advertising, including the need for authorisation and inclusion of promoter statements. During the regulated period, online advertising also comes within scope of the campaign expenditure limit and disclosure requirements.

14.45 Since 2017, parties have been able to use the party broadcasting allocation for online election advertising expenses. While some parties continue to spend most of their allocation on traditional broadcasting, other parties have spent their entire allocation on online advertising.

Is there a case for change?

Issues identified

14.46 Much of our electoral law was not designed with the internet and social media in mind. As such, most of the rules for advertising and campaigning do not distinguish between the different characteristics of new media compared to print media, so may not regulate online election advertising as effectively.

14.47 Some submitters raised concerns about the increasing use of online media for election advertising by parties, candidates, and third-party promoters. Most of these submitters thought there should be stronger regulation, and a few wanted the targeting of online election advertisements to be banned, either for a period prior to election day or altogether.

14.48 The use of data for profiling and targeting in online election advertising has come under scrutiny internationally. Countries are grappling with how to ensure online election advertising uses targeting technology appropriately and in transparent ways, rather than being misused by bad faith actors to spread misinformation or disinformation.

14.49 In some ways, the targeting of online advertisements is not so different to traditional forms of electioneering. Political parties and candidates have always sought to understand the interests of different groups, identify the groups they may be more likely to persuade, and frame their policies to appeal to these groups.

14.50 However, it is not always clear when and why a person is being shown a targeted political advertisement, nor how their personal data has been used, which can undermine trust. It also has the potential to increase the polarisation of views, in part due to its focus on showing voters messages they already agree with, and it can make it difficult to know the range of policies that a party is advocating for.

14.51 Some tech companies have introduced their own rules and processes to manage online advertising, such as verification processes for advertisers, and archives for political advertisements. Other platforms have banned political advertising entirely.

14.52 In Aotearoa New Zealand, our privacy laws restrict how personal data can be used, but there are no specific protections in place to restrict the targeting or microtargeting of election advertisements.

14.53 Microtargeting is the use of online data to tailor advertising messages to target audiences, based on people's personal preferences. Technological developments allow online data (demographic information, consumer habits, browsing behaviour, etc) to be compiled about users and compared, to identify who may be most interested in or susceptible to a particular message.

Our view

14.54 We acknowledge the concerns raised about how technology is changing how parties, candidates and third-party promoters reach different target audiences. The use and misuse of new technologies in online election advertising is a multifaceted, complex, and changing area.

14.55 Voluntary regulation by media companies goes some of the way to providing transparency and restrictions over the activities of parties, candidates, and third-party promoters, but is strengthened by government regulation of election campaigns, advertising, and data use.

14.56 Aotearoa New Zealand already has some measures in place that other countries are only now considering, such as requiring all election advertisements to be labelled and to identify the advertiser. However, we take note of the steps being taken overseas to protect individuals from undue influence through online election advertising.

14.57 The European Union is currently considering a package of changes that aim to prevent abusive political advertising and make elections more transparent and resistant to interference, including tightening the rules on targeting (including microtargeting) and delivery of political advertising online. If it becomes law, the use of sensitive data for targeting would be banned and non-sensitive data could only be used if explicit consent has been given for it to be used for online political advertising.

14.58 We considered the effects that similar regulation could have on Aotearoa New Zealand, and whether such measures would be necessary or warranted at the current time. In particular, we considered increasing transparency and requiring parties to report on who they microtargeted with online advertisements, although it wasn't clear if this would simply increase the administrative burden on parties.

14.59 Ultimately, concerns related to the targeted of advertising are wider than election advertising and campaigning, and may need to be dealt with through broader regulation. However, we are interested to hear your views on how these issues could be addressed and invite suggestions and opinions on what regulation may be needed, if any.

Interaction with our other recommendations

14.60 In **Chapter 19**, we discuss disinformation risk and recommend extending the timeframe for the offence of knowingly publishing false information to influence voters to include the entire advance voting period and polling day. This recommendation could apply to advertising in any media.

What do you think about our recommendations on online advertising and why?

Campaign spending limits and disclosure requirements

The Panel recommends:

R69. Applying the following spending limits during the regulated period:

a. registered parties: $3.5 million

b. candidates: $31,000 for a general election (and $62,000 for a by-election)

c. third-party promoters: ten per cent of the registered party spending limit (which would be $350,000 at present).

14.61 All candidates, political parties, and third-party promoters who publish election advertisements during the regulated period are subject to spending limits. The regulated period normally begins three months before the election and ends the day before polling day. The purpose of spending limits is to support fairness between those contesting the election and prevent any one voice disproportionately influencing elections through higher levels of spending.

14.62 Election expenses are defined as 'only those relating to the preparation and publishing of election advertisements'. This definition includes materials and design work, but doesn't include surveys or polls, voluntary labour, or cars with party branding. Other activities involved in seeking election – such as travel, campaign advisors, and renting office space – are also not included in the regulated election expenses.

14.63 Third-party promoters are individuals or groups who are not directly contesting the election. There are no restrictions on who can be an unregistered third-party promoter. If third parties plan to spend more than $14,700 on election advertisements during the regulated period, they first must register with the Electoral Commission. Overseas persons are not able to register as third-party promoters. Advertising by a third-party that promotes, and is approved by, a party or candidate counts towards that party's or candidate's spending limit.

14.64 The current spending limits, which are adjusted annually to allow for inflation, are:

- $1,301,000 for registered political parties contesting the party vote, with an additional $30,600 for each electoral district contested by a candidate for a party
- $30,600 for candidates for a general election (or $61,100 for a by-election)
- $367,000 for registered third-party promoters.

14.65 Party and candidate advertisements on television and radio can only be paid for with the broadcasting allocation, so they do not count towards these spending limits. Parliamentary Service funding is also excluded.

14.66 All candidates and registered parties are required to disclose their election expenses within 70 or 90 working days (respectively) of election day. While candidates only need to file their expense returns, registered parties are also required to submit an auditor's report of their expenses. Unregistered parties are not required to disclose their election expenses. Registered third-party promoters are only required to disclose their election expenses if they exceed $100,000 in spending during the regulated period.

14.67 The Electoral Commission defines what form these returns need to take, including the categorisation of certain activities.

Earlier recommendations

1986 Royal Commission on the Electoral System

The Royal Commission recommended:

- that both parties and candidates should be subject to spending limits, to minimise the effect of inequalities in financial resources. It was not convinced that significantly increased spending on campaigning would necessarily lead to a better-informed electorate or a healthier democracy
- to limit election advertising to those authorised by a candidate or party, with election advertising by interest groups and others banned
- a regulated period of three months, reflecting that this is when most campaign expenses are incurred.

On disclosure, the Commission indicated the need to strike a balance between the competing demands of equal treatment between political competitors on the one hand and administrative simplicity on the other. It noted that disclosure is beneficial to the democratic process, both as a deterrent to excessive spending and so that

participants are informed. It also noted that disclosure is an essential part of setting spending limits.

2011 & 2020 Electoral Commission post-election reports

In 2020, the Electoral Commission recommended that spending limits should be adjusted once each parliamentary term – on 1 July in the year before the election. In 2011, the Commission also recommended reducing the period for the deadline of returns from all groups by 20 working days.

Is there a case for change?

Spending limits

Arguments against change

14.68 Very few of the submitters we heard from who supported the current restrictions on campaign expenditure explained why they did.

14.69 Some of the arguments that could be made against changing the current approach to spending limits include:

- raising the spending limits would increase the financial disparities between different political parties. This higher limit would most likely impact minor parties. If the limits are set so high that no party reaches them, then the limits become meaningless
- lowering spending limits would increase restrictions on freedom of speech. As election advertising may be reduced, voters may be less informed about candidate and party policy positions
- limiting the definition of election expenses to spending associated with advertising appropriately balances the administrative burden on parties, candidates and third-party promoters with what is required to ensure compliance. Accurately capturing and reporting all of the costs associated with their election activities would be an unreasonable burden.

Arguments for change

14.70 Many of the submitters who talked about restrictions on campaign expenditure considered that no spending limits should apply, and that parties and candidates should be able to campaign as they saw fit. These submitters considered this approach would promote freedom of expression. Some of these submitters also expressed doubt about the impact that spending money on campaigning has on election results.

14.71 However, we also heard from many other submitters who thought the current restrictions on campaign expenditure were not strong enough and that the spending limits were too high. In recent elections, for example, only a few parties spent close to their election expense limits (though this does not take into account the cost of advertising paid for by the broadcasting allocation). Over the past four elections, only 15 to 20 per cent of candidates spent at least half of their allowed limit on election expenses.

14.72 Some submitters thought spending limits for parties should be set in a different way; for example, being the same for all parties rather than also being tied to the number of electorates in which they were standing candidates.

14.73 Some submitters suggested that other campaign costs should be regulated, such as private polling or campaign consultants. They noted that the current definitions of election expenses may not reflect how electioneering has changed, including the shift towards the 'permanent campaign' by political parties, and it may represent only a small part of actual spending.

14.74 Some other arguments that could be made for changing the current approach to spending limits include:

- lowering the spending limits would increase their effectiveness in supporting a level playing field between parties. Electors would be exposed to a similar amount of advertising material from different parties and candidates contesting the election
- a lower limit would also reflect the rise of online advertising, which can have a wider reach and is substantially cheaper than television and radio advertising
- increasing spending limits may allow parties and candidates to expand their ability to engage and communicate with electors, allowing for a more informed electorate
- the current regulated period advantages incumbent parties and candidates, particularly those that can use Parliamentary Service funding for political advertisements throughout the parliamentary term.

Disclosure requirements

Issues identified

14.75 Some submitters suggested that more detailed accounting of spending should be required to provide the public with more information about the activities of parties, candidates and third-party promoters.

14.76 The Electoral Commission only prescribes the categories of spending for disclosure; those filing the returns decide how expenses are further itemised and

reported. The Commission's guidance is that returns must 'provide details of the type of advertisement, name of advertiser or supplier, volume, duration and size as appropriate'. However, failure to include these details is rarely enforced. In some instances, all online advertising has been included in a single line item in a return, with no associated details.

14.77 If disclosure of expenses was required before the end of the election, then it would improve the real-time transparency of election advertising and campaigning. There may also be an opportunity to act on any breaches and reduce their impact on the election, as well as give voters the opportunity to take this spending into consideration.

14.78 However, increasing either the level of detail required, or the frequency and timing of disclosures, would increase the administrative burden on candidates, parties and third parties. Requiring disclosures sooner, or before the end of electioneering, may distract parties and candidates during their busiest period.

14.79 Requiring more detailed disclosure may also be unnecessary, as some media companies already disclose election advertising on their platforms. For example, since 2020, Meta has made it compulsory for New Zealand politicians and parties to sign up to a transparency tool if they want to advertise on its platforms.

Third-party promoters

Issues identified

14.80 The current disclosure threshold treats third-party promoters differently compared to candidates and parties. Registered parties and candidates need to disclose their election expenses irrespective of how much they spent, whereas third parties only need to disclose if they spent more than $100,000.

14.81 Our recommendation to restrict anyone other than registered voters from donating could contribute to an increase in third-party promoter spending. As few third parties meet the current threshold for disclosing their spending, it may be too high to provide transparency of what they are spending money on to try to influence election outcomes. The current threshold may also reduce the chance of detecting 'bad-faith' actors seeking to influence our election outcomes.

14.82 Lowering the disclosure threshold would increase the administrative burden on third-party promoters. A lower threshold may discourage third parties from being involved in campaigning, resulting in a less informed public. Some promoters already provide returns, despite not reaching the disclosure threshold.

Our view

Spending limits

14.83 We reviewed how election expenses are defined, and if changes were required. The current rules only apply to advertising expenses. Many other forms of campaign spending, including hiring venues, travel costs and hiring advisors, are not captured.

14.84 Any definition of campaign expenses needs to provide sufficient certainty for electoral participants about what spending they are required to account for and disclose. If the definition was expanded beyond advertising expenses, it could be difficult to distinguish campaigning activities from the day-to-day activities of the parties in parliament, some of which are funded through the Parliamentary Service. This change could make it difficult for parties to know if they have exceeded their spending limits. It is also likely that an expanded definition of campaign expenses would increase administrative costs for parties and candidates, which may detract from time spent electioneering and engaging with voters. For these reasons we recommend retaining the current definition of election expenses.

14.85 We also considered the length of the regulated period in which spending limits apply. The existing three-month period works well, but our recommendations to remove some of the restrictions on advertising and campaigning could result in changes to how and when parties, candidates, and third-party promoters advertise and campaign. For example, these activities will be permitted on polling day, and parties and candidates will be able to broadcast on television and radio outside of the regulated period for the first time.

14.86 We think it is likely that advertising will remain most intense around the time of elections. Other than a small extension to account for our recommendation above to remove the ban on election advertising on election day (see **Appendix 1: Minor and Technical Recommendations**), we do not recommend any significant changes to the regulated period.

14.87 We then considered if changes should be made to how spending limits for individual political parties are calculated. The present approach – setting a base amount for all registered parties contesting the party vote, plus an additional amount for each electorate they contest – is somewhat complex. Our understanding is that this approach was adopted to reflect the national reach of a party and encourage parties to run candidates in more electorates.

14.88 We recommend instead setting a flat spending limit for all parties as a less complicated approach to the current one. We consider this approach will also provide equal opportunities for all registered parties irrespective of how many electorates their candidates are contesting.

14.89 We also considered where the campaign spending limits should be set for registered parties, candidates and third-party promoters.

14.90 In previous elections, almost all parties have spent less than they could under the election expense limits. However, at the moment, parties also get state funding to broadcast advertising on television and radio. This funding currently does not count towards their overall election expenses.

14.91 Putting parties' own advertising spending together with their spending on broadcast advertisements, we can see parties in the 2020 General Election spent the following on their election campaigns, as shown by **Figure 14.1**, below.

Figure 14.1: Comparison of some parties' expenses for the 2020 General Election

Party	Election expenses	Election expense limit	Broadcasting allocation expenses	Total expenses (election & allocation)
ACT New Zealand	$1,082,167	$2,806,400	$150,740	$1,232,907
Green Party of Aotearoa New Zealand	$792,408	$2,891,000	$323,046	$1,115,454
Māori Party	$301,518	$1,396,400	$149,120	$450,638
New Conservative (formerly the Conservative Party)	$309,722	$3,229,400	$64,609	$374,331
New Zealand First Party	$621,647	$1,960,400	$298,788	$920,435
New Zealand Labour Party	$2,387,077	$3,229,400	$1,248,924	$3,636,001
New Zealand National Party	$2,344,000	$3,032,000	$1,335,255	$3,679,255
The Opportunities Party (TOP)	$76,500	$1,791,200	$150,755	$227,255

14.92 We are mindful that several of our other recommendations would have a considerable combined impact on political financing and spending. Our recommendations on who can donate to parties and candidates, and to reallocate the broadcasting allocation to other forms of state funding of parties, may impact the money parties and candidates receive. Our proposal to replace the broadcasting regime with fairer and more effective forms of state funding would result in parties being able to spend their own money on television and radio

advertisements and the costs of those counting toward total campaign spending. However, this might make some parties more likely to reach their spending limits than they do currently.

14.93 While lowering the spending limits may strengthen their ability to address differences in spending power, it potentially comes at the cost of a less informed electorate. Any lowering would also increase restrictions on freedom of expression, which would need to be clearly justified under the New Zealand Bill of Rights Act 1990.

14.94 To allow time for the impacts of our other recommendations on the finances and election expenses of candidates and parties to be known, we recommend limited changes to where spending limits are currently set:

- **for parties**: reflecting our recommendation for a flat rate for all parties, we are recommending this rate is set at $3.5 million for each registered party contesting the election. This amount approximately reflects the spending of the two largest parties in the previous election (when broadcasting expenses are included)
- **for candidates**: setting a spending limit of $31,000 for a general election (or $62,000 for a by-election)
- **for third-party promoters**: redefine as 10 per cent of the spending cap for registered parties (which would be $350,000 at present).

14.95 In **Appendix 1: Minor and Technical Recommendations**, we also recommend that these spending limits continue to be regularly adjusted to allow for inflation; rounded up to the next $1,000 for simplicity.

Disclosure requirements

14.96 The primary purpose of the current disclosure requirements is to make it simple for the Electoral Commission to verify that parties, candidates, and promoters have complied with the rules for campaign spending. That is why the disclosures are required to be made after an election.

14.97 We think the current disclosure requirements are fit for this purpose. The alternative would be for the Electoral Commission to request this information on a case-by-case basis as part of its compliance and enforcement activities.

14.98 Disclosure requirements could also be redesigned and imposed for an additional purpose: so that the public can follow campaign spending in ‘real-time’ during a campaign. This new requirement could increase transparency.

14.99 However, we do not think there is a significant public interest in understanding where parties might choose to advertise during the campaign. The main issue is ensuring compliance with how much they spend.

14.100 While there would be benefit in providing additional transparency, we think it is marginal relative to the extra administrative costs it would impose on parties, candidates and the Electoral Commission during the busy campaign period. The Electoral Commission, in particular, would have to review these disclosures and publish them immediately while it is administering the election.

14.101 We also note that some media companies, like Meta and Google, already disclose information about online election advertising. However, these have been voluntary decisions that could change in the future.

14.102 However, as discussed in **Online Advertising** above, we are interested in receiving feedback about what regulation might be needed to protect individuals from undue influence through online election advertising, particularly microtargeting.

14.103 In **Appendix 1: Minor and Technical Recommendations**, we recommend some updates to the rules for filing and inspect election expense returns.

Third-party promoters

14.104 We think the rules relating to third-party promoters strike the right balance between transparency, administrative burden, and supporting the Electoral Commission to monitor compliance with third-party spending limits.

14.105 Third-party promoters play an important role in our democracy and can provide information to voters they do not receive from political parties or candidates directly. For example, they may assess and rank political parties' policies in particular areas (such as alignment with economic or environmental goals).

