New Zealand Law Society
Te Kāhui Ture o Aotearoa

Electoral Amendment Bill

Submission of the New Zealand Law Society Te Kāhui Ture o Aotearoa

11 September 2025

1 Introduction

1.1 The New Zealand Law Society Te Kāhui Ture o Aotearoa (**Law Society**) welcomes the opportunity to comment on the Electoral Amendment Bill (**Bill**). According to the Explanatory Note to the Bill, it "makes a range of systems improvements to support the timeliness, efficiency, integrity, and resilience of the electoral system" ahead of the 2026 General Election. Among its measures, the Bill addresses matters including: earlier closure of the voter registration period, to support the timeliness and efficiency of electoral administration; disqualifying all prisoners convicted and sentenced to a term of imprisonment from enrolling and voting while in prison; and updating provisions relating to bribery and treating.

1.2 This submission has been prepared with input from the Law Society's Human Rights and Privacy, Public Law, and Criminal Law Committees.[1] It addresses the following key concerns:

(a) Overarching concerns from a public law perspective about the Bill's proposals and the process of its policy development.

(b) Proposed changes that are inconsistent with the New Zealand Bill of Rights Act 1990 (**Bill of Rights Act**), specifically:

(i) closing enrolment 13 days before election day (clause 4);

(ii) removing the entitlement to vote of people serving a prison sentence (clauses 10–12);

(iii) an unduly broad new offence of bribery (clause 43);

(iv) a risk that Māori organisations, particularly Māori social organisations called on by the Electoral Commission to assist in providing information to Māori regarding the Māori option, may not be able to do so under proposed bribery and treating provisions (clauses 43 and 44); and

(v) proposals relating to the provision of free food and drink at or within 100 metres of a polling place, which risk having a disproportionate and inappropriate impact on Māori and tikanga Māori (clause 46).

(c) Other drafting deficiencies with the proposed bribery offence (clause 43). The clause should be amended to provide for a mens rea element, and this would assist in addressing the Bill of Rights Act concern above.

(d) A process point relating to updating Māori option details (clause 65), to ensure Māori have sufficient time to do so ahead of a local government election.

1.3 The Law Society **wishes to be heard** on this submission.

[1] More information about the Law Society's Law Reform Committees is available on the Law Society's website: https://www.lawsociety.org.nz/branches-sections-and-groups/law-reform-committees/.

2 General comment

2.1 The Law Society has serious concerns about the proposed electoral amendments. Disenfranchisement, arising from the proposed close of registration for voters 13 days ahead of election day, and changes affecting prisoner voting, is the first of these.[2] The amendments in clauses 4 and 10–12 of the Bill have the potential to significantly reduce voter participation, effective representation, and consequently public trust and confidence in the election process. This carries collateral risks of undermining democracy and the moral authority of elected governments.[3] We note in particular:

(a) Recent trends show that more people are choosing to enrol later, which means that changes truncating the enrolment period could have a significant impact on those who are eligible to vote.[4] If the proposed changes to the voter registration period had been made prior to the 2023 election, it would have affected over 230,000 special voters.[5]

(b) As we discuss below with regard to infringement of the voting rights of sentenced prisoners, the Law Society has long held and expressed concerns on this issue. In the Law Society's view, the changes proposed in regard to prisoner voting are not consistent with the Bill of Rights Act, and are likely to produce a number of practical and unjustifiable anomalies.

2.2 This leads to the second concern, which relates to the legislative and policy process. Despite proposing changes with potentially significant democratic, social and political impacts, there has been no public consultation on the design and drafting of these proposals. Previous reviews that did involve public consultation have not considered the issue of closing enrolment significantly in advance of election day.[6] Based on past election trends, Māori, Pasifika, Asian, and young voters are more likely to be disproportionately affected by the proposed changes to voter enrolment.[7] The shortcomings in consultation, particularly with Māori, fail in upholding best practices for policymaking and legislation, and the Crown's Te Tiriti o Waitangi | Treaty of Waitangi (**Treaty**) obligations.[8]

2.3 Third, it appears doubtful that these reforms will be effective in alleviating pressure on election timeframes. Officials have identified that alternative longer-term changes like automatic enrolment updates can deliver greater benefits while mitigating negative impacts on voter participation. It appears this proposal is being progressed against officials' advice (or at least, it is not supported or recommended by such advice), and without any evidence that the proposed changes are needed to (or will) deliver a faster vote count.[9] As we discuss later in the submission, it is rare that the special vote count

2 Clauses 4(2) and 10–12.
3 See Ministry of Justice *Regulatory Impact Statement: Improving the timeliness of the official vote count* (27 March 2025) at [34]: "Greater participation gives a greater authority to elected governments by better representing the breadth of New Zealand's political community."
4 Ministry of Justice, above n 3 at 1, [17] and [23].
5 Ministry of Justice, above n 3 at 8 and [53].
6 Ministry of Justice, above n 3 at 2 and [58].
7 Ministry of Justice, above n 3 at 2–3 and [55]–[57].
8 Ministry of Justice, above n 3 at 24.
9 Ministry of Justice, above n 3 at 3, 24–25 and [97].

will affect government formation in New Zealand.[10] The changes which are proposed to voter registration appear harmful to democratic participation, without any appropriate or requisite corresponding gain.

2.4 Each of the points above feed, in turn, into the Law Society's substantial concerns about the Bill of Rights Act consistency of the proposed changes, and conclusion that some central matters that the Bill contains should not proceed. The remainder of the submission substantiates this conclusion and provides feedback on other provisions — chiefly, the proposed bribery and treating offences — which are remediable but, in the Law Society's view, problematic as presently drafted.

3 Early closure of registration

3.1 Clause 4(2) of the Bill proposes a new definition of "close of registration" for electors, 13 days before election day. The Law Society does not support the proposal and considers that it should not proceed. It shares the Attorney-General's view that the proposal constitutes a limit on the right to vote, reflected in section 12 of the Bill of Rights Act.[11]

3.2 Preparatory material accompanying the Bill suggests early closure of registration will "help to deliver timelier election results, manage the costs of future elections, and provide more efficient services to voters and others electoral participants".[12] However, in the Law Society's view, the case for the early closure of voter registration is not compelling given the importance of the right to vote and the availability of other, new measures that will help to deliver timely election results. The proposal is unnecessary. It will likely lead to the effective disenfranchisement of a large number of potential voters. As the section 7 report says: "the benefits of the proposed 13-day registration deadline are not certain and there appear to be alternative, less restrictive measures that may be capable of rights-justification".[13]

The proposal will have significant effects

3.3 The Ministry of Justice and the Attorney-General have assessed both the *direct* and *indirect* effect of the proposed early registration closure:[14]

(a) An estimated 22,700 people may have their eligibility to vote directly affected by the proposed registration period, although that drops to 3,400 when other features of the Bill are considered (such as registration of 17-year-olds who will turn 18 by election day).