14.106 As such, we think allowing third parties to advertise is, overall, healthy for democracy and supports informed voter participation. There would also be a high threshold for additional regulation, as limiting third-party participation could engage the right to freedom of expression protected under the New Zealand Bill of Rights Act 1990.

14.107 Third parties only need to make a disclosure to the Electoral Commission when they spend over $100,000 during the regulated campaign period. This rule minimises compliance costs on smaller third parties who are not going to come near our proposed spending limit of $350,000.

14.108 Given the purpose of these disclosures is to support the Electoral Commission to monitor compliance with the spending limit (see discussion above), this threshold for smaller third parties is appropriate.

14.109 We note that some third parties already voluntarily disclose their expenses even if they haven't met the threshold. We support this voluntary disclosure.

Interaction with our other recommendations

14.110 As noted throughout, these recommendations rely on decisions made to remove the broadcasting regime and on our recommendations for party financing. The recommendations on other forms of advertising have also informed these recommendations.

14.111 Above, in **Chapter 13**, we recommend that any spending on election advertisements requiring authorisation from a party or candidate should be treated as a donation. Because we also recommend that only registered electors can make donations, only third parties that are registered electors can publish authorised advertisements.

14.112 Given the potential for campaign spending and third parties to influence elections, these recommendations also relate to our recommendations on foreign interference and disinformation. In **Chapter 19**, we recommend that registered third-party promoters cannot use money from overseas persons to fund electoral advertising during the regulated period.

What do you think about our recommendations on campaign spending limits and disclosure requirements and why?

Part 5

Electoral Administration

This part covers:

- the Electoral Commission (**Chapter 15**)
- accessing the electoral rolls (**Chapter 16**)
- boundary reviews and the Representation Commission (**Chapter 17**)
- electoral offences, enforcement and dispute resolution (**Chapter 18**)
- security and resilience (**Chapter 19**)

15. Electoral Commission

The Panel recommends:

Objectives, functions and powers

R70. Amending the objective of the Electoral Commission to facilitate equitable participation.

Effective governance

R71. Expanding membership of the board of the Electoral Commission from three to five members.

R72. Requiring the board of the Electoral Commission to have a balance of skills, knowledge, attributes, experience and expertise in te Tiriti o Waitangi / the Treaty of Waitangi, te ao Māori and tikanga Māori.

These recommendations should be read in conjunction with the recommendations in Chapter 3. Recommendation 3.1 requires decision-makers to give effect to te Tiriti o Waitangi / the Treaty of Waitangi and its principles when exercising functions and powers under the Electoral Act. Recommendation 3.2 requires the Electoral Commission to prioritise establishing Māori governance over data collected about Māori in the administration of the electoral system.

15.1 In Aotearoa New Zealand, the Electoral Commission organises and manages parliamentary elections and referendums.

15.2 We have considered how to maintain a fit-for-purpose electoral regime for voters, parties and candidates. This consideration involves assessing the role of the Electoral Commission, its functions, powers, governance, and protection of its independence.

Objectives, functions and powers

15.3 The Electoral Commission's functions and powers are set out in the Electoral Act. Its core function is to administer the electoral system. Its statutory objectives require it do so impartially, efficiently, effectively and in a way that:

- facilitates participation in parliamentary democracy; and
- promotes understanding of the electoral system and associated matters; and
- maintains confidence in the administration of the electoral system.

15.4 In general terms, the Commission is responsible for delivering parliamentary elections and keeping the electoral rolls up to date. It raises public awareness of electoral matters, through education and information programmes. It also registers political parties and provides guidance to parties and candidates to support their compliance with the law. After each general election, the Electoral Commission must report to the Minister of Justice on the administration of that election.

Is there a case for change?

Issues identified

15.5 While most submitters supported the current functions of the Electoral Commission, many others considered it should have broader functions. Most of these submitters wanted the Commission to have a role in enforcing electoral law, an idea we discuss below in **Chapter 18**. Some other submitters thought its education function should be expanded to include providing civics education (we discuss this in **Chapter 11**).

15.6 The Electoral Commission also facilitates participation in the electoral system. Some submitters were concerned about low participation in the system by some communities and suggested ways the Commission could contribute to improving participation. For example, we heard from people in rural communities not having adequate access to polling places on election day and from disability organisations about the lack of affordable and accessible transport on election day being a barrier (we discuss this further in **Chapter 11**).

15.7 In **Chapter 3**, we note the troubled history of electoral law in relation to te Tiriti o Waitangi / the Treaty of Waitangi (**te Tiriti / the Treaty**).

Our view

15.8 Aotearoa New Zealand's electoral system is held in high regard and the Electoral Commission delivers well-run elections with high levels of integrity. Almost all of the parties we spoke to said they found the Electoral Commission very good to deal with. We think the way the system is working shows that the Commission generally has the functions, powers, and objectives necessary to successfully deliver electoral services.

15.9 We want the Electoral Commission to continue to be as effective as it can be. We have therefore looked for any gaps in its objectives, functions and powers where its work could be strengthened.

15.10 We considered expanding the Electoral Commission's role in public education. Civics education, and the Electoral Commission's role within it, has been discussed in **Chapter 11**. We note the work that the Electoral Commission is currently doing to educate New Zealanders about enrolment and voting at the general election and its provision of expert advice to the Ministry of Education for the schools' programme. We do not think any change to the Commission's public education function is necessary and we encourage the Commission to continue and build on its work in these areas. We make further recommendations in regard to civics education in **Chapter 11**.

15.11 In **Chapter 3** we recommend a new legislative requirement for all decision-makers to give effect to te Tiriti the Treaty and its principles when exercising functions and powers under the Electoral Act. This obligation should apply generally across the Act and be explicitly included in the Electoral Commission's statutory objectives in order to actively protect Māori electoral rights and provide equitable opportunities for Māori participation.

15.12 We also recommend in **Chapter 3** that the Electoral Commission prioritises building capability and capacity to work with Māori to provide Māori governance over Māori data collected in the administration of the electoral system.

15.13 We note the Commission's objective to 'facilitate participation' does not include a requirement to promote equitable access to electoral services. As discussed in **Chapter 11**, the Electoral Commission currently works to increase participation in general elections, including by working directly with communities with lower participation rates. We think it is important that there is a particular focus within the Commission on understanding and addressing barriers in accessing electoral services for particular communities.

15.14 While we acknowledge the Electoral Commission's current work, we recommend amending its statutory objectives so that it is explicitly required to facilitate *equitable* participation. Changing the law will clearly signal the role of the Commission and provide a clear justification for the allocation of funding to ensure everyone can participate in our democracy. Achieving equity of

participation is likely to require different measures for different groups and communities.

15.15 We anticipate that the effect of including these functions could be that further research and monitoring is undertaken. As we noted in **Chapter 11**, we are aware that there are limited data available about voter turnout in disabled communities. We think more research should be done by the Electoral Commission and other agencies to better understand voting trends and barriers.

15.16 Equitable participation supports our objective of achieving a system that is fair as well as one that encourages participation. Equitable participation will also be more likely to produce a parliament that represents the full range of communities in Aotearoa New Zealand. Promoting changes that produce a representative parliament is another of our objectives supported by this recommendation.

15.17 We considered whether the new objectives we recommend for the Electoral Commission should be explicitly outlined in the Electoral Commission's reporting requirements. The Commission currently has to report to parliament after each general election, report on the Election Access Fund Te Tomokanga — Pūtea Whakatapoko Pōtitanga and provide an Annual Report under the Crown Entities Act. These reports generally include reporting about the Commission's progress against its objectives, and we expect the new objectives we recommend should also form part of this reporting.

What do you think about our recommendations on the objectives, functions and powers of the Electoral Commission and why?

Independence

15.18 An independent Electoral Commission is a critical aspect of our electoral system and a feature that requires safeguarding. The Electoral Act recognises the importance of having an independent body to administer our electoral system: it requires the Commission to act independently in performing its statutory functions and duties and when exercising its statutory powers.

15.19 The independence of the Electoral Commission is provided by it being an independent crown entity, and by board appointments being made by the Governor-General on the recommendation of the House. The convention of cross-party involvement in the board nomination process and unanimous (or near

unanimous) approval by parliament also protects against politicising the role of the Commission.

Is there a case for change?

Issues identified

15.20 The Electoral Commission needs to be sufficiently independent to remove the potential for political manipulation. During Select Committee consideration of the 2010 legislation that created the current Electoral Commission, most submitters supported the Commission instead being an officer of parliament to provide the highest level of independence. The purpose of an officer of parliament, such as the Ombudsman and the Controller and Auditor-General, is to carry out inquiries and reviews as a check on government activity on behalf of the House of Representatives. The Select Committee concluded that the roles and responsibilities of the Electoral Commission were of a different nature to that of an officer of parliament.

Our view

15.21 An independent Electoral Commission helps ensure that election results are trusted by the public and that the way the electoral system is administered is free from partisan political influence and outright corruption. In this way, its independence helps to protect democracy, something especially important in Aotearoa New Zealand given our limited constitutional safeguards.

15.22 We considered whether the Electoral Commission should be an officer of parliament instead of an independent crown entity. We do not think it is necessary or appropriate for the Electoral Commission to become an officer of parliament. In the 12 years since its creation as an independent crown entity, the Electoral Commission has been able to exercise its functions with sufficient independence. Many submitters to this review emphasised that the Electoral Commission should maintain its independence and neutrality. The independence of the Electoral Commission as it is currently structured was not queried. In this context, we consider that changing the structure of the Electoral Commission would be an unnecessary, resource intensive change.

15.23 We do not recommend any changes to the process for appointing members to the board of the Electoral Commission. To date, appointments to the Commission have attracted a high level of consensus amongst Members of Parliament (**MPs**). We therefore believe that the current appointment process for board members is strong and sufficiently independent. We do not want to make board appointments complicated. We consider the current process meets our objectives for the Electoral Commission as an independent, open and accountable body. However, as

noted in **Chapter 2**, we are recommending that the provisions in the Electoral Act governing the removal of members of the Electoral Commission from office should be entrenched to recognise the body's importance as an independent and impartial electoral administrator.

Effective governance

15.24 The board of the Electoral Commission is currently made up of three people: the Chairperson, Deputy Chairperson, and the Chief Electoral Officer (who is also the Chief Executive).

15.25 There are no specific requirements in the Electoral Act about the knowledge, skills or diversity of membership needed on the Electoral Commission's board. However, the Crown Entities Act 2004 requires that the relevant Minister consider that board appointees have the appropriate knowledge, skills, and experience to assist the statutory entity they are being appointed to govern. The Minister must also consider the desirability of promoting diversity of membership, to ensure that the work of boards benefits from participation that reflects society.

Is there a case for change?

Issues identified

15.26 Several submitters to this review suggested that the governance of the Electoral Commission needs to be more representative of the diverse communities within Aotearoa New Zealand – including Māori – and that its board should have more than three members.

15.27 The Electoral Commission submitted that the restricted size of its board means that there is less opportunity for ensuring it has sufficient diversity, knowledge, skills, and experience. The Electoral Commission also invited us to consider whether its board should be responsible for appointing the chief executive, as is the case with other crown entities.

Our view

15.28 We considered whether the membership of the board of the Electoral Commission should be changed to be more in line with other independent crown entities. The Electoral Commission board – with one of its three members being the chief executive/chief electoral officer – is unusual in having both governance and executive functions. Most boards of independent crown entities are just responsible for the governance of the body, do not include the chief executive, and are often responsible for appointing them.

15.29 We think that including the chief executive/chief electoral officer on the board lessens the risk of disconnection between the board and the day-to-day operation of the Electoral Commission. This improves the board's decision-making and the work of the Electoral Commission. It also recognises the statutory role that the chief executive holds as chief electoral officer. We therefore do not recommend any changes to the appointment process of the chief executive or their membership of the board.

15.30 While we do not recommend any changes to the membership structure of the Electoral Commission board, we consider that the board's current size of three members may be limiting its effectiveness and representativeness. We recommend increasing the size of the board to five members. We think this size would strike a better balance between ensuring sufficient skills, knowledge and experience are represented on the board.

15.31 Alongside our recommendation to increase the size of the board, we also think there is a need for the Electoral Act to provide more direction on what skills, knowledge and experience the board of the Electoral Commission should collectively have. We note that many boards in Aotearoa New Zealand strive for more diverse representation, and we consider increased diversity on the board would benefit its governance role.

15.32 We consider it important that the ability to uphold te Tiriti / the Treaty is provided for at every level of the Electoral Commission, including at board level.

15.33 We consider it would be better to require the Minister of Justice to ensure that the board collectively has skills, experience, and expertise in te Tiriti / the Treaty, te ao Māori and tikanga Māori. Including such a requirement would recognise the Crown's obligations and the status of Māori as a Tiriti / Treaty partner. It would also support our objectives of an electoral system that is fair, can encourage participation, and supports the formation of a representative government and parliament.

15.34 We also think that the board should collectively have knowledge and experience of working with diverse communities. A board whose membership contained an understanding of the unique needs of these communities, such as rural communities, voters from migrant backgrounds, and disabled people, would better support the Commission's objective to facilitate equitable participation in the electoral system.

15.35 We note that the limited size of the board, whether it has three members or five, will inevitably constrain its ability to be representative of all New Zealanders. As discussed in **Chapter 11**, we encourage the Electoral Commission to consider how best to regularly engage with and seek input from different communities – for example, by setting up advisory groups.

Interaction with our other recommendations

15.36 The objectives, functions, powers, and governance of the Electoral Commission impacts on several topics within scope of this review. The Electoral Commission has a role in all aspects of the electoral system, from the regulation of political parties (**Chapter 12**) and donation rules (**Chapter 13**); voting methods, including the vote count (**Chapter 10**) and enrolment processes (**Chapter 8**); and the process for emergencies and disruptions at the general election (**Chapter 19**).

What do you think about our recommendations on the governance of the Electoral Commission and why?

16. Accessing the Electoral Rolls

The Panel recommends:

R73. **Removing the availability of the main and supplementary rolls for public inspection.**

R74. **Removing the availability of the master roll for public inspection after an election.**

R75. **Removing the ability for any person to purchase electoral rolls and habitation indexes.**

R76. **Retaining access to electoral rolls and habitation indexes for social scientific and health research, but with tighter controls on data access and use and a stronger ethics approval process.**

R77. **Removing access to the electoral rolls by political parties, candidates and Members of Parliament.**

R78. **Removing the ability for scrutineers to access marked copies of the electoral rolls, which show who has voted, during the voting period and to share this information with political parties and candidates.**

R79. **Allowing Parliamentary Service to access names and addresses from the electoral roll in order to facilitate outreach to constituents on behalf of Members of Parliament.**

R80. **Removing the *Index of Streets and Places* from sale.**

R81. **Retaining the existing provisions for being enrolled on the unpublished roll.**

16.1 Accurate and up-to-date electoral rolls are critical to the conduct of elections and therefore to the overall integrity of the electoral system. The Electoral Commission administers the electoral rolls, and they are used to issue votes. They are also

used to identify people who are eligible to vote and help to identify issues (for example, people voting more than once). Public access to the rolls allows them to be checked for correctness. The rolls are also used to calculate the number of Māori electorates.

16.2 In addition to electoral purposes, the electoral rolls are used by other government agencies and by researchers and the general public. The rolls have commercial uses (for example, they are accessed by debt collectors to obtain addresses). They also have political uses: for example, political parties use roll data to canvass voters.

Types of rolls

16.3 The 'electoral rolls' is the generic term for the various rolls produced by the Electoral Commission:

- the *main* roll is printed at least annually for each general and Māori electorate
- a *supplementary* roll is then maintained for people who have enrolled after the cut-off date for the main roll. The supplementary roll is incorporated into the main roll when the main roll is printed
- a *composite* roll, combining the main and supplementary rolls, is produced for elections
- during elections, *marked* rolls are produced and updated during the voting period, showing who has already voted up to that point in time. After voting is completed, consolidated *master* rolls are produced for each electorate to show whether a person voted
- a *dormant* roll is also maintained, containing the enrolment details of people who the Electoral Commission is unable to contact at their listed enrolment address. The Electoral Commission removes people from the dormant roll when a person either enrols at a new address, dies, or after they have been on the dormant roll for three years
- *Habitation indexes* are a form of roll, where electors' details are listed according to their residential address. These details are drawn from the main and supplementary rolls
- the Electoral Commission also maintains an *unpublished* roll containing the enrolment details of people whose personal safety, or the safety of their family, may be threatened if their enrolment details were publicly available. Any person on the electoral roll (or enrolling for the first time) can apply to be placed on the unpublished roll. The person needs to provide some

evidence or explanation as to why their safety may be at risk. The Electoral Commission has discretion to consider the merits of applications.

Inspecting the rolls

Public inspection

16.4 Printed copies of electoral rolls are available for anyone to inspect at public libraries and Electoral Commission offices. In addition, anyone can pay to get a printed copy of the electoral rolls from the Electoral Commission. The public electoral rolls include people's full names and home addresses, as well as their occupation (if provided).

16.5 The Electoral Commission produces a master roll after each election. This information can only be inspected by a registered voter for their electorate.

Access to roll data for research and other purposes

16.6 The Electoral Commission is obliged to share electoral roll information with certain organisations and groups, such as local authorities (for conducting local government elections and polls on changes to their voting systems), and state sector science and health researchers. This information may include greater detail than the public roll, such as people's age range and whether they are of Māori descent.

16.7 In addition to these purposes, roll data can be used by several government agencies to provide services, including the Ministry of Justice (for the preparation of jury lists), Stats NZ (to compile official statistics, suitable for research and government policy development) and Land Information New Zealand (to assist in drawing electorate boundaries and advising the Representation Commission).

16.8 With an individual's consent, the Electoral Commission provides electoral information to the Tūhono Trust iwi affiliation service, for the purpose of maintaining a register of iwi affiliations that can be accessed by iwi organisations and other Māori organisations.