(b) A much greater number will be indirectly affected, because (as the Attorney-General notes) there has been an expectation that electors can register until very close to or on election day. She notes 97,000 special votes were cast by people registering for the first time during the 2023 voting period, and nearly 134,000 people changed electoral districts during the voting period. A figure of 100,000

10 See [3.7] below.
11 Attorney-General *Report of the Attorney-General under the New Zealand Bill of Rights Act 1990 on the Electoral Matters Legislation Amendment Bill* (26 June 2025) at [33].
12 Electoral Amendment Bill 2025 (186-1) (explanatory note) at 1.
13 *Report of the Attorney-General*, above n 11, at [47].
14 *Report of the Attorney-General*, above n 11, at [41]–[42].

voters amounts to around 3.5 per cent of the votes cast in the 2023 General Election.

3.4 The Law Society shares the Attorney-General's concern that Māori, Pasifika, Asian and young voters will be more affected by the proposed change to the registration deadline.[15] Any suggestion that election day registration is exercised only by those who do not take voting seriously would be objectionable and inaccurate in at least two ways. First, as the Attorney-General notes, many of the 3,400 directly affected potential voters will be seeking to register at that time for reasons largely outside their control: they may have recently returned to New Zealand from overseas; they may have recently become New Zealand residents; or they may have been released from prison. Second, and more fundamentally, it is constitutionally dangerous to attach a moral worthiness to voting. Voting is a core democratic right, which should not be eroded based on competing social philosophies.[16] Rather than limiting voting rights in the name of administrative efficiency, the right to vote should be preserved (or enlarged, where possible), with any administrative cost borne by the state as a necessary facet of democracy.

The restriction is not necessary

3.5 The Law Society notes other measures in the Bill will assist with the timely processing of votes, such that the proposed registration limit is unnecessary (or, at least, it is not yet clear whether a registration limit is required).[17] That includes:

(a) An elector's address will be automatically updated based on information received from other agencies.[18]

(b) Many enrolment processes will move from paper-based to digital, which should speed up enrolment close to an election.[19]

(c) Importantly, the Electoral Commission will be empowered to determine whether a person is qualified to vote as a special voter any time after that vote is received.[20] Currently, that may only begin after the close of the poll. In 2023, around 490,000 special votes were received before election day,[21] but could not be fully processed until the polls closed. That equated to around 82 per cent of all special votes.

3.6 It can be expected that those measures will have a significant impact. The Ministry notes, for example, that automatic enrolment updates are "much better" than the status quo

15 At [42.3].

16 *Sauvé v Canada* [2002] 3 SCR 519 at [13] per McLachlin CJ, cited in *Make It 16 Inc v Attorney-General* [2022] NZSC 134, [2022] 1 NZLR 683 at [51].

17 It is relevant that the Ministry points to a "high level of uncertainty" as to whether any particular package of reforms could effectively reduce timeframes for a voting count from 20 days to 14 days, which is the Minister's stated preference: Ministry of Justice, above n 3 at 4.

18 Clause 25.

19 Clauses 26–34.

20 Clause 151.

21 The Electoral Commission reported that 602,454 special votes were received in 2023, and 110,000 were received on election day: Electoral Commission *Report of the Electoral Commission on the 2023 General Election* (May 2024) at 60–61.

overall, whereas closing enrolment earlier has only "better" efficiency than the status quo, while harming electoral participation and the integrity of electoral processes.[22]

3.7 Other factors weaken the case for closing enrolment early:

(a) The driver for the proposed change appears to be a desire to have votes counted within 14 days, rather than (say) 20 days as occurred in 2020 and 2023.[23] However, it is rare that the special vote count will affect government formation in New Zealand:

(i) Nine elections have been held since 1999. In seven of those elections, the losing major party leader conceded on election night or the following day, and so the timing of special votes did not affect government formation.

(ii) In around half of those elections, a government was formed *before* the final results (2008, 2011, 2014 and 2020).

(iii) It appears that special votes contributed to a delay in government formation only in 2005 and 2017, although preliminary negotiations took place prior to the final results in each case, and a government was formed around a month after the election.

(b) The timeframe for the formation of government in New Zealand is in line with other countries that use proportional representation. In the most recent national elections, governments were formed in Denmark, Norway and Sweden around a month after election day, and around two months after election day in Finland, Ireland and Germany. In the MMP era, a government has been formed in New Zealand on average 25.2 days after the election.

(c) The measure does not seem to be supported by the Independent Electoral Review. The Review made no recommendations to restrict registration within the voting period despite conducting a wide-ranging review and making a large number of recommendations.[24]

3.8 Accordingly, the Law Society does not consider there is a pressing need to deliver final results any earlier. Formation of government does not require them in most cases, and the New Zealand experience is in line with other countries.

Recommendation

3.9 The Law Society considers an early close of registration to be unnecessary, particularly in light of the likely disenfranchising effect it will have on many voters, the other intended improvements to enrolment efficiency, and the lack of a pressing need to deliver election results sooner.

3.10 Clause 4(2) and the new definition of "close of registration" in section 3(1) should not proceed.

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22 Ministry of Justice, above n 3 at 23–24.

23 Ministry of Justice, above n 3 at 2.

24 Independent Electoral Review *Final Report: Our Recommendations for a Fairer, Clearer, and More Accessible Electoral System* (2023) at [9.49]–[9.76].

3.11 For avoidance of doubt, Law Society **supports** those parts of the Bill relating to automatic enrolment updates,[25] digital enrolment processes,[26] and earlier processing of special votes.[27]

4 Prisoner disenfranchisement

4.1 Clauses 10–12 of the Bill introduce lengthy changes to the principal Act which, among other measures, would remove the right of all persons convicted and sentenced to a term of imprisonment from enrolling and voting while in prison. Currently, prisoners can enrol to vote if they are serving a sentence of less than three years, meaning around 2,000 people will lose the ability to vote if the Bill is passed.[28]

4.2 The Law Society opposes those parts of the Bill relating to prisoner disenfranchisement and considers they should not proceed. The arguments for and against prisoner voting have been well-rehearsed since the passage of the 1993 Act. In 2010, in relation to a similar proposal, the Law Society said the Bill before the committee was an "unnecessary and retrograde step", constituted an unjustified violation of section 12 of the Bill of Rights Act, and was contrary to article 25 of the United Nations International Covenant on Civil and Political Rights.[29] The Law Society maintains those views in regard to the present proposals.

4.3 Below, the legislative context, the position in comparable jurisdictions, and domestic judicial commentary on the proposed ban are each summarised, before reviewing the justification arguments advanced in the Bill's preparatory material.

Legislative context

4.4 Since the passage of the Electoral Act 1993, the right of prisoners to vote has undergone repeated change:

(a) From 1993 to 2010, prisoners serving sentences of less than three years were permitted to vote.

(b) From 2010 to 2020, all people serving a sentence of imprisonment were disqualified from voting.

(c) From 2020 to the present day, prisoners serving sentences of less than three years have again been permitted to vote.

(d) The proposals in this Bill would revert the law to the 2010–2020 position in respect of people serving a sentence in prison, while granting a vote to people detained in a hospital or secure facility.

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25 Clause 25.
26 Clauses 26–34.
27 Clause 151.
28 Ministry of Justice *Supplementary Analysis Report – Implementing a ban on prisoner voting, and the voting rights of detained people* (17 June 2025) at [8]. In the following paragraph, the report also notes 5,756 people received sentences of under three years in 2024, but the Law Society assumes that figure includes people serving their sentence outside of prison.
29 New Zealand Law Society submission on the Electoral (Disqualification of Convicted Prisoners) Amendment Bill 2010.

The position in comparable jurisdictions

4.5 The Bill would put New Zealand out of step with Australia, which permits prisoners serving less than three years to vote in federal elections,[30] and Canada and South Africa, which permit all prisoners to vote.[31] In the European Union, 25 of 27 Member States permit at least some prisoners to vote, with 11 having no restriction.[32]

4.6 Instead, the Bill would place New Zealand closer to the near-total ban in the United Kingdom, although "civil prisoners" may vote in that country (typically, people in prison for contempt of court or for failure to pay fines, debt or child maintenance) and prisoners in Scotland may vote if they are serving a sentence of less than 12 months.[33] A small number of prisoners released on temporary licence may also vote: for example, if undertaking employment in the community during the day.[34]

New Zealand judicial findings

4.7 In 2015, the previous ban was the subject of the first declaration of inconsistency with the Bill of Rights Act made by a New Zealand court.[35] In the High Court, as in his earlier section 7 report, the Attorney-General agreed the measure appeared to be inconsistent with section 12 of the Bill of Rights Act, and could not be justified under section 5.[36] The Attorney-General maintained that view on appeal, including in the Supreme Court.[37]

4.8 In 2019, the Waitangi Tribunal made several findings, including that: the Crown had failed to ensure adequate consultation with Māori before passing the ban; the Crown failed to actively protect Māori rights under the Treaty; and the ban disproportionately affected Māori by virtue of the significantly higher incarceration rates of Māori, especially for less serious crimes. Although the 2010 law prohibited voting only while in prison, it found that the ban operated "as a de facto permanent disqualification due to low rates of re-enrolment amongst released prisoners".[38] In light of that report, the Ministry of Justice accepts that re-enacting the ban would be a "clear and serious breach of the Treaty of Waitangi".[39] The Law Society agrees.

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30 Commonwealth Electoral Act 1918 (Cth), s 93(8AA). Additionally, at least some prisoners may vote in each state election: at one end, New South Wales and Western Australia permit prisoners serving sentences of less than 12 months; at the other end, all prisoners in South Australia and ACT may vote.

31 In Canada, see *Sauvé v Canada* [2002] 3 SCR 519. In South Africa, see *Minister of Home Affairs v National Institute for Crime Prevention and the Re-Integration of Offenders (NICRO) and Ors* [2004] ZACC 10, (2005) 3 SA 280.

32 Martina Prpic *Prisoners' voting rights in European Parliament elections* (European Parliamentary Research Service, PE 751.459, September 2023) at 5.

33 Representation of the People Act 1983 (UK), s 3.

34 Neil Johnston *Prisoners' voting rights* (House of Commons Library, 9 August 2023) at [3.4].

35 *Taylor v Attorney-General* [2015] NZHC 1706, [2015] 3 NZLR 791.

36 At [32].

37 *Attorney-General v Taylor* [2018] NZSC 104, [2019] 1 NZLR 213 at [2].

38 Waitangi Tribunal *He Aha i Pērā Ai? The Māori Prisoners' Voting Report* (Wai 2870, 2019) at 33–34. The Ministry also appears to accept the ban may be discriminatory on the grounds of race: Ministry of Justice, above n 28 at 15. But see *Ngaronoa v Attorney-General of New Zealand* [2017] NZCA 351, [2017] 3 NZLR 643 at [132]–[149] which found the ban did not directly or indirectly discriminate against Māori prisoners.

39 Ministry of Justice, above n 28 at 17.

4.9 For completeness, we note that all declarations of inconsistency now require a response by the Minister to the House of Representatives, advising of the government's response to that declaration.[40] If passed, the Bill therefore raises the unhappy prospect of further resources being expended on judicial, executive and legislative processes to relitigate a settled issue.[41]

Insufficient justification

4.10 Rights and freedoms in the Bill of Rights Act may be subject to such "reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society".[42] However, the Law Society considers the reasons for the limits advanced in the Bill's preparatory material do not justify the proposed restriction on voting rights and are not borne out by the available evidence.

Consistency

4.11 The Explanatory Note suggests the Bill will "establish a consistent approach to prisoner voting, regardless of the length of sentence".[43] While correct in superficial terms (since all prisoners will be disenfranchised), in practice, the Bill creates inconsistencies and arbitrary outcomes.

4.12 For example, a person sentenced to a short term of imprisonment (say, a month) that happens to fall over an election will be disenfranchised. However, a person sentenced to a two and a half year prison term that falls *between* elections will retain the ability to vote, along with any person serving their term on home detention.[44] The Bill therefore has the potential to create arbitrary outcomes based on the timing of a person's sentence and the place it is served, rather than the seriousness of offending.