Political party and candidate inspection

16.9 The Electoral Commission is obliged to share electoral roll information with parties, candidates and Members of Parliament (**MPs**) for a fee. This information includes the name, address and occupation of people registered in each electorate as well as people on the dormant roll. They can also access information about the age group and Māori descent for electors.

16.10 In addition, scrutineers appointed by parties or candidates can access the marked versions of the electoral rolls in polling places while voting is taking place. These marked versions show who has voted in that electorate. At the last election, scrutineers could photograph the list of voters in these marked-up versions, which could then be used by parties and candidates to encourage turnout.

16.11 Although parties do not have special access to the master rolls, in practice they may also access the information via registered voters acting on their behalf. Parties may wish to do this to target future voter turnout.

Earlier recommendations

2014 & 2017 Justice Select Committee

Following the 2014 general election, the Justice Select Committee recommended a review of current roll access, noting that the current settings present privacy concerns. However, after the 2017 election, it also recommended that parties have increased access to electronic master rolls during an election period.

2014, 2017 & 2020 Electoral Commission post-election reports

In its 2014, 2017 and 2020 post-election reports, the Commission recommended that electoral rolls and habitation indexes were removed from general sale.

Is there a case for change?

Arguments against change

Public inspection

16.12 Public inspection of the rolls was originally intended to ensure their accuracy and allow for the detection of any fraudulent enrolments.

16.13 Members of the public use the rolls to find information, such as for genealogical research, or to find an address.

Access to roll data for research and other purposes

16.14 Several submitters referred to the importance of continued access to the rolls for their specific interests, such as scientific research.

16.15 Several academics supported continued access to roll data for scientific research, noting these data are often the best available data source for the conduct of surveys. Roll data are useful for several areas of scientific study, including health, social and demographic research, and election studies. When strict conditions are placed on the use of roll data for these purposes, submitters argued that individuals' personal information can be adequately protected.

16.16 Voters of Māori descent can consent to the Electoral Commission giving the Tūhono Māori affiliation service their details. Tūhono assists Māori to register with their iwi and other Māori entities, and assists Authorised User Organisations (iwi organisations) to develop comprehensive and reliable registers of their members. The Tūhono Central Web Service updates iwi databases once a month with change of address details from the Electoral Commission's database.

16.17 It is more effective and efficient for the Electoral Commission to maintain the rolls centrally than it would be if local government had to maintain their own rolls.

Access to roll data by political parties, candidates and MPs

16.18 Provision of roll data, including voters' addresses, allow candidates, political parties and MPs to engage with voters and constituents. A few parties submitted that access to roll data supports democratic engagement and allows parties to directly engage with voters on policy.

16.19 Some political parties submitted that allowing scrutineers to access the marked copies of the electoral rolls during the voting period could enable candidates and political parties to contact enrolled people to encourage them to vote. They argued that access to the master roll and the marked roll may help parties and candidates to increase voter turnout during the advance voting period.

Unpublished roll eligibility

16.20 In considering the ability to inspect the rolls, a few submitters referred to the unpublished roll as being a sufficient safeguard for those people who believe that they or their family could be at risk if their address details were publicly available.

16.21 A few submitters supported the current policy settings for being placed on the unpublished roll. Many submitters considered that there should be greater availability and awareness of the unpublished roll.

Arguments for change

16.22 The predominant theme in submitters' comments was the conflict between the Electoral Act's permitted access to the electoral rolls and general privacy standards that protect personal, identifying data.

16.23 Some submitters argued that the ability to inspect and purchase roll data impinges on the protection of personal data, in conflict with the Privacy Act 2020.

Under the Privacy Act, personal information can generally only be used for the purpose it was collected and must not be otherwise disclosed without permission. There are a number of exceptions to this rule. For example, if the purpose the information is to be used for is directly related to the purpose for which it was obtained; or if it is used in a way that the individual is not identified, including for statistical research. Another exception is where the source of the information is publicly available.

Public inspection

16.24 Some submitters considered that supervising people inspecting the rolls was essential to prevent data transfer through scanning or other technology. A few submitters said that roll inspection was being used to breach protection and restraining orders.

Sale of roll data

16.25 The strongest support for change from submitters was to end the current ability for any person to purchase rolls and habitation indexes. Arguments supporting this change largely related to the use of personal data for non-electoral purposes, the lack of any real control on how the data are used after it has been purchased, that these data can be purchased by individuals or companies from outside New Zealand, and the types of businesses that see a commercial value in using these data (including debt collectors, marketers, and finance companies). These uses could undermine the primary purpose of the roll: enrolling and voting.

Access to roll data for research and other purposes

16.26 The rolls are accessed for various purposes and in various ways. One way they are used is for research purposes to invite a sample of the population from the main rolls to participate in research. State sector health and social scientific researchers can apply to access a copy of the electoral rolls in order to contact potential participants through mail. Those people who wish to participate then provide consent to complete the research if they wish to.

16.27 Submitters discussed the importance of accessing the roll to obtain a sample for research, and the lack of robust alternatives. Some recommended greater transparency about how the rolls were used for research purposes, to build trust and understanding with the wider public. A few also recommended greater controls and protections on how records are retained, stored and deleted.

16.28 Other research takes place without participants' individual consent, or in most cases, even knowing the research is being done. For example, a master roll could be accessed over consecutive elections to see if a particular voter exercised their vote over time.

16.29 A few submitters, primarily academics, argued for technical changes to access rules to the master rolls for undertaking research. Suggested changes included the

provision of master rolls in electronic format and removing the legal requirement that the master roll can only be inspected by a registered voter from a particular electorate. Submitters considered that these changes would improve the efficiency and reduce the cost of data collection, without any material impact on the protection of data.

Access to roll data by political parties, candidates and MPs

16.30 Some submitters were opposed to candidates, political parties, and MPs having access to roll data to get contact details for voters. They thought the democratic role of voters was being confused with the political purposes of these groups.

16.31 A few submitters expressed concern that people were being targeted by parties and that the detailed personal information that political parties can obtain is an invasion of privacy. It was also noted that the ability to electronically crossmatch roll data with other databases exacerbated this problem.

16.32 Several submitters referred to the ability of party scrutineers to access the marked copies of the rolls or the master rolls to identify who has or hasn't voted. These submitters considered this a significant invasion of privacy that can lead to non-voters being targeted by political parties and candidates. While political parties consider this access to be a way of encouraging turnout (and have argued for easier, electronic access to this information), several submitters referred to how this is akin to harassment and an invasion of their privacy.

16.33 Political parties and candidates encouraging turnout in this way was seen by some submitters to confuse the role of the independent Electoral Commission in running elections, while also providing parties and candidates with voting data that can be used for political purposes.

16.34 Some Māori groups expressed concern that political parties can use these data sources to build voting histories for individuals or communities without their consent.

Māori data access

16.35 There are currently no additional protections for data pertaining to Māori on the electoral roll, including its use for research purposes. A few submitters noted the importance of Māori data sovereignty.

Unpublished roll eligibility

16.36 Some submitters argued that it should be easier to be placed on the unpublished roll, given that enrolled people have no control over who may access their personal information on published rolls. It was suggested that Aotearoa New Zealand adopt an opt-in/opt-out system, so that people enrolling can choose whether to be on the published or unpublished roll, as is provided in some other

countries, such as the United Kingdom.[20] A few others suggested that enrolment on the unpublished roll for protected persons under the Family Violence Act 2018 or the Sentencing Act 2002 should be automatic.

Index of Streets and Places

16.37 The Electoral Commission submitted that the *Index of Streets and Places*[21] should not be for sale.

Our view

16.38 In considering options for retaining or changing electoral roll access, we sought to achieve an appropriate balance between the integrity of transparent election processes and the need to protect the personal information of registered voters.

16.39 The Privacy Act 2020 provides us with a contemporary guide to privacy settings for the use of personal, identifiable data. One purpose of the Privacy Act is to promote and protect individual privacy by providing a framework for protecting an individual's right to privacy of personal information. We think it is appropriate that the Privacy Act principles are more strongly reflected in the electoral system.

16.40 Enrolment is compulsory, but people may not be well-informed about the other ways that their enrolment data can be access and used or consent to these uses.

16.41 The need to strongly protect personal data has become more critical now that technology can be easily used to data-match and target a large number of individuals. Therefore, we believe there is a need for electoral roll data to be more stringently controlled.

16.42 We also have concerns that once roll data are provided to a third party, it is virtually impossible to control how those data may be subsequently used and therefore how they can be protected, especially due to potential re-formatting, data transfers and data matching. We note any loss of control may potentially open up access to this information to foreign states.

Public inspection of rolls

16.43 We consider the principles expressed in the Privacy Act take precedence and that the personal information of those legally obligated to enrol should be protected.

[20] Government of the United Kingdom. *The electoral register and the 'open register'*. Retrieved from https://www.gov.uk/electoral-register/opt-out-of-the-open-register.

[21] The Index of Streets and Places is a listing that links all streets and places in New Zealand to their relevant general and Māori electorate.

16.44 We therefore recommend that the main and supplementary rolls should not be available for public inspection. We also recommend that the master roll, which records whether a person voted, should not be available for public inspection after an election.

16.45 The original purpose of making rolls available for public inspection stems from the 1800s, when there were far fewer voters in an electorate – for example, there were less than 300 people on the average electorate roll in the 1850s. As people often knew each other and where they lived, a public inspection of the roll could verify the correctness of the information.

16.46 With an average of almost 50,000 people per electorate now on the roll, we believe that verification is a much less valid purpose. If a person has concerns about an incorrect or fraudulent enrolment, they can raise them with the Electoral Commission. We support more information being made available by the Electoral Commission about how to raise such concerns with them.

Sale of roll data

16.47 The current ability for *any person* to purchase electoral rolls was strongly opposed by several submitters. The Electoral Commission has consistently recommended in recent election reports that rolls are removed from general sale.

16.48 We agree there are legitimate purposes for the rolls to be accessed for specified non-election purposes, such as for research, local government elections and to contact people for jury service. However, our view is that electoral rolls should not be able to be purchased by *any person*, and particularly not for commercial interests, such as debt collection and marketing, or by overseas companies, as is currently the case.

Access to roll data for specific purposes

16.49 While we support continued access to roll data for social scientific and health research, we consider that there should be more stringent controls on how much detail is provided, how it is used and stored, and how it is subsequently retained or destroyed. We believe the ethics approval provisions for research institutions using these data should also be strengthened. For example, they should be required to go through a similar process to that for accessing administrative data like the Statistics New Zealand Integrated Data Infrastructure.

16.50 Questions around Māori data ethics also need to be addressed as part of these approvals. In **Chapter 3**, we recommend the Electoral Commission should consider how to uphold tino rangatiratanga by exploring how to enable Māori to have sovereignty of data collected about them. The same principle should apply to any person accessing data about Māori from the electoral roll. The nature of the requirements will differ depending on the researcher and the purpose.

16.51 Currently researchers receive a full copy of the roll, even though it is often not needed. The Electoral Commission could generate randomised survey lists from roll data (on a cost recovery basis), rather than providing the entire roll data to the researcher.

16.52 Consistent with our recommendation to remove public inspection of the master roll, researchers would no longer have access to the data contained in the master roll. We see this kind of access as different from the other provisions for access for research purposes, which focus on providing information that researchers can use to contact potential research participants to seek their consent and participation.

16.53 We do not recommend any changes to the provisions relating to the Tūhono Trust iwi affiliation service at this time. However, we note the work that is underway by the Department of Internal Affairs to establish a new system that collects people's iwi affiliation information, verified by iwi. After that system is in place, it may be worth reviewing if Māori and iwi think it is necessary to retain this service.

Political party access

16.54 Political parties and candidates say they need access to electoral rolls to canvass voters and encourage enrolment, and to create mailing lists for communicating with voters and constituents.

16.55 We heard that at least some political parties were combining data from the electoral roll with data from other sources to build database pictures about individuals, electorates and voting patterns. Several submitters, including organisations representing Māori, were concerned that individuals are being targeted and possibly profiled. This kind of access concerns us and requires controls to be placed on it.

16.56 Our view is that political parties and candidates should no longer have access to electoral roll data. Our main concern is to stop the use of personal and private data to target people for political purposes without their consent. We have heard several anecdotal instances of voters being confused or concerned about how political canvassers obtained their contact details. There are many other ways that political parties can campaign and engage with voters and constituents without needing access to personal information – for example, door-knocking campaigns or meeting voters in public spaces like shopping malls or markets.

16.57 Similarly, we recommend removing the ability of scrutineers to access the marked copies of the electoral roll during voting and to share that information with political parties and candidates. Their role in the voting place should be limited to observing the voting process to make sure the rules are being followed. Our same arguments about access to personal data without consent apply. This lack of consent is particularly concerning when the information relates to whether a person has voted, which is a personal choice.

16.58 We consider, however, that there is a need for sitting MPs to be able to contact their constituents as part of carrying out their duties as elected representatives. Parliamentary Service funding can be used to communicate with constituents (but not for electioneering purposes). We think that the Parliamentary Service should be able to access electoral roll data in order to facilitate outreach to constituents and communities on behalf of MPs. The Parliamentary Service would provide this service to MPs and would not grant them any access to the actual roll data.

16.59 These recommendations would strongly limit current levels of access. We are aware that a significant amount of data has already been collected under current rules that would continue to be held. If this change were adopted, we would encourage people who hold existing data to comply with the new expectations and act in accordance with privacy principles.

Unpublished roll eligibility

16.60 For the unpublished roll, our view is that the current settings are reasonable. In addition, less than five per cent of unpublished roll applications are declined; primarily due to insufficient evidence being provided, or the application being discontinued. This indicates there is reasonable access to being placed on the unpublished roll.

16.61 Although the introduction of an opt-in/opt-out system was suggested by some submitters, we believe that the adoption of our other recommendations, which generally restrict access to electoral roll data, will provide greater privacy protections, to address the concerns raised.

Sale of the *Index of Streets and Places*

16.62 We support the change recommended by the Electoral Commission to remove the *Index of Streets and Places* from sale.

Interaction with our other recommendations

16.63 Our recommendation in **Chapter 8** that enrolment remain compulsory places an expectation on the government to adequately protect individuals' enrolment data.

16.64 In **Appendix 1: Minor and Technical Recommendations**, we make two further recommendations to update processes for maintaining and accessing the electoral rolls.

What do you think about our recommendations on the electoral rolls and why?

17. Boundary Reviews and the Representation Commission

The Panel recommends:

R82. **Removing the requirement that the boundary review is based on census data, so that eventually other data sources could be used. Noting that improved processes will be required to ensure Māori data sovereignty and a more robust calculation of the population of Māori descent.**

R83. **Increasing the population quota tolerance (that is, the extent to which it can vary from the average population in an electorate) to plus or minus 10 per cent when setting electorate boundaries.**

R84. **Considering communities of interest for Māori alongside general communities of interest in the setting of general electorates as well as for setting the Māori electorates.**

R85. **Retaining the current membership of the Representation Commission.**

R86. **Adding the current Māori members of the Representation Commission – the Chief Executive of Te Puni Kōkiri and the two political representatives of Māori descent – as members for determining general electorate boundaries.**

17.1 The boundary review process sets out how Aotearoa New Zealand is divided into electorates and where their boundaries are drawn. An independent body called the Representation Commission has sole responsibility for undertaking this review.

17.2 The Electoral Act 1993 sets out the calculations and steps that must be followed to determine the number of electorates, using data from both the census and the Māori electoral option. As the census takes place every five years, boundary reviews also operate on a five-yearly cycle.

17.3 The Representation Commission consists of:

- the Chairperson, who by convention has normally been a current or retired Judge
- two members appointed by parliament, one representing the government and one the opposition
- four government officials (the surveyor-general, government statistician, chief electoral officer, and the chairperson of the local government commission).

17.4 When determining the boundaries of the Māori electorates, membership also includes the chief executive of Te Puni Kōkiri and two people of Māori descent who represent the government and the opposition.

17.5 The boundary review process consists of the following steps:

- the government statistician reports the general and Māori electoral populations
- the Surveyor-General then prepares maps showing the distribution of the population and provisional electorate boundaries
- the Representation Commission as a whole then reviews these provisional boundaries against criteria (set out below) and ensures that the number of people residing in each electorate fits within plus or minus five per cent of the 'population quota' – that is, the population size for each electorate
- the proposed boundaries are then made available for public review and there is an 'objection' and 'counter-objection' process. The Representation Commission publishes all submissions and must consider any objections or counter-objections before making its final boundary decisions.

17.6 When determining where to place boundaries for the general electorates, the Representation Commission must consider the following criteria:

- existing boundaries of general electoral districts
- communities of interest[22]
- infrastructure that links communities (called facilities of communications in the Electoral Act)

[22] A term commonly used in boundary reviews but rarely defined in statute. Generally, the term refers to a group united by shared interests or values. For example, a river valley may contain a community of interest, and drawing an electoral boundary down the river line would divide that community.

- topographical features, and
- any projected variation in the general electoral population of those districts over the next five years.

17.7 When setting the Māori electorate boundaries, the Representation Commission must consider the same criteria but with the following modifications:

- the community of interest criteria is specified as 'among the Māori people generally and members of Māori iwi'; and
- consider projected variations in the Māori electoral population rather than the general electoral population.

17.8 As noted in **Chapter 2**, three provisions in the Electoral Act concerning the boundary review and Representation Commission are entrenched:

- the membership of the Representation Commission (section 28)
- the process for dividing New Zealand into general electorates, as well as the definition of 'general electoral population' (section 35)
- the allowance for adjusting the population quota within electorates (section 36).

17.9 These provisions can only be changed by a majority vote in a public referendum or by a 75 per cent vote in the House of Representative.