4.13 Further inconsistency is created by the provisions of the Bill that preserve the right of prisoners to vote if they are already serving a sentence of less than three years upon the legislation coming into force.[45] That will create a further distinction between prisoners who can vote or not, again dependent on the timing of their sentencing rather than the seriousness of the offending.

4.14 However, as the Attorney-General notes, a person who committed an offence prior to enactment but is sentenced to a term of less than three years after enactment will be disenfranchised. That is in the nature of a penalty imposed after the commission of an offence, which will likely breach section 25(g) of the Bill of Rights Act.

4.15 Finally, as the Attorney-General notes, a further inconsistency is created between people serving a term of imprisonment and those detained in a hospital or secure facility,

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40 New Zealand Bill of Rights Act 1990, ss 7A and 7B.

41 It appears there the courts have jurisdiction to issue a second declaration of inconsistency (see *R (on the application of Chester) v Secretary of State for Justice* [2013] UKSC 63), although (a) the point has not been tested in New Zealand; and (b) the courts may decline to award relief given the legislation is unlikely to be amended once passed (*Chester* at [39]–[40] per Lord Mance (with whom Lord Hope, Lord Hughes and Lord Kerr agree).

42 Section 5.

43 At 2.

44 *Report of the Attorney-General*, above n 11 at [12].

45 Sch 1, creating new Sch 1AA, Part 4, cl 10(b).

meaning a person's ability to vote may change as they transfer between places of detention.[46]

Rule of law and civic responsibility

4.16 The Bill suggests that the proposed change is necessary to underline "the importance that New Zealanders place on the rule of law and the civic responsibility associated with the right to participate in a democracy".[47]

4.17 Insofar as some prisoners were permitted to vote from 1993–2010, and from 2020 to the present, the Law Society is not aware of any evidence to suggest that prisoner voting challenged the rule of law or weakened civic responsibility during those times. Following the 2023 election, for example, the Electoral Commission noted the electoral system enjoyed high levels of trust and overall satisfaction among New Zealanders,[48] with 93 per cent of voters rating it excellent or very good.[49] No concerns were raised with respect to prisoner voting in that report or the 2020 report.[50]

4.18 The Ministry of Justice has observed a significant majority of submissions to the committee in 2010 opposed a total ban on prisoner voting (93 per cent). In 2020, most submissions supported the current law (78 per cent).[51] In 2023, the Independent Electoral Review recommended all prisoners should retain the right to vote, although noting that some submissions were strongly divided on the issue.[52] Most recently, the Ministry notes a lack of data establishing a link between disenfranchisement and the goals of the prison system, such as deterrence of crime, culpability, punishment or rehabilitation.[53]

4.19 The Law Society again observes that some prisoners serving a term of imprisonment will remain entitled to vote — namely, those who are serving a sentence of less than three years on enactment.[54] That provision is no doubt intended to protect the right against retroactive penalties, which is a fundamental human right.[55] The Law Society notes that the arguments in favour of protecting that right apply with equal force to protecting the right to vote for all prisoners.

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46 *Report of the Attorney-General*, above n 11 at [14].
47 Electoral Amendment Bill 2025 (186-1) (explanatory note) at 2.
48 Electoral Commission *Report of the Electoral Commission on the 2023 General Election* (May 2024) at 1 and 3. No concerns were raised with respect to prisoner voting in that report, or in the 2020 report.
49 At 9.
50 Electoral Commission *Report of the Electoral Commission on the 2020 General Election and Referendums* (May 2021). The Electoral Commission raised only a logistical issue at 34: "Several opportunities for improvement were identified, particularly in supporting prisoners to understand the enrolment process. This could include a bespoke enrolment form catering to the differences and difficulties with prisoners' address information."
51 Ministry of Justice, above n 28 at 3.
52 Independent Electoral Review, above n 24 at [7.117]–[7.146].
53 Ministry of Justice, above n 28 at 5 and 14.
54 Sch 1, creating new Sch 1AA, Part 4, cl 10(b).
55 New Zealand Bill of Rights Act 1990, s 26.

Recommendation

4.20 In the Law Society's view, the available evidence does not demonstrably justify the restriction proposed. The proposed voting ban creates inconsistencies and arbitrary outcomes, contravenes domestic and international norms, and is an acknowledged breach of the Treaty.

4.21 Accordingly, the Law Society opposes clause 10(2) and new section 86B and recommends that they not proceed.

4.22 Alternatively, should the measure proceed, the Law Society recommends amending clause 10(2) and new section 86B to exclude from their ambit people whose offence was committed before enactment, where a sentence of less than three years was imposed after the Bill comes into force.

4.23 For avoidance of doubt, the Law Society **supports** those parts of the Bill relating to the voting rights of people detained in a hospital or secure facility (clause 10(1), which would repeal section 80(1)(c), and new sections 86H–86L).

5 Clauses 43 and 44: amending bribery and treating offences

5.1 Clauses 43 and 44 of the Bill propose changes to existing sections 216 and 217 of the Act concerning the offences of bribery and treating. In the main, the proposed amendments are intended to clarify the language and drafting of the existing provisions. However, there are issues, as set out below, with their drafting. In particular, clause 43 needs to be reconsidered and significantly redrafted: there are concerns with both the crafting of that offence, and its Bill of Rights Act implications. Each of clauses 43 and 44 introduce additional substantive offences for bribery and treating specifically in respect of persons making the choice between enrolling on the General or Māori rolls, and these elements of the provisions are concerning.

5.2 Clause 43(1), (3) and (4) replace subsections 216(2), (6) and (7). Within those replacement subsections are new offences of bribery where a person, directly or indirectly, or by an agent:

(a) gives money to, or procures a benefit for, a voter to induce them to register on the General roll and not the Māori roll (or vice versa);[56]

(b) gives money to, or procures a benefit for, to any person to induce a voter to register on the General roll and not the Māori roll (or vice versa);[57]

(c) receives or agrees to receive money, benefits, office, place, or employment for themselves or any other person for:[58]

(i) agreeing to register, or registering, as an elector on the General roll and not the Māori roll (or vice versa); or

(ii) agreeing to induce, or inducing, a person to register on the General roll and not the Māori roll (or vice versa).

56 New section 216(2)(a)(iii), and see new section 216(2)(b)(iii).
57 New section 216(2)(c)(iii).
58 New section 216(6)(d) and (e)(iii); and see new section 216(7)(c) and (d)(iii).

5.3 Clause 44(1) replaces subsection 217(2), including a new offence of treating where a person, directly or indirectly, or by an agent, corruptly gives, provides, or pays (in whole or part) for the expense of giving or providing food, drink, entertainment or any other thing to or for a person:[59]

(a) for the purpose of influencing that person or another person to register on the General roll and not the Māori roll (or vice versa);

(b) on account of that person or any other person having registered on the General roll and not the Māori roll (and vice versa).

5.4 The Explanatory Note to the Bill states that these provisions are for the purpose of ensuring free and fair elections by strengthening protections relating to improper influence.[60] The Law Society agrees that the principle of protecting the integrity of electoral processes is a very important one, and that conduct that could influence an elector's choice to elect between the General and Māori roll ought to be regulated in some way to ensure their choice is free from improper influence.

5.5 However, the Law Society considers more careful consideration of the appropriate legislative response is required:

(a) There are key drafting issues requiring correction, if the new clause 43 offence is to be workable and appropriately targeted. The Law Society shares the Attorney-General's view that, as drafted presently, new section 216 is overly broad and inconsistent with sections 12 (right to vote) and 14 (right to freedom of expression) of the Bill of Rights Act. To improve it, we recommend that clause 43 is amended to clarify that the offence of bribery occurs if a person does any of the specified things "corruptly" or "with corrupt intent".

(b) According to the Regulatory Impact Statement, the changes to clauses 43 and 44 to introduce additional substantive offences for bribery and treating specifically in respect of persons making the choice between enrolling on the General or Māori rolls address an issue identified as a gap in sections 216 and 217 as currently in force. The Law Society accepts there are legitimate concerns relating to the potential for improper influence over an elector's choice of General or Māori rolls. However, we consider the proposed amendments to be both damaging and premature. It is not clear that the proposed changes to clauses 43 and 44 have adequately weighed the specific constitutional context of Māori electorates, the underlying policy assumptions, and likely unintended effects. These elements of the proposed new offences should be removed from the Bill to enable consultation, further analysis, and development of appropriate legislative intervention.

5.6 For the avoidance of doubt, the Law Society **supports** clause 45 of the Bill, which amends section 218 in respect of undue influence against electors. The amendments proposed in this clause are appropriately targeted at criminalising conduct such as threatening or using force, inflicting injury, and abduction to compel or punish voting behaviour. That

59 New section 217(2)(a)(iii) and (c)(iii).
60 Electoral Amendment Bill 2025 (186-1) (explanatory note) at 2.

conduct is, as the Attorney-General put it, plainly wrong,[61] and it ought to be the subject of sanction in light of the importance of electoral rights and electoral integrity protected by that sanction.

Clause 43: defining and narrowing the scope of the offence

5.7 Clause 43, as presently drafted, has at least three problems:

(a) A principal deficiency of the new section is that it focuses only on benefits actually conferred prior to the enrolment or voting occurring. It does not, in express terms, apply to a promise of a future benefit — an omission which is odd, because the prior section did so.

(b) The amendment refers to payment of "money". It is at the least seriously arguable that the word "money" only refers to currency. A thing in action (like a direct credit to a bank account, cryptocurrency or a gift card) is not covered.[62] Following on from that is the possible issue of promises of "benefits" that are in fact illusory — such as giving out expired gift cards that would not be redeemable. This would not be caught by the proposed wording.

(c) A third, and significant, issue is that the clause captures activity that is both entirely innocuous and legitimate in the context of elections, to an extent that (as the Attorney-General's advice on the clause identifies) it imposes an unjustified limit on sections 12 and 14 of the Bill of Rights Act. As drafted, the scope of the clause includes simply that people may be encouraged and assisted in one way or another to vote. The Attorney-General gives the following examples of activity that would be within the scope of clause 43(2):[63]

(i) A neighbour transporting an elector to or from the polling station to vote; or a parent giving their 18-year-old child petrol money to drive to the polling station.[64]

(ii) A candidate paying a strategist to develop a winning campaign strategy; a person making donations to a candidate's election campaign; or an elected politician following through on campaign promises which benefit certain persons or groups.[65]

5.8 We note that some of the same issues arise with the current drafting of section 216.[66] However, this Bill presents an opportunity to clarify the conduct that ought to be captured by the offence of bribery. In the Law Society's view, concerns with the section would be considerably cured by attention to its mens rea element. We recommend an amendment to the offence wording, to require an element of corrupt behaviour — in the same way as proposed by clause 44 in relation to the intended subsections 217(2) and

61 *Report of the Attorney-General*, above n 11 at [50].
62 *Adams on Criminal Law* at CA220AA.04.
63 *Report of the Attorney-General*, above n 11: see especially [54], [56] and [57].
64 Clause 43(2)(a).
65 Clause 43(2)(e) and (f).
66 While the current section 216(1) states that commission of bribery is a "corrupt practice", the substantive offences do not include any reference to corrupt behaviour.

(4) (retaining the earlier law in this respect). Inclusion of such a reference would ensure that the offence required proof of intent to bring about a corrupt result.[67] Clause 43 should be amended to clarify that the offences occur if a person does any of the specified things "corruptly" or "with corrupt intent", as defined by the Supreme Court in *Field v R*.[68] This would assist in narrowing the criminality considerably and thereby address concerns that the Attorney-General has raised about the broad nature of the new offence and the potential to capture actions that were not intended to be corrupt. Requiring that the commission of an offence under the Electoral Act involve some element of corrupt behaviour is not unreasonable.

5.9 The Committee may wish to seek further advice from officials regarding the further concerns identified above, relating to illusory benefits and future benefits.

Clauses 43 and 44: inducements when making the choice between enrolling on the General or Māori rolls

5.10 As noted above, each of clauses 43 and 44 introduce additional substantive offences for bribery and treating in respect of persons making the choice between enrolling on the General or Māori rolls. The Law Society considers more careful consideration of the appropriate legislative response is required, due to the particular context of the Māori option, and the prospect of unintended consequences having a chilling effect on organisations providing important information to Māori electors about the Māori option.

Policy rationale does not address specific circumstances of Māori option

5.11 The Law Society is concerned that the underlying policy rationale of the provisions relating to electing between the roll for a General or Māori electorate has not been critically examined. It does not appear that the question has been asked as to whether the policy rationale applies uniformly across influencing a person's vote and influencing a person's choice between General and Māori electoral rolls, and how any potential differences could be addressed in amendment to the bribery and treating provisions.