Earlier recommendations

1986 Royal Commission on the Electoral System

The Royal Commission recommended:

- exploring whether alternatives to the census could be used. It considered that if suitable projections of usually resident or electoral populations could be devised, they should be used
- using a ten per cent tolerance in the determination of electorate boundaries to support better treatment of communities of interest. It noted that, under Mixed Member Proportional (**MMP**), having about the same number of people in each electorate was less necessary than under First-Past-the-Post
- that each of the parties represented in parliament should have its own representative on the Representation Commission, to avoid issues in appropriate representation through the single 'Government' and 'Opposition' appointees alone

- that all unofficial members should be non-voting members, and that the representatives of Māori interests should have a voting majority when setting the boundaries for the Māori electorates.

2014 Justice Select Committee

In its 2014 post-election report, the Justice Select Committee recommended:

- that the electorate boundary review process be decoupled from the census in light of possible future census changes
- that all submissions on proposed electoral boundaries should be made available online, to provide greater transparency and to ensure submissions could be made available to the public faster.

2014 Electoral Commission post-election report

The Commission echoed the recommendation of the Justice Select Committee that all submissions should be made publicly available – instead of the current summaries of objections.

Relationship to the census

Is there a case for change?

Issues identified

17.10 The census is the definitive count of Aotearoa New Zealand's population, but response rates to the census have been decreasing over time, resulting in missing data. Any resulting inaccuracies in the census – for example when Māori were significantly undercounted in the 2013 and 2018 census – may result in fewer electorates being allocated.[23] While the Estimated Resident Population methodology involves more estimation, it may be a more accurate basis for calculating electoral populations than the census, as it uses other data sources (for example births, deaths and migration data) to adjust for those people that have been missed by the census.

[23] Statistics New Zealand. (2022). *Māori population under-estimated in 2013: Analysis and Findings*. Retrieved from: https://www.stats.govt.nz/reports/maori-population-under-estimation-in-2013-analysis-and-findings/; Statistics New Zealand, 2022. *Report of the Independent Review of New Zealand's 2018 Census*, Wellington.

17.11 There is currently not an established, robust Māori descent indicator in the Estimated Resident Population data. Under the Estimated Resident Population methodology, Stats NZ determines who is and is not Māori from administrative data on ethnicity (that is, those who have identified as being of Māori ethnicity), whereas the census gives individuals the opportunity to self-report as being of Māori descent (that is, descended from a Māori ancestor, although they may not identify as Māori ethnicity). The calculation of the Māori electoral population and the number of electorates, uses the Māori descent indicator, which includes a much larger number of people than ethnicity.

17.12 Using administrative data for electoral purposes (a purpose for which the data were not collected) also raises issues with Māori data sovereignty, and social license more generally, that would need to be addressed if the Estimated Resident Population data were to be used.

17.13 The new Data and Statistics Act 2022 allows a broader range of methods for collecting data for future censuses. In the future the census might not involve the direct collection of data from the entire population at the same time (that is, there may no longer be a census night).

17.14 Many submitters who answered this question were concerned about the quality of census data.

Our view

17.15 We considered whether there would be merit in shifting away from the use of the census alone for calculating electoral populations and using the Estimated Resident Population data.

17.16 Of the two methods, we appreciate that the census is a more concrete measure, grounded in counting the number of actual people who say they live in an area (i.e., an electorate) on a given day. It also provides a population-level indicator of Māori descent and allows people of Māori descent to self-report their descent. However, the census has not been without issues, including the significant undercounting of the Māori electoral population in previous years. As a snapshot of that one census day only, it also becomes less reflective of the population over time.

17.17 In contrast, we understand that the Estimated Resident Population methodology can provide a more accurate measure of the population, as it can fix known issues in the census data and benefit from drawing on other data sources.

17.18 However, using administrative data collected for non-electoral purposes raises concerns for us around Māori data sovereignty and social license more generally. Appropriate protections would need to be put in place for ownership and use of these data for this purpose.

17.19 A more robust process would also be required to help calculate the Māori descent population. There are fewer opportunities for individuals to self-identify their whakapapa Māori in this dataset, these would need to be added over time, and we do not think it would be appropriate for Stats NZ to decide descent on people's behalf. Improved processes for Māori data would also help ensure that the interests of Māori are actively protected through the correct allocation of Māori electorate seats.

17.20 On balance, there are clear issues with the census that may increase in the future. We recommend removing the requirement that the boundary review process is based on census data and instead provide flexibility to Stats NZ on the data source or sources they use. The change relies on general societal consensus (or social license) about such a change. This recommendation is also contingent on our recommendations to improve Māori data sovereignty (which we discuss in **Chapter 3**), and on a robust calculation of the Māori descent population.

Population quota tolerance

Is there a case for change?

Issues identified

17.21 A few submitters thought the population variation tolerance was too low, and should be plus or minus 10 per cent. Others thought the current low tolerance level appropriate in that it supports the principle that all votes are of equal value – increasing it may be perceived as eroding this principle.

17.22 The population of each electorate is based on the total population within it (that is, of all ages), not the population of voters.

17.23 The Electoral Act's current tolerance of plus or minus five percent for population variation between electorates means the Representation Commission has limited flexibility when applying the other criteria (existing boundaries, communities of interest, topographical features, etc., as set out above). For example, it cannot always avoid splitting communities of interest. A higher permitted population variance would also better accommodate the topography of Aotearoa New Zealand – and may partially address concerns about geographically large electorates.

17.24 The current quota tolerance was adopted under First-Past-the-Post. Under that system, it was appropriate to have a relatively strict adherence to equal representation for equal populations because the results of electoral contests directly determined the shape of parliament. Under MMP, the principle we adhere to is proportional representation based on nationwide support for political

parties, making a larger tolerance for population variance between electorates more acceptable.

17.25 Changing electorate boundaries (and names) frequently can create public confusion and add administrative costs. A higher tolerance would mean boundaries need to change less often.

Our view

17.26 The context for the population quota tolerance has changed since the current five per cent threshold was first set under the First-Past-The-Post electoral system. Under First-Past-The-Post, where the outcome of individual electorate races would directly impact the make-up of parliament, a low quota tolerance was important to ensure equal parliamentary representation of all population groups. Under MMP, where the nationwide party vote has the primary role in defining the make-up of parliament, the need for a low tolerance is less critical.

17.27 However, one principle has remained the same under both First-Past-the Post and MMP. Maintaining a low variation between electorates supports the aim that each electorate Member of Parliament (**MP**) represents a similar number of people, ensuring each population group has equal and direct local representation in parliament. If this is allowed to increase without good reason, then this key principle of our voting system will be undermined.

17.28 We understand that a higher tolerance would, however, give the Representation Commission the flexibility to better apply the other criteria they need to deliver on. For example, this may result in fewer communities of interest needing to be bisected by electorate boundaries.

17.29 We also received evidence from the Surveyor-General that increasing the tolerance to 10 per cent would result in boundaries needing to change less frequently. The Surveyor-General's analysis of boundary reviews from 2002 to 2013 showed that the number of electorates exceeding a 10 per cent threshold – and therefore needing a boundary change – was 64 per cent lower than the number exceeding a five per cent threshold. The average number of electorates exceeding five per cent was 29, while the average number exceeding 10 per cent was 10 electorates. Fewer changes in boundaries may help voters – and the candidates seeking to represent them – to know and form a connection to their electorate.

17.30 To stabilise electorate boundaries, we recommend the population quota tolerance is increased to plus or minus 10 per cent.

Criteria for setting electorate boundaries

Is there a case for change?

Issues identified

17.31 Some submitters who answered our question about the boundary review process were concerned about splitting communities of interest and thought more focus should be put on keeping communities of interest together by focusing on geography, rather than just on population.

17.32 Adding a requirement to consider Māori communities of interest (defined by whakapapa links across hapū and iwi, among other considerations) in general electorates would reduce the chances of these natural communities being split. It would also reflect that many people of Māori descent choose to be on the general electoral roll. Such a change would match the existing criteria for general electorates, upholding the Crown's equity and participation obligations under te Tiriti o Waitangi / the Treaty of Waitangi (**te Tiriti / the Treaty**).

17.33 The Surveyor-General suggested adding a new criteria relating to the geographical size of electorates to ensure that the Representation Commission is able to consider reducing the sheer size of some electorates (to the extent it can within the population quota tolerance).

Our view

17.34 We recommend that communities of Māori interest should also be considered when setting the boundaries for general electorates as well as when setting Māori electorates. Consideration would need to be given to how and when this new requirement would be implemented, to avoid otherwise unprompted changes to existing boundaries.

17.35 We are also aware of concerns over the large geographical size of some electorates. For example, Te Tai Tonga electorate encompasses the entirety of the South Island and Wellington; and West Coast-Tasman spans from Jacksons Bay to Farewell Spit. This creates issues for candidates and MPs being able to connect with voters, inequity for those candidates and MPs and their voters compared to smaller electorates and the potential for a significant breadth of issues across an electorate.

17.36 Much of this is outside of the control of the boundary review process. A significant contributor to large electorates is the low population density of many rural areas – some electorates need to include significant areas of land to ensure that electorates meet even the lower end of the population quota threshold. The small

number of Māori electorates also need to cover the whole country, so consequently these are quite large. In **Chapter 11**, we recommend changes to enable better participation by rural and remote communities. In **Chapter 13**, we recommend the creation of a new fund – Te Pūtea Whakangāwari Kōrero ā-Tiriti / Treaty Facilitation Fund – to overcome financial barriers that political parties and candidates may face in reaching Māori voters.

17.37 We considered whether to also include a 'geographical size of electorates' criteria in the boundary review process, as suggested by the Surveyor-General. However, we are concerned this may result in more rural electorates being at the lower end of the population quota tolerance and more urban electorates at the higher end, creating inequities in representation. It may also duplicate or confuse the application of the other criteria, diluting the focus on each of them, and would be unlikely to address the large geographical size of some Māori electorates.

Frequency of boundary reviews

Is there a case for change?

Issues identified

17.38 Boundary reviews are conducted every 5 years. They are currently paired to the census. A few submitters thought the boundary review process should occur less frequently, but most thought it should be aligned with the parliamentary term.

17.39 If boundary reviews are undertaken less frequently, there would be less frequent changes to electorate boundaries and names. This added stability may help electorate candidates and political parties to build relationships within electorates. Less frequent reviews would also reduce the cost and administrative burden of boundary reviews.

17.40 If boundary reviews were more frequent, then changes in population growth and distribution could be addressed faster.

17.41 As discussed previously, there may be a future situation where the Estimated Resident Population is used instead of census data, making the five-year timetable arbitrary.

Our view

17.42 As indicated previously, a key consideration for us is to provide electors with constancy and stability in their electorate, where possible.

17.43 Given few issues have been raised with the current timeframe, and in light of our subsequent recommendation on the population quota tolerance that might reduce how often boundaries need to change, we recommend retaining the five-year frequency for boundary reviews, even if a four-year term of parliament was adopted. A regular time interval needs to be chosen, and even without the census, five years seems to strike a reasonable balance between population growth, stability and accuracy.

Membership of the Representation Commission

Is there a case for change?

Arguments against change

17.44 Just over half of submitters who answered our question about boundary reviews and the Representation Commission were generally satisfied with the status quo. The current composition of the Representation Commission has worked well, and the results of its work have been generally viewed as non-partisan and satisfactory.

17.45 Some people consider that due to their experience and on-the-ground knowledge, the political appointees can bring significant community of interest knowledge. It is difficult to find others who can bring that expertise of communities across the whole of the country. Two of three Māori members are also political appointees, and alternative mechanisms for appointment of these members would be needed if all political appointees were to be removed.

17.46 There is a view that in addition to the knowledge and views they bring, the non-political members are also important to ensure that the political appointees do not have a voting majority within the Representation Commission. This helps ensure that the decisions are non-partisan and objectively fair for all parties.

Arguments for change

17.47 The presence of political appointees brings into question the impartiality of the Representation Commission, and risks undermining public confidence in the process. The presence of its politically appointed members has been repeatedly raised as being inconsistent with the neutrality and independence of the Representation Commission, and more broadly with the fundamentals of the MMP electoral system (for example, by updating representation to reflect multi-party parliaments). The Royal Commission noted that the independence of the Commission was of critical importance to maintain public confidence in it when boundary placements may favour one party over another. Most submitters who

argued for change were concerned about political representation on the Commission, and thought it should be altered or removed. These submitters were concerned about independence and the need to protect the work of the Commission against political interference.

17.48 Some people argue that if political appointees are retained, then each party represented in parliament should be allowed to appoint a member. The current system is viewed as unfair to the minor parties in parliament, as their views may not be well represented by the government and opposition appointees. The current arrangements are also more in line with First-Past-The-Post than MMP. To date the government and opposition appointees (but not the appointees of Māori descent) have been ex-Labour and ex-National MPs.

17.49 Other people consider the current lack of consideration of Māori communities when setting general electorate boundaries creates unfairness and assumes Māori are not on the general electoral roll, when many are. A few submitters said that Māori electorate boundaries should be decided solely by Māori, or that Māori should have as much say in determining general electorate boundaries as non-Māori currently have in determining Māori electorate boundaries. Some said that to ensure the right expertise is available, the Māori members of the Representation Commission should also be involved when these are set.

Our view

17.50 We considered a range of potential changes to the members of the Representation Commission, including whether the political appointees should be retained.

17.51 We considered whether all political appointees should be removed from the Representation Commission. This would help to remove any risk, perceived or otherwise, of the Representation Commission being subject to political influences that may benefit parties rather than voters. In this situation, these members would be replaced by those who could bring community knowledge, and alternative mechanisms would be used to appoint Māori members.

17.52 However, there were no clear alternatives to replacing the community of interest expertise that the political appointees bring. While individuals with knowledge of individual regions can be found, it is difficult to identify individuals who can bring a local knowledge of, and connections to, communities across the entirety of the country. There are also few official roles that require or would be expected to have that type or level of knowledge. In contrast, political parties actively build community knowledge to understand voters and the issues they face, including through being out and about in the electorates. The political appointees can often bring this knowledge and experience due to their roles as part of the political machinery.

17.53 We consider the current system is working as well as it can in this regard. As such, we recommend that the current membership of the Representation Commission be retained.

17.54 Following from this, we also considered whether a non-voting representative for each political party with MPs in parliament should be included, but were concerned this would make the Representation Commission unwieldy and hamper the boundary review process. This would not fit with our objective to ensure that the electoral system remains practical and enduring. We also considered reducing the number of ex officio members. However, given we are recommending that the voting rights for the political appointees be retained, the current ex officio members are required to ensure a voting majority for the non-political appointees.

17.55 We also considered a range of options regarding the Māori members of the Representation Commission. We considered reducing the number of members to ensure representatives of Māori interests have a voting majority when Māori electorates are considered, fitting with the view of the Royal Commission.

17.56 Rather than maintain, or increase, membership differences when considering the different types of electorates, we instead recommend that the Māori members of the Representation Commission are also members when general electorates are being determined. This would ensure that there is sufficient expertise to understand impacts on Māori communities when general electorate boundaries are being considered. This change would better uphold te Tiriti / the Treaty than currently, because it would ensure Māori interests are represented through all parts of the boundary review process. In **Chapter 3**, we note the need to actively protect Māori electoral rights and provide equitable opportunities for Māori participation.

What do you think about our recommendations on boundary reviews and the membership of the Representation Commission and why?

18. Electoral Offences, Enforcement and Dispute Resolution

18.1 In this section, we consider the current range of electoral offences and the associated penalties, and the organisations responsible for enforcing electoral law.

Electoral offences

The Panel recommends:

R87. Undertaking an overhaul and consolidation of all electoral offences and penalties, to ensure they are consistent and still fit for purpose. This work should be guided by the principles of proportionality, effectiveness and practicality.

R88. Giving judges an express discretion to restore voting rights for people found guilty of a corrupt practice.

R89. Repealing the offence of treating voters with food, drink or entertainment before, during, or after an election for the purpose of influencing a person to vote or refrain from voting. Also repealing the offence of corruptly accepting food, drink or entertainment under these conditions

18.2 The Electoral Act 1993, the Electoral Regulations 1996 and the Broadcasting Act 1986 contain over 100 different electoral offences.

18.3 All the offences under the Electoral Act are criminal offences, and some carry penalties specific to the electoral system alongside fines and terms of imprisonment.

18.4 Corrupt practices threaten the integrity of the electoral system. Examples include bribery or otherwise unduly influencing voters and interfering with ballot papers.

Penalties include up to two years' imprisonment and/or up to a $100,000 fine. Corrupt practices also have electoral system penalties. Individuals found to have committed a corrupt practice automatically are disqualified from voting or running as a candidate for three years, and if they are a sitting Member of Parliament (**MP**) then they must vacate their seat in parliament.

18.5 A range of other offences, some of which are called illegal practices, cover other breaches of electoral law. Examples include inducing someone to vote who is not qualified to vote, and some electoral funding offences. These offences attract a range of levels of fines. Some forms of behaviour can be either a corrupt or an illegal practice, depending on the circumstances of the offending.

18.6 In addition, there are a number of offences in the Broadcasting Act 1989. applying to broadcasters and those arranging broadcasts during the election period. Examples include broadcasting advertisements outside of the permitted period and broadcasters not giving identical terms to each party or candidate. Penalties include fines of up to $100,000.

18.7 Prosecutions under the Electoral Act must be commenced within either six months or three years of the offence being committed, depending on the offence. Some behaviours are also captured by the Crimes Act 1961, which can attract higher penalties than those under the Electoral Act. Prosecutions can also be brought over a longer time under the Crimes Act and stronger search and seizure powers are available to Police when investigating Crimes Act offences.

Earlier recommendations

2011 Justice Select Committee

The Justice Select Committee recommended that the government consider examining the current electoral enforcement provisions to determine whether they are adequate.

2011, 2014 & 2017 Electoral Commission post-election reports

In 2011 and 2014, the Electoral Commission recommended consideration of whether the current enforcement provisions are adequate and how better enforcement of electoral offences can be achieved. The Commission expanded on this recommendation in 2017 by commenting that there appear to be some offences that could more appropriately be dealt with by administrative penalties or other mechanisms rather than referral to the Police for prosecution.

Is there a case for change?

Issues identified

Offences and penalties generally

18.8 Individual electoral offences have been added and altered over time, with some directly carried over from the previous law (the Electoral Act 1956). There has not been a systematic review of the offences, to ensure internal consistency and/or alignment with penalties under other areas of the law.

18.9 All electoral offences are criminal offences, resulting in criminal convictions irrespective of the severity of the offence, and can only be enforced through the criminal courts.

18.10 Many low-level electoral offences may be more appropriate as infringement offences, such as instant fines. (Infringement offences are criminal offences that do not result in a conviction.) Civil sanctions may also be appropriate and could include monetary penalties, injunctions, and enforceable undertakings. The UK Electoral Commission, for example, is able to impose civil sanctions.

18.11 No consistent distinction is made between the penalties for political insiders – candidates, MPs, party office holders and parties - and others. What works as a deterrent for insiders may differ from those outside the political system. In addition, lengthening the period for which some penalties apply may help to prevent future offending for longer.

18.12 Under the Electoral Act 1993, only the party secretary can be prosecuted for most breaches of the law by those involved in the party organisation. There is no ability to hold the party as an organisation legally accountable. Penalties applied to parties directly could potentially create stronger in-system regulation, with parties exerting more pressure on their members and affiliates to conform with the law. However, the electoral system is largely self-enforcing, and public knowledge of offences committed by party members is already a strong deterrent. It may be difficult to apply penalties to parties, given the range of legal forms they take and the low barriers to forming parties.

18.13 The current rules in many areas of electoral law are also not easily understood by parties and candidates or voters, meaning many unintentional offences may be committed.

Corrupt practices

18.14 A few submitters thought it was still appropriate that offenders lost the right to vote when they had specifically set out to undermine the integrity of elections.

18.15 Given that the right to vote is guaranteed under the New Zealand Bill of Right Act 1990, there must be a strong justification for automatically removing that right

from those found to have committed a corrupt practice. Further, these offenders lose the right to vote at a lower penalty level than prisoners currently do (although see the recommendation on prisoner voting in **Chapter 7**).

18.16 Disenfranchisement also fails to reflect that the harm caused by most corrupt practices is through systemic influence rather than through the vote of one person. Relative to the other penalties – fines and imprisonment – removal from the electoral roll may not be an effective deterrent for individual voters. However, it may be appropriate for candidates and sitting MPs because it involves the loss of a seat or the ability to stand for parliament in the next electoral cycle. Distinguishing between 'political insiders' and voters may support higher penalties being assigned to political insiders, to strengthen the deterrent effect.

Treating

18.17 The Electoral Commission has previously raised specific concerns with the offence of treating. Treating is when someone provides food, drink or entertainment before, during, or after an election for the purpose of 'corruptly' influencing a person to vote or refrain from voting. It is also an offence to 'corruptly' accept food, drink or entertainment under these conditions. There is an exception for 'the provision of a light supper after any election meeting'.

18.18 The offence of treating creates many problems and confusion in practice. It is unclear how much food, drink and entertainment can be offered or accepted and under what circumstances. This lack of clarity might mean that such great care is taken not to 'treat' voters that it prevents behaviour that is acceptable, such as providing ordinary hospitality. The current offence fails to acknowledge manaakitanga, where hospitality shows connection, kindness and respect and is important in Māori culture, as well as in many other cultures.

18.19 Treating must also be done 'corruptly', which can be difficult to prove. In its submission, the Electoral Commission indicated its view that there would need to be an understanding or contract in place that voters would vote in a certain way to provide sufficient evidence that the offence of treating had been committed. Providing voters with food, drink and entertainment without the necessary corrupt bargain is legal, adding further confusion about what is allowed.

Our view

18.20 Electoral offences seek to ensure compliance with the electoral rules, maintaining the integrity of and confidence in the electoral system. Offences should be targeted at those elements of electoral law most critical to upholding our electoral system. Penalties need to be set at levels and enforced to the extent they deter offending in the first place and demonstrate that breaking the rules will result in appropriate consequences.

18.21 While we consider individual offences throughout this report, here we consider whether the broader suite of electoral offences and penalties are still fit for purpose. We suggest there is a need for a comprehensive and detailed overhaul and consolidation.

18.22 Given the breadth of our work, and the detailed, technical legal nature of prescribing offences in the law, we consider this consolidation is best undertaken by legal and policy experts when the Electoral Act is redrafted in line with our recommendation in **Chapter 2**.

18.23 Electoral offences have been added and amended over time, with some carried over from earlier electoral laws. There are some clear inconsistencies in how various forms of behaviour is treated as a result. For example, paying an elector to display a poster or notice on their property is an offence, but paying them to wear a rosette or clothing expressing support for a candidate is not.

18.24 We are also concerned that the penalties applied to Electoral Act offences may not be aligned with enforcement regimes in other areas of the law. Inflation alone may have reduced the deterrent effect of many of the financial penalties over time.

18.25 We think there is merit in questioning whether all breaches of electoral law should be criminal offences. For example, a party secretary who is late filing the party's expenses return could still be liable for a fine of up to $40,000, but as a civil penalty, rather than a criminal offence.

18.26 We also question whether all offences are still required or remain relevant. For example, scrutineers can require a polling official to put questions to a voter, which the voter must answer correctly in writing. To refuse, or to answer incorrectly, is a criminal offence. This puts significant power into the hands of scrutineers, which could be abused to target specific voters without providing any appreciable public benefit.

18.27 We also consider that the offence for treating is no longer fit for purpose. Treating dates from the 1850s, when candidates would ply potential voters with alcohol and entertainment before taking them to the polls. The offence pre-dated the introduction of the secret ballot, which made treating less effective in practice because it was no longer possible to know if a voter actually voted the way they claimed they would. Some of the behaviours that treating is meant to prevent are also likely to be covered by the bribery offence.

18.28 The offence is also problematic because it may negatively affect efforts to turn out the vote. Providing food and entertainment can help to encourage participation during elections by creating a more festive atmosphere, but the uncertainty about what constitutes treating may make people reluctant to do so.

18.29 The treating offence is confusing for parties, candidates and the public, and as a result, it may be ineffective in preventing harm while constraining acceptable behaviour. We recommend its repeal.

18.30 Accordingly, we recommend that, when the Electoral Act is redrafted, all electoral offences and penalties are reviewed to ensure they are consistent and still fit for purpose. This work will need to ensure the Electoral Act's offences and penalties are:

- **proportionate**: to the nature of the conduct involved and the harm caused. This will mean greater use of penalties beyond the criminal law, including infringements and civil sanctions. For example, it will generally be inappropriate to use the criminal law to address matters relating to a minor or technical breach of the rules (such as a failure of a voter to update their address). By contrast, conduct that involves deliberate activity that undermines the integrity of an election and is motivated by political objectives (such as interference with ballot papers) should be met with more serious criminal sanctions
- **effective**: will the offence and penalty achieve the desired enforcement objective for the prohibited act? For example, if deterrence is the primary objective for a penalty, issuing a $1,000 infringement notice to a large political party may not meet that objective. To be effective, the offences and penalties will also need to consider situations where associates or agents of a political party undertake the prohibited action on their behalf. They will also need to consider timeliness, for example, prosecutions taking place long after an election may weaken the deterrent effect of the offence
- **practical**: electoral offences penalties should be clear, consistent, easily understood, with the sanctions able to be applied without undue complexity or legal risk. This will require consolidation of the many and highly specific offences and penalties.

Consequences of being placed on the Corrupt Practices List

18.31 We also considered changes to the most serious category of electoral offences, corrupt practices. As corrupt practices are deliberate attempts to influence election outcomes, most of the current penalties – including imprisonment, significant fines, disqualification from running as a candidate, and loss of seat for sitting MPs – are appropriate and should be retained, if not increased.

18.32 However, we did consider whether disenfranchisement was an appropriate penalty for corrupt practices. Disenfranchisement is an automatic consequence of being placed on the Corrupt Practices List.

18.33 We note that the disenfranchisement penalty limits the fundamental right to vote and that the current law does not align with our recommendation to return voting rights to prisoners. The other penalties, such as large fines and terms of imprisonment, may be sufficient on their own.

18.34 Disenfranchisement for committing a corrupt practice reflects the principle that, if someone acts to undermine the electoral system, then their ability to participate in any part of it should be removed for a time. We consider disenfranchisement should be retained as a default penalty for corrupt practices.

18.35 We think there is a difference between corrupt practices that are committed by political players who stand to gain significantly from their offending compared to members of the public – for example, a candidate bribing people for their votes, compared to a voter who casts a vote on behalf of a family member or friend. We think the consequence of committing a corrupt practice should be stronger for 'political insiders'.

18.36 A temporary voting disqualification on conviction of a corrupt practice should remain the default, but we recommend that a judge should have discretion to waive this consequence if it is not justified by the circumstances.

18.37 The overhaul of electoral offences that we recommend should include reviewing what constitutes a corrupt practice, ensuring that disenfranchisement only applies in the most serious cases.

Interaction with our other recommendations

18.38 Recommendations are made throughout this report on individual offences that should be added, amended or removed, including those applying to private donations, the treating offence, and harassing election officials. Our recommendation to abolish the broadcasting regime would also result in all the broadcasting offences being removed.

18.39 Each of these recommendations should be considered as part of the general review of offences that we propose.

What do you think about our recommendations on offences and why?

Enforcement

The Panel recommends:

R90. Giving the Electoral Commission additional investigative powers (including to require documents, and to undertake audits).

R91. Giving the Electoral Commission the ability to refer serious financial offending directly to the Serious Fraud Office.

R92. Considering whether the Electoral Commission should be able to impose sanctions for low-level electoral breaches, dependent on the outcome of a broader overhaul and consolidation of electoral offences.

18.40 Enforcement of electoral law is currently undertaken by several organisations.

18.41 The Electoral Commission, as electoral administrator, is the first line of compliance. The Commission undertakes a range of education, engagement and outreach to ensure electoral rules are understood, and receives complaints from the public, candidates and parties. The Electoral Commission can enquire into the complaints reported to it. However, the Commission does not have any formal investigative or enforcement powers, and instead must refer any allegations or suspected offences to the New Zealand Police (Police) if it believes there is sufficient basis for further investigation. For some offences, neither Police nor the Electoral Commission can obtain information from third parties such as internet or telecommunications companies (known as production orders) because this process is only available for sentences with a penalty of imprisonment.

18.42 The Police may receive both referrals from the Electoral Commission and complaints directly from the public. The Police independently decide whether to investigate any matter referred to them, and then, following investigation, whether to prosecute. More serious offences may be referred by the Police to the Serious Fraud Office.

18.43 The Serious Fraud Office investigates and prosecutes serious or complex financial crimes, including bribery and corruption. The Office focuses on a relatively small number of cases that can have a disproportionally high impact, including focusing on those that could undermine confidence in the public sector or are of significant public interest.

18.44 Election advertising and political campaigning are also regulated by the Broadcasting Standards Authority, the Advertising Standards Authority, and the New Zealand Media Council. This regulation is discussed further in the section on Advertising and Expenditure.

18.45 The Electoral Commission received approximately 1,000 queries and complaints during the 2020 general election, with similar numbers received in 2017. The Electoral Commission takes a range of responses. It may be satisfied by a response provided (for example where the Electoral Act provides for a reasonable excuse), or it may send a warning letter to alert someone to a potential breach. The Commission refers potential offending to the Police as appropriate. There has been an increase in prosecutions over time, with around two prosecutions in previous years rising to approximately 20 in 2022. The Serious Fraud Office has also undertaken a few high-profile prosecutions under the Crimes Act 1961 in recent years relating to donations.

Earlier recommendations

1986 Royal Commission on the Electoral System

In discussing enforcement of election finance legislation, the Royal Commission was of the view that the Electoral Commission should be empowered to instruct legal counsel to initiate a prosecution if they believe a breach of the law has taken place.

2017 Justice Select Committee

The Justice Select Committee recommended that the government give the Electoral Commission some investigatory, enforcement, and sanction powers, but that major breaches of electoral law should remain with the Police. It specifically recommended providing the Commission the power to: investigate electoral offences; obtain documents and other evidence; impose fines; and impose other remedies for minor breaches of electoral law.

2011, 2014 & 2020 Electoral Commission post-election reports

In 2011 and 2014, the Commission recommended that consideration be given for how better enforcement of electoral offences can be achieved. In 2020 support was also expressed for the Justice Select Committee recommendation that the Commission be granted investigatory, enforcement and sanction powers.

Is there a case for change?

Arguments against change

18.46 Of those public submitters who responded to the question about the roles and functions of the Electoral Commission, most were split between whether the Electoral Commission should take a larger role in enforcing electoral law. Some submitters to this review were strongly against the Commission gaining enforcement powers, as this would conflict with the Commission's function to promote and encourage people to enrol, vote and stand for election.

18.47 Additional resource would be required to deliver the new functions, and there may be duplication with other organisations. If no new resources are allocated, then existing Commission functions may be compromised. If further investigative powers are granted, but not the ability to refer cases directly for prosecution, then this will only exacerbate the existing issue of Police needing to independently verify the investigations of the Commission as part of their due diligence.

Arguments for change

18.48 Of those submitters who supported the Commission having further responsibilities, the majority wanted it to take on an enforcement function.

18.49 Of the current enforcement agencies, the Electoral Commission has the most detailed knowledge and experience of electoral law, and direct connections to parties, candidates and third parties. This expertise can assist in investigating potential breaches, and can support enforcement action in the case of low-level breaches. The Commission also retains this expertise throughout the electoral cycle, whereas other organisations only engage in the area close to elections or when necessary. It may also enable a quicker response. Currently, charges can take many months to be laid as the Police prioritise investigating and taking enforcement action in relation to other forms of offending. A number of submitters were concerned about the length of time taken to investigate and prosecute electoral offenses, and many were concerned about insufficient resourcing.

18.50 Some people consider that granting the Commission the power to issue infringement notices or impose civil sanctions may help accelerate enforcement action. Given electoral officials' presence at polling places where offences may be committed, infringement notices or civil sanctions could be readily administered by the Commission, as appropriate. Empowering the Commission to require information and conduct audits, rather than relying on voluntary compliance, may also reduce the burden of investigations on other agencies, and improve their ability to filter cases for referral. Being able to refer some cases directly to the Crown Law Office for prosecution would also remove the need for Police involvement.

Our view

18.51 Effective enforcement is important to deter rules being broken, and to ensure there are consequences when they are. Without enforcement, the public's confidence in the integrity of the electoral system may diminish, and rule breaches may increase.

18.52 Aotearoa New Zealand has seemingly good levels of compliance with electoral law. Electoral contestants are generally compliant. Further, competition between electoral contestants works to monitor compliance. However, while this has been true in the past, we need to ensure that the right powers are available should their use in the future become necessary.

18.53 We considered whether the Electoral Commission should be granted any additional enforcement powers. We acknowledge that the Commission could bring significant value to enforcement, both from their in-depth knowledge of the law and role in administering the electoral system, and as they may be on the spot or can directly reach those who may be committing offences. Opportunities to speed up investigation and prosecutions will also be undoubtedly positive in helping to deter future offending.

18.54 Concern about how this may affect the perception of the Electoral Commission by both voters and political insiders may be overstated. While it is possible that an enforcement role may deter some people from seeking information from the Commission or engaging with them, the ability of the Commission to act in a non-partisan manner is not in question.

18.55 On balance, we recommend that rather having an enforcement role, the Electoral Commission should be given additional investigative powers, to support enforcement by New Zealand Police and the Serious Fraud Office.

18.56 In particular, we recommend that the Electoral Commission is granted the power to require documents and to undertake audits in relation to the financial returns of registered political parties, registered promoters, and individual candidates. These powers would be a natural extension of the Commission's current role in receiving and reviewing financial returns, while strengthening their ability to investigate where the Commission suspects an offence has been committed. Noting that granting the investigative power alone may increase duplication of work, we also recommend that the Commission be empowered to directly refer cases to the Serious Fraud Office for prosecution.

18.57 Following the broader review of electoral offences, consideration should be given to whether the Electoral Commission should be authorised to enforce low-level electoral breaches. This would be contingent on appropriate offences or groups of offences being identified for enforcement by the Commission. There may be merit in the Electoral Commission being able to issue infringement fines and apply some civil sanctions, as it may help speed some enforcement actions in addition to

reducing the demands on New Zealand Police. However, we consider that the prosecution of all significant offences should remain the remit of New Zealand Police.

18.58 Any new investigation or enforcement functions would need to be appropriately resourced and funded to ensure that the existing functions of the Electoral Commission are not affected. Clear arrangements between the enforcement organisations, and where each operates, would need to be worked through.

Interaction with our other recommendation

18.59 The recommendations on the role of the Electoral Commission more broadly should be considered alongside this recommendation for enforcement powers. As noted, the recommendation for power to enforce low-level offences would be contingent on suitable offences being identified as part of the broader review of electoral offences that we have recommended.

What do you think about our recommendations on enforcement and why?

Dispute resolution

The Panel recommends:

R93. Removing deposit fees for applications for recounts and otherwise retaining deposits at current amounts.

R94. Permitting judicial discretion as to whether an electorate-level or national-level recount goes ahead.

R95. Retaining existing notice periods for initiating an election petition and commencing the hearing for that petition.

18.60 Clear and defined dispute resolution processes are a necessary part of the electoral system, to ensure that the integrity of elections and election outcomes is upheld. The Electoral Act provides for specific processes to resolve such disputes

in relation to election outcomes. Other mechanisms for resolving disputes in relation to the administration of elections, or the actions of Electoral Commission officials, can be pursued through the Ombudsman's office or by asking a judge to review an administrative action.

18.61 In this section we discuss two specific areas of dispute resolution in the Electoral Act: election recounts and election petitions.