5.12 The specific constitutional context is an important consideration. It is a long-standing constitutional right for Māori to exercise the option to choose between General or Māori electoral rolls.[69] That right has great significance in our democracy, and in giving effect to the Treaty.[70] An increase in the number of persons on the Māori electoral roll may affect Māori electorate boundaries. It may also have the effect of increasing the number of Māori electorates, while a decrease may do the opposite. But this is the constitutional *intention* of the Māori option: it does not undermine the integrity of electoral processes for Māori exercising the Māori option to have those effects on Māori electorates. In any event, although there is the potential to affect the number of Māori electorates, it is

67 See *Field v R* [2011] NZSC 129 at [66], where the Supreme Court held that the word "corruptly" captures the requirement for a defendant to have knowingly engaged in conduct which the legislature regards as corrupt.

68 Above n 67.

69 See Waitangi Tribunal *Maori Electoral Option Report* (Wai 413, 1994) at 7.

70 At [3.1], [3.8] and [5.1].

important to emphasise that this does not afford Māori any electoral advantage. Māori on the Māori roll get the same number of votes as electors on the General roll.

5.13 The Regulatory Impact Statement suggests that Māori may be targeted by those who "wish to influence their roll choice", thereby inhibiting the ability of electors to freely exercise their electoral rights "to the fullest extent".[71] This position implies that any influence on roll choice is improper or corrupt. It does not consider whether influence can, in fact, enable electors to exercise their electoral rights to the fullest extent, freely and in an informed manner.

5.14 In this respect, the Law Society acknowledges that an analogy can be made with encouraging a person to vote, or not to vote at all, or encouraging a person to refrain from registering as an elector. Making the choice between General and Māori rolls also has consequences for which electorate candidates an elector will be able to vote for at an election. At the same time, encouraging a person to choose one electoral roll over another is not of precisely the same character as encouraging a person to refrain from enrolling (and therefore not being able to vote at all), or encouraging a person to vote or not vote for a particular party. Nor does it affect the political make-up of Parliament: choosing between the General and Māori roll does not have a party-political nexus, and does not impact on the size of particular political parties within Parliament. That is the product of a person's vote, not their choice between General and Māori rolls. That choice is, of course, separate: it does not interfere with a person's free choice when voting.

5.15 These matters do not appear to have been analysed in any detail, and have not been the subject of consultation with Māori.[72] The Law Society considers that these matters should be further considered prior to legislating offence provisions.

Chilling effect

5.16 Another matter of concern is the likely chilling effect on legitimate activity. Although there is no specific prohibition on providing information or even advocacy about one roll or the other, there is a real risk that the legitimate activities of civil society organisations will suffer a chilling effect as a result of the new provisions. This is particularly so in the case of kaupapa Māori organisations, for the reasons set out at [5.20] below. It is compounded by the fact that the bribery provisions, as earlier discussed, are overly broad.[73]

5.17 It is not uncommon for Māori social organisations to undertake work or embark on campaigns to inform electors of their rights, including the right of Māori to choose between the General and Māori rolls. If that work or those campaigns are suppressed as a result of the new provisions, then Māori will be disadvantaged due to receiving less information about the Māori option.[74] In the context of persistently low enrolment and voting rates for Māori electors, this is a matter of considerable concern.

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71 Ministry of Justice *Regulatory Impact Statement: Strengthening electoral offences relating to improper influence* (16 June 2025) at [21].

72 At 2–4 and [26].

73 See [5.7] and following, above.

74 This is acknowledged in the Regulatory Impact Statement: Ministry of Justice, above n 71 at 17 (table 5).

5.18 The chilling effect will likely be significant, given the serious consequences that flow from a conviction for corrupt practice.[75] On conviction, a person may be sentenced to up to two years imprisonment, and may also be fined in addition to any sentence. The fines are substantial: up to $100,000 for a constituency candidate or party official, and up to $40,000 in any other case. In addition, a conviction of corrupt practice has the mandatory, very serious consequences of the person being removed from the electoral roll and being unable to vote for three years not to mention the significant stigma associated with a serious criminal conviction. If the person is a member of Parliament, they will also lose their seat. In light of those possible consequences, civil society organisations may be inclined to take an overly-cautious approach so as not to risk their staff or volunteers being subject to complaints, investigations, and the possibility of conviction.

Inconsistency with section 19 of the Bill of Rights Act

5.19 The Law Society differs from the Attorney-General's view that these provisions are not discriminatory in terms of section 19 of the Bill of Rights Act.[76]

5.20 The principal group affected by the bribery and treating provisions regarding the Māori option is likely to be Māori organisations — particularly Māori social organisations — that are called on by the Electoral Commission to assist in providing information to Māori regarding the Māori option. These organisations typically have kaupapa Māori ways of working that, at times, necessitate overlap between the provision of social services and assisting Māori to enrol. For example, this might include the provision of financial, medical, and social assistance to Māori, alongside the provision of information about the right to, and the effects of, exercising the Māori option. That mahi is often kanohi ki te kanohi to enable more effective uptake of information.[77] It might also be alongside significant celebrations on the Māori calendar (for example, Waitangi Day, Matariki, Matatini, or local events specific to a particular marae), which may involve the provision of free food and/or entertainment to participants. Māori organisations are therefore more likely to be subject to risk of complaints about potential bribery and treating offences, as a direct result of the kaupapa Māori way they work. Moreover, the chilling effect discussed above is likely to be considerable, indicating that the new provisions are disproportionate to the intended objective, and therefore not justified under section 5.

Recommendation

5.21 Those parts of clauses 43 and 44 that criminalise conduct in relation to the Māori option require more careful analysis given the constitutional context. In particular, they should be drafted, tested, and introduced only after consultation with Māori. It is important to consult with Māori organisations that undertake mahi to inform Māori voters of their right to, and the effects of, exercising the Māori option. As the Regulatory Impact Statement observes, there is no evidence of improper influence being exerted on the

75 Electoral Act 1993, ss 216(1), 217(1), 224, 80(1)(e), 98(1)(e) and 100.
76 *Report of the Attorney-General*, above n 2 at [49].
77 See Waitangi Tribunal, above n 60 at [4.6].

choice between rolls, and the risk is only hypothetical at this stage.[78] Pausing to permit consultation and further analysis does not pose an imminent risk of harm.