Election recounts

18.62 The Electoral Act provides for electorate-level and national-level recounts. Applications for an election recount must be lodged within three working days of the Electoral Commission's declaration of an electorate result.

18.63 For electorate-level recounts, a candidate may apply to a District Court Judge for a recount of electorate votes, while a party secretary can apply for a recount of party votes. In the event of a tie in the original result, the Electoral Commission is required to apply for a recount.

18.64 Where a recount application is made, the judge is required to undertake and oversee the recount process as if they were a returning officer. If the resulting vote count is different to the Electoral Commission's declared result, the judge orders the Commission to amend its declaration. In the past four general elections, there have been five recounts of the electorate vote in individual electorates, with only one of these overturning the original declared result. In most cases where the recount did not change the result, the initial winning margin was more than 700 votes. In the remaining recount, Christchurch Central in 2011, the winning margin increased from 45 to 47 votes. There has never been an application for a recount of the party vote in any electorate.

18.65 A party secretary also may apply to the Chief District Court Judge for a recount of the party vote in all electorates. The three-day period for applying for a national-level recount commences when the final declaration of electorate seats is made. To date, there has never been an application for a nationwide party vote recount.

18.66 For any recount, the applicant is required to lodge a deposit, which can be returned to the applicant if the judge decides to do so. The Electoral Act specifies the deposit fee, which has not changed since 1993, apart from being adjusted for the GST increase in 2010. The deposit fees are:

- recount of electorate votes - $1,022.22 (originally $1,000)
- electorate-level recount of party votes - $1,533.33 (originally $1,500)
- national-level recount of party votes - $92,000.00 (originally $90,000).

- For both electorate-level and national-level recounts, there is no judicial discretion to decline to undertake a recount. A recount therefore must proceed when an application, with the accompanying deposit, is made.

Election petitions

18.67 Since 1880, the courts have determined disputes over which candidate has won an election. Election petitions are decided in the High Court. Reasons to dispute a result may relate to the rights of particular voters to vote in an electorate, the use of corrupt or illegal practices, the conduct of an election by electoral officials, or how the allocation of list seats has been determined.

18.68 For an electorate result, a petition can be lodged by a person entitled to vote in the electorate, a candidate, or a person claiming to have the right to be elected. The petition, with a $1,000 deposit, needs to be presented to the High Court within 28 days of the result, and at least 14 days' notice needs to be given before a trial can commence.

18.69 The High Court's decision on an electorate-level petition is final: there is no appeal. This avoids extended litigation and argument that would delay determining who is entitled to sit in parliament, and possibly, impact on forming a government.

18.70 While the High Court's decision cannot be challenged, its reasons for the decision and the basis of law used can be reviewed by the Court of Appeal. If the Court of Appeal identifies errors in the High Court's interpretation of the law that will add to the understanding of the application of the law, but it cannot change the outcome of the petition.

18.71 For electorate-level petitions, the court is able to: examine the right of particular voters to vote in the electorate and carry out a conclusive count of votes; investigate any allegations of illegal or corrupt practices; and investigate any procedural irregularities to determine if these were significant enough to affect the result.

18.72 Another form of election petition involves challenging the allocation of list seats. The petition must be lodged by a political party secretary and is heard before three Court of Appeal judges. In such a case, the Court of Appeal has a narrow scope – to review whether the Electoral Commission has followed the correct statutory process in determining each party's share of seats and identifying that the correct list candidates have been chosen to fill those seats. The court cannot examine anything else - specifically corrupt or illegal practices, or procedural irregularities, that may affect the party vote at a national level. The court's decision cannot be challenged.

Review by the courts

18.73 The courts are also periodically called upon to review the actions and decisions of government agencies and officials operating under statutory functions and powers. Review by the courts is an important check on the potential misuse or abuse of administrative powers, to ensure that all relevant matters are considered when a decision is made.

18.74 For electoral law, such cases may relate, for example, to a decision of the Representation Commission on drawing electorate boundaries, or an Electoral Commission decision on a party's application to register as a party. Courts may also be called on to resolve disputes within non-government electoral actors, such as whether a pre-selection process was consistent with a political party's constitution.

18.75 People seeking clarification on how to interpret 'the rules of the game' may ask the courts for guidance. For example, by seeking a declaratory judgment of what constitutes electoral spending, ahead of incurring those costs during a campaign and potentially breaking the law.

Complaints

18.76 A complaint to the Ombudsman about the actions of the Electoral Commission is also an option. The Ombudsman would then consider whether the Commission's acts or decisions were unreasonable, unfair or wrong, and suggest a solution if appropriate.

Earlier recommendations

2020 Electoral Commission post-election report

The Commission recommended reviewing the current judicial recount and petition provisions to ensure they were fit for purpose and struck the right balance between the right to seek an independent review and the potential to delay an election outcome.

Is there a case for change?

Issues identified

18.77 Apart from the Electoral Commission's submission, referring to its recommendation in its 2020 post-election report, submitters made few comments on current dispute resolution settings. A few submitters considered there should be an automatic process for a recount where the margin between candidates was very small. Some submitters thought the time to apply for a recount should be extended. The lack of submissions may indicate the current system is generally working well.

18.78 Other issues we identified include:

- the cost of election recounts has remained unchanged for the past 30 years (apart from the small GST increase)
- there is no ability for judges to exercise discretion in the merits of a recount application when it is presented. This means there is no way to prevent a frivolous or vexatious recount
- there is currently no provision available to lodge a petition relating to activities that may affect the casting of party votes at a national level.

Our view

Recounts

18.79 In considering options to retain or change the current provisions for election recounts, we sought an appropriate balance between keeping recounts accessible while also preventing frivolous or vexatious applications that may unnecessarily delay the final outcome of an election.

18.80 Deposit fees have not changed for a considerable time and would need to be doubled simply to adjust for inflation since 1993. However, we are mindful that the cost of applying for a recount should be accessible for all election participants. While about one recount application has been made following recent elections, there is no indication that the current procedures are being abused.

18.81 We consider it reasonable that judges should have a discretion as to whether a recount should go ahead. This discretion is already in place for local government elections, if a judge is satisfied that the applicant has reasonable grounds to

believe that the declaration is incorrect and that on a recount the applicant might be elected.[24]

18.82 By providing judges with this discretion, the possibility of vexatious or frivolous applications will be minimised. However, we do not recommend that an applicant need demonstrate that a recount could alter the result of the election, as is the case for local government elections. The recount procedure also can serve as an important way of ensuring that electoral officials have correctly followed the law, as has been demonstrated in recent recount applications. As such, an applicant should be required to demonstrate that they have a reasonable ground for believing either that the declaration is incorrect and that on a recount they might be elected, or that the legally required processes around receiving and counting votes have not been properly followed.

18.83 With this discretion in place, we do not believe there is any need for a deposit to be paid when applying for a recount.

18.84 Our recommendations are designed to ensure frivolous and vexatious claims cannot be made, creating undue delay, while removing any financial obstacle in applying for one. Judges would still be able to award costs against an unsuccessful applicant at the recount's conclusion, as is currently the case.

Petitions

18.85 We consider the current 28-day period for initiating an election petition is reasonable. It allows potential petitioners to gather evidence and assess the likelihood of success. We also consider the 14-days' notice required before commencing a trial strikes a good balance between giving respondents necessary time to prepare, while not unduly delaying the resolution of any challenge to final election outcome.

18.86 Although there is no provision in the Electoral Act to lodge a national-level petition, there are sufficient existing political avenues to respond to allegations that the party vote has been compromised.

What do you think about our recommendations on dispute resolution and why?

[24] Local Electoral Act 2001, s 90(3).

19. Security and Resilience

Managing disinformation

The Panel recommends:

R96. Extending the timeframe for the offence of knowingly publishing false information to influence voters to include the entire advance voting period and polling day.

R97. That the overhaul and consolidation of the offences and penalties regime for electoral law (recommended above) specifically considers the scope of the undue influence offence, and whether it should be expanded to include disinformation methods and mechanisms.

19.1 Participation and engagement is vital to Aotearoa New Zealand's electoral system. The deliberate spread of false information (disinformation) could manipulate the information voters need to make an informed choice and risks the resilience of the electoral system.

19.2 There is no one definition of disinformation, but we use it to refer to false information that is intentionally spread, with the purpose of deliberately misleading or influencing people's perceptions, opinions, behaviour or causing disruption. This is different to misinformation, which we use to mean false information that is spread without this intent.

19.3 The spread of disinformation could:

- undermine public confidence in the legitimacy and integrity of New Zealand's elections and democracy, especially where the disinformation is focused on the electoral system or administration of elections
- reduce participation through diminished confidence in the system
- result in people making decisions based on incorrect information

- distort free and open debate.

19.4 Currently, it is a corrupt practice to knowingly publish (or republish) false statements with the intention of influencing the vote of an elector during the two days before, and on polling day. This offence was originally created with the intent to prevent candidates from making false claims immediately before polling day, when there was limited time available for them to be fact-checked or countered through the media or in public debate.

19.5 It is also a corrupt practice to commit the offence of undue influence. The wording of this offence is outdated and appears to cover a range of behaviour. Relevantly, it includes someone who through '...any fraudulent device or contrivance, impedes or prevents...' someone from voting, or 'compels, induces or prevails upon' someone to vote or not vote. It is possible that this offence could apply to some people who spread disinformation with the intention of disrupting the voting process.

19.6 The New Zealand Bill of Rights Act 1990 protects the rights of freedom of expression and association, including the freedom to seek, receive, and impart information and opinions of any kind in any form. In the context of managing the spread of disinformation, any limitations on these fundamental rights must be capable of being justified in New Zealand's free and democratic society.

Current work to address disinformation risk

Election disinformation

19.7 There is no one government agency responsible for proactively monitoring information in the public domain about elections. The Electoral Commission works with government to establish protocols and processes for dealing with issues such as misinformation and disinformation about the electoral process or the election.

19.8 There are various agencies that deal with complaints about misinformation and disinformation in the media. Complaints about paid advertising in social media are dealt with by the Advertising Standards Authority, whereas unpaid content is dealt with by social media companies. Complaints about information on television or radio are dealt with by the Broadcasting Standards Authority. Complaints about information in a newspaper are dealt with by the Media Council.

19.9 Social media companies also have their own rules on misinformation and disinformation, including fact checking potential disinformation, flagging where information is false, restricting the sharing of that information and provide links to correct information.

19.10 The Electoral Commission also publishes information for voters on identifying misinformation and disinformation.

Other responses to disinformation

19.11 Work to identify and deal with disinformation currently is being done in government, including through the Department of Internal Affairs' Content Regulatory Review, and in civil society organisations.

19.12 Some social media companies are also implementing self-regulation. In July 2022, the Aotearoa New Zealand Code of Practice for Online Safety and Harms was launched. Among other things, the signatories (including Meta, Google, TikTok, Twitter and Twitch) have committed to providing safeguards to reduce the risk of harm from online disinformation.

Earlier recommendations

2017 Justice Select Committee

The Justice Select Committee made a number of recommendations that touch on disinformation risk. It recommended that the government:

- ask the Electoral Commission, in its report on the 2020 General Election, specifically to address the issue of astroturfing and ways New Zealand can deal with it
- engage with international social media platforms to encourage them to adhere to our laws and customs regarding free speech; and explore regulatory tools that would assert New Zealand's strong tradition of free speech.

It also made recommendations that related to foreign interference risk through the spreading of disinformation. Those recommendations are discussed below in **Foreign Interference**.

Is there a case for change?

Issues we have identified

19.13 Most submitters who answered our question on disinformation and misinformation considered it to be a serious issue that required urgent attention.

19.14 Disinformation can be spread in person, through media, and online. The rise in online disinformation presents particular challenges because of how quickly it can spread, and how many people it can reach.

19.15 Disinformation can be hard to identify and could be spread as news, advertising, or individual comments. Bot accounts can be used to give the impression that

views are coming from a multitude of individual grassroots sources, but have actually come from a single source. There can be disagreement about whether information is false, and whether it has been deliberately spread.

19.16 As we have previously mentioned in this interim report, freedom of expression and association are protected rights under the New Zealand Bill of Rights Act 1990. These freedoms include the right to seek, receive, and impart information and opinions of any kind in any form – even false information. The rights are not absolute, but any restrictions on these rights need to be justifiable.

19.17 Technological developments make it easier to spread disinformation more effectively. Microtargeting can tailor disinformation for target audiences, and artificial intelligence technology could be used to make deepfake videos of candidates and public officials to spread disinformation.

19.18 Where disinformation is spread by individuals through paid means, this would technically be captured by the rules on election advertising. However, it can be difficult to determine whether a post has been paid for, especially when an original post is re-posted. This adds to the complexity of enforcement.

19.19 Māori communities have raised the particular effects that disinformation can have on them, including given the effects of colonisation and distrust between Māori and the state. Many submitters from Māori and Pasifika communities reflected on their experiences of COVID-19 and the potential lessons learned about combatting disinformation through resourcing communities and relationship building.

19.20 Submitters had various ideas about what could be done to reduce the risk of disinformation and misinformation influencing Aotearoa New Zealand's elections:

- **fact checking**: many submitters wanted an independent organisation to fact check and regulate misinformation and disinformation, with several suggesting that the Electoral Commission take on this role. Some suggested that the Electoral Commission should also be able to investigate and publicly correct false statements
- **extending the rules**: some submitters suggested that any rules relating to disinformation and misinformation should apply at all times, not just around election time. Or, if nothing else, they should cover at least four to six weeks before an election
- **education**: most submitters wanted better civics education to help inform people about the risks of misinformation and disinformation. A few suggested that there should be specific resourcing for educating groups who might be especially affected
- **code of conduct**: a few submitters recommended creating a code of conduct to be adhered to by all election participants

- **the role of the media**: many submitters raised concerns about media neutrality during elections, and their role in effectively countering misinformation and disinformation. A few submitters suggested that the government should work with social media platforms to prevent serious misinformation and disinformation.

19.21 The Electoral Commission submitted that the harm caused by misinformation and disinformation extends beyond elections, and it needs to work with other agencies in the area. It considers that any kind of broader mandate to counter misinformation or disinformation in electoral campaigns would undermine trust and confidence and impact perceptions of its political neutrality.

Our view

19.22 Disinformation is a broad and significant all-of-society issue. It impacts more than just the electoral system. It is not possible to address the larger issue of disinformation in this review, but we are concerned about the risk it presents to the security and resilience of the electoral system, and voter participation.

19.23 There is a balance to be reached between protecting the electoral system from disinformation risk and unjustifiable restrictions on individuals and groups exercising rights such as freedom of expression and association.

19.24 We haven't identified any other countries that are successfully dealing with disinformation risks in their electoral systems. This may be because of the spread of disinformation is an issue across wider society, not just the electoral system. We have seen that in other countries, self-regulation by social media companies appears to be ineffective at stopping online disinformation. However, legislative measures to attempt to deal with disinformation are relatively new and this is a developing area. There have also been concerns overseas that some legislative responses may be an unjustifiable limitation on freedom of expression.

19.25 We note the Department of Internal Affairs' is currently undertaking a Content Regulatory Review. That review is looking at developing a general content regulatory system that reduces the risk of harm from content to New Zealanders. 'Content' means any type of communicated material (for example video, audio, images and text) that is publicly available. It is also looking at a range of ways that content containing misinformation and disinformation can be addressed. Recommendations from that review may impact how social media companies deal with disinformation.

Education

19.26 In our view, education is the primary way in which Aotearoa New Zealand can reduce the risk of disinformation in the electoral system. Education could build awareness of risks, and help people to identify disinformation. This could be

delivered through the existing civics education in schools. In **Chapter 11**, we have also recommended developing a funding model to support community-led education and participation initiatives. If desired by communities, these initiatives could include education on identifying disinformation risks in the electoral system. Because the education would be delivered within communities, this could result in increased trust in the electoral system.

Offences

19.27 The offence of publishing false statements to influence voters applies in limited circumstances. It applies to someone who:

- publishes or republishes a false statement (or arranges for it to be published or republished), and
- knows that it is false, and
- does so with the intention of influencing the vote of an elector.

19.28 A person who is found guilty of this offence will have committed a corrupt practice. As we note in **Chapter 18**, corrupt practices are deliberate attempts to influence election outcomes. There is no value in having such knowingly false statements play a part in our election campaigns.

19.29 If a person knowingly publishes a false statement without the intention to influence a person's vote, or publishes something that they don't know is false, or publishes a disputed fact or opinion, they will not have committed this offence.

19.30 The offence currently applies for the two days leading up to, and polling day. Advance voting trends may increase the risk that voters could be impacted by disinformation that attempts to influence their vote during that period. This could impact voter participation as well as the ability for voters to make an informed choice.

19.31 Given the rise in advance voting, we recommend the timeframe for the offence is extended to apply across the entire advance voting period, and polling day. In **Chapter 9**, we recommend that advance voting is to be provided for a minimum period of 12 days. While a restriction on freedom of expression during the advance voting period, in our view that restriction is justifiable. It is an extension of an existing offence to reflect the rise in advance voting since it was originally introduced.

19.32 In **Chapter 18**, we recommend an overhaul and consolidation of the offences and penalties regime for electoral law. We recommend that in that process, consideration is given to whether the undue influence offence should be modernised, and the extent to which it should capture disinformation mechanisms such as deepfakes.

Interaction with our other recommendations

19.33 In **Chapter 14**, we recommend that consideration is given to restrictions on microtargeting for online advertising and campaigning. Any changes in this area could impact disinformation risk, although enforcement challenges would continue.

What do you think about our recommendations on reducing disinformation risk and why?

Foreign interference

The Panel recommends:

R98. That registered third party promoters cannot use money from overseas persons to fund electoral advertising during the regulated period.

19.34 Foreign interference, or even the perception of foreign interference, is a risk to the security and resilience of Aotearoa New Zealand's electoral system.

19.35 Foreign interference can be defined as an act by a foreign state, or people acting on its behalf, that is intended to influence, disrupt, or subvert Aotearoa New Zealand's national interest by covert, deceptive, corruptive, or threatening means. Below, we use the term 'foreign state' to refer to any state other than Aotearoa New Zealand, and any people acting on behalf of that state.

19.36 There are many reasons why a state might want to interfere in Aotearoa New Zealand's electoral system. It might want to influence the outcome of an election, undermine public trust in the integrity of the electoral system or an election outcome, or generally undermine societal trust in democracy and Aotearoa New Zealand's social cohesion. It could interfere in a number of ways, for example by trying to disrupt the delivery of an election, spreading disinformation, or influencing parties and candidates.

19.37 Aotearoa New Zealand's government agencies, including the New Zealand Security Intelligence Service, are concerned about the potential for electoral interference.

In 2019, the intelligence agencies reported to the Justice Select Committee that interference in New Zealand's elections by a state actor was plausible and that the impact of perceived or actual interference in our democracy is potentially serious.

19.38 Following the 2020 general election, the New Zealand Security Intelligence Service reported that it did not identify systemic, state-sponsored interference activity in that election. However, it also said that electoral interference remained a key area of focus, due to the prevalence of interference in elections around the world. It has also confirmed that a small number of states engage in interference activities against New Zealand's interests, targeting our political, academic, media and business sectors, and several of our ethnic communities.

19.39 Currently, the Electoral Act has a number of provisions which may reduce the risk of foreign interference, including in relation to Member of Parliament (**MP**) and candidate eligibility, political finance and advertising:

- **MPs**: An MP's seat becomes vacant if they lose their New Zealand citizenship, become a citizen or subject of a foreign state (unless by birth or marriage), make a declaration of allegiance to a foreign state or apply for a foreign passport
- **candidate**: Although permanent residents have the right to vote, only citizens are able to stand as candidates
- **political finance**: Donations over $50 from overseas persons are banned, party secretaries are required to live in New Zealand, party secretaries and candidates must take all reasonable steps to check if donations are made by or on behalf of an overseas person. It is also an offence to enter into arrangements to avoid disclosing donor identity
- **advertising**: Overseas persons are not able to become registered third-party promoters and are therefore limited to spending $14,700 on election advertising in the regulated period. The name and address of promoters must be included on election advertisements, and the advertising rules apply to advertisements published in Aotearoa New Zealand even where the promoter is not in the country. It is also an offence to publish false statements to influence voters in the two days before, and on election day.

19.40 There are offence provisions in the Act, such as bribery and undue influence, as well as general criminal provisions in the Crimes Act 1961 that could apply to individuals acting on behalf of a foreign state.

19.41 The Electoral Commission works with other agencies, including the security agencies, the New Zealand Secret Intelligence Service (NZSIS) and the Government Communications Security Bureau (GCSB), to manage foreign interference and cyber security threats to elections.

Earlier recommendations

2017 Electoral Commission post-election report

The Commission recommended that parliament continue to consider whether existing legislative protections around unauthorised interference and cyber security were fit for purpose.

2017 Justice Select Committee

The Justice Select Committee considered foreign interference risk in elections. It recommended that the government:

- ask the Electoral Commission to specifically address the issue of astroturfing in its 2020 post-election report
- consider contingency systems for cyber-attacks; and an offence that would prohibit hacking into computer systems owned by Parliament, the Electoral Commission and its officers, parties, candidates, or MPs with the aim of intending to affect the results of an election
- consider the applicability of implementing recommendations relating to foreign interference via social media content from the UK and Australia
- increase regulation of electoral advertising by: prohibiting foreigners from advertising in social media to influence a New Zealand election outcome (as in Australia); allowing only persons or entities based in New Zealand to sponsor and promote electoral advertisements; creating an offence for overseas persons placing election advertisements as well as organisations selling advertising space to knowingly accept impermissible foreign-funded election advertising
- increase regulation of donations by: examining how to prevent transmission through loopholes, for example, shell companies or trusts, making it unlawful for third parties to use funds from a foreign entity for electoral activities; and requiring registered third parties to declare where they get their donations from
- consider one over-arching anti-collusion mechanism, including penalties, to replace those in the Electoral Act
- investigate whether Australia's foreign influence transparency scheme would be applicable to New Zealand
- engage with international social media platforms to encourage them to adhere to New Zealand's laws and customs regarding free speech; and explore

regulatory tools that would assert New Zealand's strong tradition of free speech.

Is there a case for change?

What we've heard

19.42 Many submitters who responded to our question about foreign interference were concerned about this issue.

19.43 A few submitters discussed voter eligibility requirements, and raised concern about non-citizens having the right to vote. Many submitters suggested that there should be a ban on overseas donations and increased resource provided for cybersecurity measures.

19.44 Some submitters considered there is a need for public education to counteract potential foreign interference, including for candidates, politicians, and members of migrant communities. A few submitters acknowledged Aotearoa New Zealand's security agencies, saying that they should continue to carry out their role in monitoring and preventing foreign interference.

19.45 In its submission to us, the Electoral Commission stated that it does not think that it needs additional functions or powers in this area for the delivery of elections. It stated that it would continue to work with other agencies on risks and threats to disruption of the electoral system, including from foreign interference. It submitted that consideration be given to whether there should be an offence to hack into computer systems with the aim of affecting election results, and an offence to target or harass electoral officials.

Issues identified

19.46 We have identified a number of potential vulnerabilities that could reduce the resilience of the electoral system to foreign interference. These mainly relate to the potential for interference if a foreign state provided funding to a third-party promoter, or acted as a third-party promoter, with the goal of covertly influencing the electoral debate.

Funding and advertising

19.47 A foreign state could try to interfere in the electoral system through political finance, including by hiding the true source of a donation and therefore covertly obtaining influence and leverage over parties and candidates. As we mentioned above, there are already a number of provisions in the Electoral Act that may reduce the risk of this. Recommendations we have made above in C**hapter 13**, such

as only allowing donations to parties and candidates from people who are registered to vote, may also reduce this risk.

19.48 Funding third party individuals or organisations (third party promoters) with the intention of influencing political outcomes is another possible interference route. Because the funding of third-party promoters isn't regulated under the Act, funding by a foreign state would not be publicly disclosed. A foreign state could also try to covertly influence the electoral system, or an election, through advertising as an unregistered third-party promoter.

19.49 Enforcement issues arise in the online advertising space. The Electoral Commission has previously stated that it can be hard to trace advertising back to its source, and prosecution of those based outside New Zealand may not be practical.

Influencing parties and candidates

19.50 Lobbying is a legitimate form of political participation, and foreign states often engage in open lobbying activities to influence decision-making, policy and perceptions. Lobbying can also be covert, and in the electoral context, foreign states could covertly attempt to lobby parties and candidates in order to influence political and governmental decisions. This could be done directly, or through lobbying organisations. Voters and other individuals would not be aware of this covert influence as lobbying is not regulated.

19.51 Some other countries regulate lobbying and related activities on behalf of foreign states and foreign interests. The Justice Select Committee has previously recommended that the government consider whether the Foreign Influence Transparency Scheme in Australia should be adopted in New Zealand.

Disinformation

19.52 Some foreign states use social media and other online tools to conduct disinformation campaigns. Disinformation from foreign states could also be spread in traditional media, such as newspapers.

19.53 We heard from submitters about challenges accessing information about the electoral system, as well as candidates and parties, in accessible and translated formats. This could make some New Zealand communities more vulnerable to disinformation from foreign states.

Influence and coercion

19.54 Foreign states can attempt to interfere by building relationships with parties and candidates. This could be done by covertly building influence over a person or by gathering information that is detrimental to a candidate, and using it to pressure or coerce that person to act in ways that benefit the foreign state. International reporting suggests this is an issue in other countries. The government has

published security advice for MPs and local representatives on espionage and foreign interference threats.

19.55 Communities with ethnic or kinship ties to foreign states can also experience pressure and coercion. In the election context, this could result in pressure to support certain candidates or parties through donations or when voting. This could impact people's ability to exercise their fundamental right to vote, and freedom of expression, which are protected rights under the New Zealand Bill of Rights Act 1990.

Cyber-attacks

19.56 Finally, foreign states could attempt to disrupt elections, or the electoral system, through cyber-attacks. This might be done in the lead up to an election, (for example, 'hack-and-leak' operations), or to interfere with the election process itself. There have been reports of these kinds of cyber-attacks in other countries. The Electoral Commission works with relevant government agencies on cyber-security.

Our view

19.57 Foreign interference is a complex issue. The electoral system is just one area where a foreign state might attempt to interfere in Aotearoa New Zealand. Foreign interference issues cannot be addressed through the electoral system alone.

19.58 However, we are concerned about the potential for foreign interference to negatively impact the electoral system. In our view, foreign interference poses a serious risk to the security and resilience of the electoral system as well as to public confidence in elections.

19.59 In the last decade, there have been many international reports of alleged foreign interference in elections and the electoral systems of other democracies.

19.60 We have considered the parts of the Electoral Act that may reduce the risks of foreign interference in the electoral system, and whether any changes are necessary, or desirable, in order to meet the review's objectives.

19.61 There is a balance to be reached between protecting the electoral system from foreign interference and restricting the democratic freedoms of individuals and groups – such as freedom of expression and association.

Funding

19.62 In our view, our recommended changes to private political donations and loans in addition to the existing rules, reduce the risk of foreign interference by financing parties and candidates.

19.63 However, these rules don't address the potential risk of foreign interference by the funding of registered third-party promoters. We thought about whether there should be stronger regulation of how registered third-party promoters can fund their election advertising, to reduce the risk that a foreign state seeks to interfere with Aotearoa New Zealand's elections through advertising in the regulated period.

19.64 We considered whether this should be done by stopping registered third-party promoters from accepting funds from overseas persons for election advertising, or by stopping overseas persons from making donations to registered third party promoters.

19.65 Stronger regulation of registered third-party promoters' financing could unduly impact their ability to participate in our democracy and restrict their freedom of expression. In **Chapter 14**, we have expressed that we think allowing third parties to advertise is, overall, healthy for democracy and supports informed voter participation.

19.66 We think a middle ground is to recommend that registered third-party promoters are not allowed to use funds obtained from an overseas person for election advertising during the regulated period. 'Overseas person' is defined quite loosely in the Electoral Act, and we suggest there may be merit in refining the definition to close potential loopholes. For example, under the current definition, entities incorporated in New Zealand, but owned and directed by non-resident foreign nationals, or overseas-based corporate entities, are not overseas persons. Tightening the definition of overseas person could impact who is able to become a registered third-party promoter, because an overseas person is not eligible to register.

Lobbying

19.67 We note that the government has recently indicated it will begin long-term work to develop policy options to regulate lobbying. We are concerned about the risk of foreign interference via lobbying and cultivation of relationships with parties and candidates. In our view, there would be merit in stronger regulation of lobbying to prevent foreign interference, such as introducing a lobbying register that requires disclosure when lobbyists are acting on behalf of foreign interests.

Advertising

19.68 In our view, the risk of a foreign state attempting to interfere in the electoral system through election advertising in social media or through traditional media is difficult to quantify. This is a developing area, and we note that other democracies have alleged state-sponsored interference in elections through coordinated social media campaigns.

19.69 The only way that this risk could be adequately dealt with would be to extend the regulation of election advertising by third parties. We considered whether to recommend stronger regulation of election advertising by prohibiting overseas persons from promoting election advertisements. This has previously been recommended by the Justice Committee.

19.70 Increased regulation would have a significant impact on the political speech of a very wide group of people and organisations. It would capture more than just those overseas persons who are attempting to interfere on behalf of a foreign state. It could capture, for example, civil society organisations that have both domestic and international branches. Currently, we do not think increased regulation is justifiable, and think that the balance is in favour of allowing third parties to continue to advertise without further restriction. However, the balance could change in the future, and we encourage the government to continue to pay close attention to this issue.

Disinformation from foreign states

19.71 We have discussed disinformation risk in the **Managing disinformation** section above. We will not repeat that discussion here, but do note that it is not always possible to identify when a foreign state is behind the spread of disinformation. This could be because someone is acting on that state's behalf, or the state is using bots to spread disinformation. As we note above, in our view, education is the primary way in which Aotearoa New Zealand can reduce the risk of disinformation in the electoral system. This includes the risk of disinformation by foreign states.

19.72 We do not make any recommendations specific to foreign interference disinformation risk. However, in **Managing disinformation**, we recommend increasing the timeframe for the offence of publishing false statements to influence voters to cover the entire advance voting period and polling day. This offence could also apply to someone acting on a foreign state's behalf.

Influence and coercion

19.73 We also considered the issues of foreign interference through influence and coercion and the risk that foreign states could cultivate relationships with candidates, parties and MPs, as well as risks to communities with ethnic and kinship ties to foreign states.

19.74 These are serious issues, but in our view apply more widely than to just the electoral system. We note existing government work in educating MPs against foreign interference threats, and encourage that work to continue in the future. There are also existing offences in the Electoral Act, and in the Crimes Act 1961 that may apply to individuals who attempt to bribe, or unduly influence candidates and parties.

Cyber attacks

19.75 The Justice Select Committee has previously recommended that an election-specific hacking offence is introduced to prohibit hacking into computer systems owned by Parliament, local authorities, the Electoral Commission, election service providers, election officers, political parties, candidates or MPs with the aim of intending to affect the results of an election. We considered this recommendation, but on balance do not think it is necessary.

19.76 We acknowledge that hacking by a foreign state with the intention to interfere with our electoral system is a serious concern. However, it is not clear to us that there is a gap in the existing law. Under the Crimes Act 1961, it is already a criminal offence to damage or interfere with a computer system without authorisation, or to access a computer system without authorisation.

Interaction with our other recommendations

19.77 In other parts of our report, we have made a number of recommendations that could reduce the risk of foreign interference in the electoral system, including:

- In **Chapter 6**, we recommend retaining the rule that an MP's seat becomes vacant if they lose their New Zealand citizenship, become a citizen or subject of a foreign state (unless by birth or marriage), make a declaration of allegiance to a foreign state or apply for a foreign passport.
- In **Part 3**, we recommend:
    - that the length of time a permanent resident must have lived in New Zealand in order to be eligible to vote is increased to one electoral cycle, and keeping the time that residents can spend overseas without losing the right to vote as 12 months (**Chapter 7**)
    - that funding is made available for community-led civics and citizenship education and participation initiatives (**Chapter 11**)
    - that there should be a new criminal offence relating to threatening, intimidating or harassing electoral officials (**Chapter 9**).
- In **Part 4**, we recommend keeping the requirement that a person must be a New Zealand citizen in order to stand as a candidate. We have also made a number of recommendations on political financing, including prohibiting and loans from overseas persons, introducing a cap on donations and loans, and increasing public disclosure of donors and lenders
- In **Chapter 15**, we recommend that the Electoral Commission should be given additional investigative powers and the ability to refer financial offences directly to the Serious Fraud Office. We also recommend an overhaul and consolidation of the offences and penalties regime for

electoral law, and suggest that greater penalties for political insiders undertaking fraudulent or corrupt acts should be considered.

What do you think about our recommendation for reducing the risk of foreign interference in the electoral system?

Appendices

Appendix 1: Minor and technical recommendations

We recommend several minor and technical changes in addition to the more substantive recommendations set out in the body of this report.

In many cases, these changes are previous recommendations from the Electoral Commission that we endorse, or recommendations from the Justice Select Committee. You can follow the links to the previous reports for more information.

The following tables set out the minor and technical changes we recommend for each section of the interim report.