5.22 For these reasons, the Law Society considers that consultation between Treaty partners and further analysis is required before offence provisions that apply to influencing whether a person votes or enrols can be extended to apply on equal terms to influencing a person's choice between General and Māori electorates. The Law Society recommends that the parts of clauses 43 and 44 that criminalise conduct in relation to the Māori option are removed from the Bill, to enable consultation, further analysis, and development of appropriate drafting.

6 Clause 46: Provision of free food, drink or entertainment around polling places (new section 218A)

6.1 Clause 46 proposes the insertion of new section 218A to the Act, making it an offence to "provide, free of charge, any food, drink, or entertainment" in an area within 100 metres of any entrance to a polling place, or smaller area specified by the Electoral Commission. In the Law Society's view, new section 218A in clause 46 is an unjustified limitation on sections 14 and 20 of the Bill of Rights Act. Clause 46 is inconsistent with sections 14 and 20 because:

(a) it is not connected to an important policy objective;

(b) the intended safeguards are insufficient to preclude capturing legitimate conduct;

(c) the intended safeguards introduce a lack of clarity and increase the likelihood of people being subject to reporting when their conduct is not, in fact, prohibited;

(d) it will have a chilling effect on the legitimate activities of civil society organisations (including within the likes of churches and elderly communities); and

(e) it precludes, and/or will have a chilling effect on, the ability of Māori places and Māori organisations to be polling places while conducting polling activity in accordance with tikanga Māori. There may be other places and organisations within cultural communities that work in accordance with specific cultural values and practices, and which would be similarly affected, including Pacific communities.

6.2 The Law Society recommends deleting this clause from the Bill. If the clause does proceed, it should be amended to:

(a) limit the controlled area to the specific polling place; and

(b) add an exception that precludes application of the new offence to Māori organisations and venues, and events run by Māori and/or Māori organisations, and consider any additional exceptions that may be required for other communities.

78 Ministry of Justice, above n 71 at [21].

Lack of, and no connection to, important policy objective

6.3 The provision of free food, drink or entertainment within 100 metres of a polling station (or some other lesser distance) is not itself improper. It is conduct protected by section 14 of the Bill of Rights Act. To be demonstrably justified under section 5, any limitation on section 14 needs to be both for an important policy objective, and rationally connected to that objective.

6.4 The policy rationale and objective for this prohibition is somewhat unclear. The Explanatory Note says that the provision is to "strengthen the offence of treating" through the prohibitions imposed by clause 46.[79] However, the prohibition itself appears to be a policy option developed as an alternative to amending the treating provisions, not in addition to those amendments.

6.5 In any event, clause 46 is not a treating provision, and it is not connected to the objectives of such provisions. The central objective of treating (and bribery) provisions is to prevent persons from intentionally and corruptly influencing a person's voting choice. Clause 46 instead creates a near-blanket ban on legitimate activities of providing free food, drink, or entertainment even when those activities have no connection to the mischief targeted by treating provisions (that is, improper influence). In the absence of a mens rea component related to the purpose of treating provisions, the limitation posed by clause 46 on the provision of free food, drink, or entertainment is not rationally connected to the stated objective.

Safeguards are insufficient to preclude infringement on rights

6.6 The Bill contains some intended safeguards:

(a) Under new section 218A(1), the person must know they are within a controlled area.

(b) Under new section 218A(2), the prohibition does not apply to entities supplying food, drink, and entertainment free of charge in the ordinary course of business.

(c) New section 218A(3) provides a defence of reasonable excuse.

6.7 These are insufficient to overcome the problem that the prohibition itself is not rationally connected with the central objective of treating provisions. In addition, they are insufficient to ensure the limitation on section 14 is the least restrictive means to achieve the objective.

6.8 Examples of behaviour that would, prima facie, be caught by clause 46 include:

(a) Neighbourhood children giving away homemade lemonade.

(b) Music played on a loudspeaker, or food or drink provided, to advertise or celebrate some other event (for example, charity events, hangi at a marae, theatre groups advertising a production, or businesses promoting a sale).

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79 Electoral Amendment Bill 2025 (186-1) (explanatory note) at 2. The Regulatory Impact Statement states the proposal relates to offences which regulate "improper influence" over electors: Ministry of Justice, above n 71 at 1 and [11].

(c) Free food or drink given away after a person has voted, where their vote could not be influenced.

(d) Members of the public giving another person a chocolate bar or cold drink, or a parent giving their children a snack while they wait in line to vote.

(e) A person playing music in their car for themselves and other passengers as they arrive to vote at a polling place.

6.9 Compounding this is the length of the prohibition period. New section 218A would apply not just to polling places on polling day, but to advance polling places throughout the advance voting period. As such, the number of people and events that may be caught by the provision is extensive. This not only exacerbates the lack of rational connection with the objective, but also indicates the provision is not the least restrictive means to achieve it. For instance, those who have already voted or who have no intention of voting but are sharing food between themselves or playing music from their cars at loud volume near a polling place may be subject to complaints, referred for investigation, and potentially be convicted.

Safeguards contribute to a lack of clarity and increase the prospect of being subject to reporting

6.10 The intended safeguards have the effect of reducing clarity about what is and is not permitted. The Bill's Regulatory Impact Statement suggests that the proposed provision makes it "straightforward to identify and prosecute offending" and is "more readily enforceable than the status quo".[80] New section 218A imposes an apparently brightline prohibition, which is likely to be the primary understanding that members of the general public take from the provision. It is therefore likely to result in an increase in members of the public reporting concerns of potential offending to the Electoral Commission.[81] However, the intended safeguards mean it will not be straightforward for members of the public to know, in any given case, whether:

(a) the person offering free food, drink or entertainment knows they are in a prohibited area;

(b) an entity is acting in their ordinary course of business; or

(c) the person or entity has a reasonable excuse.

6.11 It may also not be self-evident whether the applicable prohibited area is some lesser distance (that the Electoral Commission in its discretion has specified) than 100 metres from the entry to a polling place.

6.12 The first risk which arises is unjustified complaints. Combined with a likely increase of reporting to the Electoral Commission, more people are likely to be referred on for Police enquiry — including some whose activities are not caught by the prohibition at all. Wholly innocent behaviour should not be the subject of Police enquiry, or the threat of a charge or conviction. There is an additional and more fundamental risk: that the

80 Ministry of Justice, above n 71 at [51].
81 Ministry of Justice, above n 71 at 14.

intended safeguards are insufficient to exclude legitimate activities or leave those providing the activities themselves uncertain as to whether they are complying (since they cannot know for certain in advance what will constitute a reasonable excuse).