Part 3: Voters

Recommendation	Comment	Relevant report
Chapter 8: Enrolling to vote		
R99. Extending the information the Electoral Commission can access through data-matching to include email addresses and phone numbers.	This change would build on existing data-matching provisions, which are currently restricted to physical addresses. It would enable the Electoral Commission to contact people through digital channels who are not enrolled or need to update their details. We endorse this recommendation on the condition that data-matching is done in a way that is consistent with privacy principles and takes account of privacy risks, such as shared phones or email addresses. We also believe there needs to be consideration of equity and engagement with communities, such as Māori, over any changes and their potentially unforeseen impacts.	Electoral Commission, Report on the 2017 General Election, page 46 Electoral Commission, Report on the 2020 General Election, page 45-46

Recommendation	Comment	Relevant report
R100. Enabling same-day enrolment on election day for overseas voters.	Currently, any eligible voter can enrol and vote on election day except for overseas voters, whose enrolment deadline is midnight the day before election day. The Electoral Commission has proposed work to update its system to enable election day enrolment for overseas voters, which would also require an amendment to the Electoral Act.	Electoral Commission, Report on the 2020 General Election, page 43
Chapter 9: Voting in elections		
R101. Clarifying that parents can take their children into voting booths.	The Electoral Act says that a person must go into a voting booth alone. This rule is meant to protect the secrecy of the vote. In practice, however, voters can take their children with them into the voting booth if they cannot be left unattended. For clarity, we recommend that the law should state that children under the voting age can accompany their parent or caregiver into the voting booth.	
R102. Clarifying section 61 to cover people whose name appears on the electoral roll but who have moved address and need to update details.	The Electoral Commission has recommended several changes to clarify and modernise special voting provisions. These changes should be considered as part of a redraft of the Electoral Act.	Electoral Commission, Report on the 2020 General Election, page 41
R103. Updating references in section 61 about special voting eligibility to refer to electoral officials generally instead of specific officials.	The Electoral Commission has recommended several changes to clarify and modernise special voting provisions. These changes should be considered as part of a redraft of the Electoral Act.	Electoral Commission, Report on the 2020 General Election, page 41

Recommendation	Comment	Relevant report
R104. Allowing special vote declarations issued in a voting place to be completed in an approved electronic medium.	The Electoral Commission has recommended several changes to clarify and modernise special voting provisions. These changes should be considered as part of a redraft of the Electoral Act.	Electoral Commission, Report on the 2020 General Election, page 42-43
R105. Modernising archaic language used in the provisions relating to special voting in the Electoral Act and the Regulations.	The Electoral Commission has recommended several changes to clarify and modernise special voting provisions. These changes should be considered as part of a redraft of the Electoral Act.	Electoral Commission, Report on the 2020 General Election, page 57-58
R106. Making party secretaries responsible for appointing scrutineers in most cases.	Shifting this responsibility from candidates to party secretaries will align with the role of party secretaries in coordinating a party's election-related activities.	Electoral Commission, submission to this review
R107. Prohibiting Members of Parliament from being scrutineers at general elections or by-elections.	A recommendation to prevent voters from being influenced.	Electoral Commission, submission to this review
Chapter 10: Counting the vote and releasing results		
R108. Enabling roll scanning and initial special vote declaration checking to begin prior to the close of voting	This change would help to reduce pressure on the official count by allowing special vote processing to begin earlier.	Electoral Commission, Report on the 2020 General Election, page 41

Part 4: Parties and candidates

Recommendation	Comment	Relevant report
Chapter 12: Standing for election		
R109. Requiring party secretaries to be enrolled voters.	Currently, the only requirement for becoming a party secretary is that the person must live in New Zealand. We think there should be an additional requirement to reflect the party secretary's statutory responsibility for registered party compliance. We think party secretaries should be required to be enrolled voters, to mirror our recommended requirement that a party's 500 current financial members must also all be enrolled.	
R110. Providing model templates for party structures, constitutions, and candidate selection rules that comply with statutory requirements.	We think there is a need for help to make it easier for new and smaller parties to become registered. We recommend that the Electoral Commission develops model templates for party structures, constitutions, and candidate selection rules that comply with statutory requirements. Parties could use these templates if they wanted to, and could modify them to meet their particular requirements.	
R111. Require candidates to provide satisfactory evidence of New Zealand citizenship if required by the Electoral Commission.	Candidates are required to be citizens of Aotearoa New Zealand in order to be eligible to stand, but are not required to provide proof of citizenship. The Justice Committee has recommended that candidates are required to provide satisfactory evidence of New Zealand citizenship if required by the Electoral Commission.	Justice Select Committee Report on the Inquiry into the 2017 General Election and 2016 Local Elections, page 22

Recommendation	Comment	Relevant report
R112. Allowing the Electoral Commission or electoral officials to accept individual nominations.	In its submission, the Electoral Commission recommended several changes to make candidate nominations processes fairer, more efficient and effective. These changes should be considered as part of a redraft of the Electoral Act.	Electoral Commission, submission to this review
R113. Modernising the rules around notification of nomination including broadening the definition of public notice.	In its submission, the Electoral Commission recommended several changes to make candidate nominations processes fairer, more efficient and effective. These changes should be considered as part of a redraft of the Electoral Act.	Electoral Commission, submission to this review
R114. Providing that consent can be given on behalf of a candidate who is unable to complete the individual nomination form without assistance due to a disability.	In its submission, the Electoral Commission recommended several changes to make candidate nominations processes fairer, more efficient and effective. These changes should be considered as part of a redraft of the Electoral Act.	Electoral Commission, submission to this review
R115. Removing the right of inspection for nomination forms to protect privacy.	In its submission, the Electoral Commission recommended several changes to make candidate nominations processes fairer, more efficient and effective. These changes should be considered as part of a redraft of the Electoral Act.	Electoral Commission, submission to this review
R116. Allowing the Electoral Commission to refund bulk-nomination deposits before all returns have been individually filed.	In its submission, the Electoral Commission recommended several changes to make candidate nominations processes fairer, more efficient and effective. These changes should be considered as part of a redraft of the Electoral Act.	Electoral Commission, submission to this review

Recommendation	Comment	Relevant report
Chapter 13: Political finance		
R117. Making it clear that any free labour, or free services must be provided on a voluntary basis.	Currently, the labour of any person provided free of charge, and goods or services provided free of charge (under a certain minimum reasonable market value) are not donations under the Electoral Act. In its submission, the Electoral Commission recommended that 'free labour' and 'free or discounted services' is defined in the Act. The definition should be clear that 'person' is limited to natural persons for the purpose of free labour.	Electoral Commission, submission to this review
Chapter 14: Election advertising and campaigning		
R118. Following removal of the restriction on electoral advertising on election day, ensuring the regulated period also includes election day.	Our recommendation to remove to current restrictions on election day advertising (except for inside or within 10 metres of polling places) means that election advertisements will be able to be run on election day. For consistency, the rules that apply to expenditure during the regulated period should be extended to include election day.	
R119. Continuing to regularly adjust spending limits to allow for inflation and rounding them up to the next $1,000.	Adjusting spending limits for inflation without rounding results in figures that are highly specific and difficult for electoral participants to keep track of. We think rounding these limits up to the next $1,000 when they are adjusted for inflation will be clearer and simpler.	
R120. Updating provisions for candidates that are overseas to have additional time to file campaign returns.	In its submission, the Electoral Commission recommended that the provisions for candidates overseas having additional time to file a return are obsolete now that forms can be accessed and submitted electronically and should be updated.	Electoral Commission, submission to this review

Recommendation	Comment	Relevant report
R121. Updating the provisions for public inspection of returns.	In its submission, the Electoral Commission submitted that the public inspection provisions for returns are no longer fit for purpose, because returns are now published on the Electoral Commission's website, and should be updated.	Electoral Commission, submission to this review

Part 5: Electoral administration

Recommendation	Comment	Relevant report
Chapter 16: Accessing the electoral rolls		
R122. Specifically providing for the Electoral Commission to share electors' address information with Land Information New Zealand.	The Electoral Commission submitted that the Electoral Act should clarify what information it can share with Land Information New Zealand. This change will improve efficiency, lower costs and help voting place officials to issue special votes more quickly and accurately by making the information in the index much easier to use.	Electoral Commission, submission to this review
R123. Allowing the supply of the *Index of Streets and Places* in digital format.	The Electoral Commission submitted that the law should allow the *Index of Streets and Places* (a listing that links all streets and places in New Zealand to their relevant general and Māori electorate) to be supplied in digital format. This change will improve efficiency, lower costs and help voting place officials to issue special votes more quickly and accurately by making the information in the index much easier to use.	Electoral Commission, submission to this review

Appendix 2: Impact of changes to MMP

Figure 1: Combined impact of Panel's MMP recommendations in previous elections compared to status quo

Year	MMP settings	Allocation of seats	Impact on government formation	Disproportionality[25]
2020	Status quo	Labour 65, National 33, ACT 10, Green 10, Māori 2	Govt: Labour (Majority); Confidence & Supply: Green Party (75/120)	4.15
	Changes	Labour **+1**, Māori **+1**	No change (76/120)	No change
2017	Status quo	National 56, Labour 46, NZ First 9, Green 8, ACT 1	Coalition: Labour, NZ First; Confidence & Supply: Greens (63/120)	2.73
	Changes	No change	No change (63/120)	No change
2014	Status quo	Coalition: Labour, NZ First; Confidence & Supply: Greens (63/120)	Govt: National; Confidence & Supply: ACT, Māori, United Future (64/121)	3.72
	Changes	National **-3**, Labour **-1**, Green **-1**, Conservatives **+5**, Māori **-1**	Conservatives enter parliament; existing grouping insufficient to form majority (60/120)	1.40 (**-2.32**)
2011	Status quo	National 59, Labour 34, Green 14, NZ First 8, Māori 3, ACT 1, Mana 1, United 1	Govt: National; Confidence & Supply: ACT, Māori, United Future (64/121)	2.38
	Changes	National **-1**	No change (63/120)	2.32 (**-0.06**)
2008	Status quo	National 58, Labour 43, Green 9, ACT 5, Māori 5, Progressives 1, United 1	Govt: National; Confidence & Supply: ACT, Māori, United Future (69/122)	3.84

[25] As measured by the Gallagher Index of Proportionality. A perfectly proportional election would be zero. The higher the statistic, the greater the degree of disproportionality.

Year	MMP settings	Allocation of seats	Impact on government formation	Disproportionality[25]
	Changes	National **-3**, Labour **-2**, Green **-1**, NZ First **+5**, ACT **-1**	NZ First enter parliament; Govt of the day retains majority (65/120)	1.61 (**-2.23**)
2005	Status quo	Labour 50, National 48, NZ First 7, Green 6, Māori 4, ACT 2, United 3, Progressives 1	Coalition: Labour, Progressives; Confidence & Supply: NZ First, United Future (61/121)	1.13
	Changes	Labour **+1**, Green **+1**, ACT **-1**, United **-2**	Existing grouping insufficient to form majority (60/120)	2.12 (**+0.99**)
2002	Status quo	Labour 52, National 27, NZ First 13, ACT 9, Green 9, United 8, Progressives 2	Coalition: Labour, Progressives; Confidence & Supply: United Future (62/120)	2.54
	Changes	United **+1**, Progressives **-1**	No change (62/120)	2.67 (**+0.13**)
1999	Status quo	Labour 49, National 39, Alliance 10, ACT 9, Green 7, NZ First 5, United NZ 1	Coalition: Labour, Alliance; Confidence & Supply: Greens (66/120)	2.99
	Changes	No change	No change (66/120)	No change

Figure 2: Impact of 3.5% party vote threshold in previous elections compared to status quo

Year	Party vote threshold	Allocation of seats	Impact on government formation	Disproportionality[26]
2020	5%	Labour 65, National 33, ACT 10, Green 10, Māori 2	Govt: Labour (Majority); Confidence & Supply: Green Party (75/120)	4.15
	3.5%	No change	No change	No change
2017	5%	National 56, Labour 46, NZ First 9, Green 8, ACT 1	Coalition: Labour, NZ First; Confidence & Supply: Greens (63/120)	2.73
	3.5%	No change	No change	No change
2014	5%	Coalition: Labour, NZ First; Confidence & Supply: Greens (63/120)	Govt: National; Confidence & Supply: ACT, Māori, United Future (64/121)	3.72
	3.5%	National **-3**, Labour **-1**, Green **-1**, Conservatives **+5**	Conservatives enter parliament; Govt of the day retains majority (61/121)	1.27 (**-2.45**)
2011	5%	National 59, Labour 34, Green 14, NZ First 8, Māori 3, ACT 1, Mana 1, United 1	Govt: National; Confidence & Supply: ACT, Māori, United Future (64/121)	2.38
	3.5%	No change	No change	No change
2008	5%	National 58, Labour 43, Green 9, ACT 5, Māori 5, Progressives 1, United 1	Govt: National; Confidence & Supply: ACT, Māori, United Future (69/122)	3.84
	3.5%	National **-3**, Labour **-1**, Green **-1**, NZ First **+5**	NZ First enter parliament; Govt of the day retains majority (66/122)	1.49 (**-2.35**)
2005	5%	Labour 50, National 48, NZ First 7, Green 6, Māori	Coalition: Labour, Progressives;	1.13

[26] As measured by the Gallagher Index of Proportionality. A perfectly proportional election would be zero. The higher the statistic, the greater the degree of disproportionality.

Year	Party vote threshold	Allocation of seats	Impact on government formation	Disproportionality[26]
		4, ACT 2, United 3, Progressives 1	Confidence & Supply: NZ First, United Future (61/121)	
	3.5%	No change	No change	No change
2002	5%	Labour 52, National 27, NZ First 13, ACT 9, Green 9, United 8, Progressives 2	Coalition: Labour, Progressives; Confidence & Supply: United Future (62/120)	2.54
	3.5%	No change	No change	No change
1999	5%	Labour 49, National 39, Alliance 10, ACT 9, Green 7, NZ First 5, United NZ 1	Coalition: Labour, Alliance; Confidence & Supply: Greens (66/120)	2.99
	3.5%	No change	No change	No change

Glossary

Advance vote	A vote cast in a parliamentary election before election day. The advance voting period is set by the Electoral Commission and typically starts two weeks before election day.
Astroturfing	A 'fake grassroots campaign'. Occurs when an organisation hides its financial involvement in spreading a message by making it appear as though it is coming from grassroots participants.
Ballot paper	The voting paper on which a voter indicates their preferred candidate and political party. Ballot papers are also referred to as 'ballots'.
Broadcasting Allocation	State funding provided to political parties to pay for election advertising on television, radio, and the internet (parties cannot use their own money for election advertisements on television or radio). The Electoral Commission allocates this funding by considering a range of statutory criteria based on indications of the party's level of public support, as well as the need to provide a fair opportunity to each party to convey its policies to the public.
By-election	An election held in a specific electorate to replace a Member of Parliament when the electorate seat becomes vacant.
Candidate	A person who puts their name forward for election to parliament. Candidates can contest an electorate, be on a party list, or both.
Census	The census is a nationwide population and household survey conducted every five years. It collects data on a range of topics about Aotearoa New Zealand, mainly its population.
Chief Electoral Officer	The person responsible, under the Electoral Act 1993, for exercising the powers, duties, and functions of running elections as one member of the three-person board of the Electoral Commission.
Corrupt Practices	Serious offences that pose a threat to the overall integrity of the election process. A person found guilty of a corrupt practice can be imprisoned and fined, disqualified as an elector for one electoral cycle, and forced to vacate their seat if they are an MP.
Disinformation and Misinformation	*Disinformation* is false information that is intentionally spread, with the purpose of deliberately misleading or influencing people's perceptions, opinions, behaviour, or causing disruption. *Misinformation* is the spread of false information without intent.

Disabled person	Includes people with long-term physical, mental, intellectual, or sensory impairment(s) which in interaction with various barriers may hinder their full and effective participation in society on an equal basis with others.
Disenfranchisement	The loss of the right to vote.
Dissolution of Parliament	The ending of a parliament by proclamation from the Governor-General resulting in a general election.
Electoral Official	A person who works for the Electoral Commission to help it to perform its functions.
Electoral roll	The list of names of people who are registered voters for an electorate. There is a roll for each general and Māori electorate. Only voters of Māori descent can choose a Māori electorate roll.
Electorate	A geographical area that is represented by an electorate Member of Parliament. Aotearoa New Zealand currently has 65 general electorates and 7 Māori electorates.
Government	Those Members of Parliament who govern the country with the support of the majority of the members of the House of Representatives.
Hapū	Māori kin community.
House of Representatives	The assembled body of elected Members of Parliament. It combines with the Governor General to form Parliament.
Hui	Meeting.
Incumbency advantage	The advantages a political party represented in the current parliament has over parties not represented in parliament. Usually refers to advantages at elections.
Iwi	Māori nation/people.
Kanohi-ki-te-kanohi/Kanohi-kitea	Face-to-face, in person.
Kāwanatanga	Government.
Manaakitanga	Nurturing relationships.
Māori Electoral Option	People of Māori descent have the option to register either as a voter in a Māori electorate or as a voter in a general electorate. Recent changes allow Māori to move between the Māori roll and the general roll as often as they like except in the lead up to an election or by-election.

Master roll	A version of the electoral roll updated during the voting period, showing who has voted.
Member of Parliament (MP)	A person elected to sit in the House of Representatives either by winning an electorate or through a political party's list (see the description of Mixed Member Proportional voting system).
Mixed Member Proportional (MMP) voting system	Aotearoa New Zealand's current voting system. It provides for a mix of Members of Parliament elected from electorates and those elected from a party list, and a parliament in which parties' shares of the seats roughly mirror their share of the nationwide vote. Each voter has two votes – a vote for a party (the party vote) and a vote for a candidate in their electorate (the electorate vote). Each electorate elects one Member of Parliament. The candidate with the most votes determines the local representative for that electorate in parliament. The party vote is counted on a nationwide basis. A party may be eligible for a share of the list seats if it gains five per cent or more of the nationwide party vote or wins one or more electorate seats.
Nomination Day	The day specified in the writ as the latest day candidates can be nominated to contest an electorate in an election.
Overhang	The additional seats in Parliament that are created if a party wins more electorate seats than it would be entitled to from its share of the party vote.
Overseas person	An individual who resides outside Aotearoa New Zealand and is not a New Zealand citizen or registered as an elector, or a body corporate incorporated outside New Zealand, or an unincorporated body that has its head office or principal place of business outside Aotearoa New Zealand.
Pākehā	New Zealander of European descent.
Parliament	The collective term for members of the House of Representatives *and* the Governor-General.
Referendum	Where voters are given the opportunity to vote on an issue directly.
Regulated period	The three-month period before election day where there is a spending limit on election advertising for candidates, parties, and registered third party promoters (described below).

Representation Commission	The body responsible for naming and drawing the boundaries of general and Māori electorates. The Commission is composed of public officials and representatives of the government and opposition.
Returning Officer	Returning Officers are appointed by the Electoral Commission to administer the election in a particular electorate.
Scrutineer	A person who observes the conduct of the election on behalf of candidates and parties. Their role is to inform those who appointed them whether election rules and procedures have been properly followed or not.
Sovereignty	Supreme power, authority or rule.
Speaker of the House	An MP elected by the House of Representatives to manage parliament and its business. The Speaker is the chairperson of the House, oversees debates, and ensures rules and MPs' rights are upheld.
Takatāpui	Māori rainbow community.
Tangata whenua	Indigenous/'people of the land'.
Taonga	Treasured possession.
Te ao Māori	The Māori world.
Te reo Māori	The Māori language.
Third-party promoter	An individual or group who is not contesting the election directly but wishes to influence the outcome through advertising about a candidate, party, election issue, or referendum.
Tikanga Māori	Māori law and practice.
Tino Rangatiratanga	Self-determination/ chiefly authority.
Whakapapa	Genealogy, lineage, descent.
Whānau	Extended family.
Writ	The formal direction issued by the Governor-General instructing the Electoral Commission to hold the general election. The writ will specify the dates of nomination day, election day, and the latest day for the return of the writ. Writ day is the day on which the Governor-General issues a writ. Return of the writ is the day on which a writ, containing the full name of every constituency candidate elected, is returned to the Clerk of the House of Representatives.

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