6.13 Accordingly, even with the intended safeguards, the provision is too broad and cannot be said to be a justified limitation to section 14.

Breach of section 20 of the Bill of Rights Act and the Treaty

6.14 A particularly concerning aspect of this provision is the impact from a tikanga Māori perspective. The Law Society considers clause 46 fails to address Treaty matters and is a breach of section 20 of the Bill of Rights Act, as it infringes on the rights of minorities to enjoy their culture. Although both the Regulatory Impact Statement and the Independent Electoral Review have noted that food and drink are associated with manaakitanga and new section 218A would criminalise that practice,[82] the analysis of the impact on Māori and from a Treaty perspective is incomplete.

6.15 In the particular context of te ao Māori, the safe passage of people (and things) between states of tapu and noa is of vital importance. Principled and detailed tikanga surround that safe passage. Kai can play a particularly significant role in the tikanga of returning people or things from a state of tapu to a state of noa. The use of kai as part of this process is routinely practiced across Aotearoa as part of pōwhiri, mihi whakatau, tā i te kawa (dawn ceremonies), and tangihanga.[83] It is also not an uncommon practice in smaller or less formal occasions.

6.16 New section 218A will prohibit, or have a significant chilling effect on:

(a) the offering of free kai at a polling place that happens to be a Māori venue or within a controlled area around a polling place by kaupapa Māori organisations; and

(b) kaupapa Māori organisations participating as polling stations if they wish to incorporate kai as part of their tikanga.

6.17 This means that Māori electors who wish to partake in kai as part of their passage from tapu (while voting) to noa (post-voting, signifying return to ordinary life) will either:

(a) be prohibited from doing so on their own terms; or

(b) suffer a reduction in the options available to them, due to the likelihood of a chilling effect on kaupapa Māori organisations willing to take the risk of their staff or volunteers being subject to complaints, investigations, and possible convictions.

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82 Ministry of Justice, above n 71 at [18] and 13 (table 2); and see Independent Electoral Review, above n 24 at [18.16].

83 See for example Hirini Moko Mead *Tikanga Māori: Living by Māori Values* (2003, Huia, Wellington) at 81–82, 131 and 151; New Zealand Law Commission *He Poutama* (NZLC SP 24, 2023) at [2.43]; Wiremu Doherty, Hirini Moko Mead and Pou Temara *Tikanga* (NZLC SP 24, Appendix 1) at [3.58]–[3.61]; Ani Mikaere "Theorising karanga to make sense of our reality" *Whakatupu Mātauranga* (vol 1, 2016) at 115.

6.18 As noted above, the Law Society considers that the intended safeguards of "ordinary course of business" or "reasonable excuse" are inadequate. They are still further inadequate given:

(a) The significant intrusion (and chilling effect) on cultural expression it is likely to have on kaupapa Māori organisations implementing tikanga as part of electoral activity and to best serve their communities.

(b) The potential effect of discouraging Māori organisations from being polling places, which in turn would put in jeopardy endeavours to respond to the chronically low voting rates for Māori electors.[84]

6.19 There is no demonstrable justification for limiting the right of Māori to enjoy their culture as new section 218A proposes. That is particularly so, as the Bill and supporting materials do not identify a sufficiently important objective served by the limitation or rational connection between the limitation and any such objective.

6.20 As noted above, there may be similar impacts on the section 20 rights of other minorities. This does not appear to have been considered in the Regulatory Impact Statement or the Section 7 report.

Recommendation

6.21 The Law Society opposes clause 46 and considers it should not proceed. We agree with the conclusion identified in the Regulatory Impact Statement that a more effective solution would be to incorporate the provision of food, drink, and entertainment into the section 216 bribery provision (subject to appropriate amendment of that provision: as above).[85] The benefits of that approach are that:

(a) The concept of bribery is directly linked to the stated policy objective of preventing improper influence over electors.

(b) The incorporation of a relevant mens rea would prohibit a narrower range of activities, and the limit to sections 12 and 14 of the Bill of Rights Act would therefore be more readily justified under section 5.

(c) It would have less of a chilling effect on the legitimate activities of civil society organisations.

(d) It would be unlikely to breach section 20 of the Bill of Rights Act, as a result of the incorporation of the relevant mens rea.

6.22 The Law Society therefore recommends the solution preferred in the Regulatory Impact Statement. Otherwise, we reiterate our recommendation above that, at a minimum, clause 46 should be amended to:

(a) limit the controlled area to the specific polling place itself; and

84 See Independent Electoral Review, above n 24 at [11.43]–[11.45].
85 Ministry of Justice, above n 71 at [49].

(b) provide that new section 218A does not apply to Māori organisations and venues, and events run by Māori and/or Māori organisations,[86] and consider any additional exceptions that may be required for other communities.

7 Informing Māori of electoral option details

7.1 In clauses 64 and 65 of the Bill, amendments are proposed to the definition of "local government election period", and to the time at which the Electoral Commission is to send Māori electors a reminder of their right to exercise the option. The Law Society is concerned about a possible error in the timing of when the Electoral Commission is to give notice of the Māori option to Māori electors ahead of local government elections. We query whether, as drafted, there is a risk of a real practical (and likely unintended) problem with the changes proposed in clause 65.

7.2 Clause 64 amends section 78B(4) of the Act, which defines the local government election period. Currently, the definition applies to local government elections held under section 10(2) of the Local Electoral Act 2001. The clause extends the definition to include:

(a) local government elections postponed under section 24A(3)(c) or 258I(1) of the Local Government Act 2002 (that is, a postponed triennial general election); and

(b) local government elections called by the Minister under s 258M of the Local Government Act 2002.[87]

7.3 The Law Society has no concerns with this clause.

7.4 Clause 65 amends section 89DA(2), which sets the time at which the Electoral Commission is to send Māori electors a reminder of their right to exercise the option.[88] This is currently three months before the commencement of the local government election period, which in turn for an election held under section 10(2) of the Local Electoral Act 2001 is "3 months before polling day". In clause 65, this is changed. The Electoral Commission must send to Māori electors information about the exercise of the Māori option not less than 3 months before the commencement of "*an election*" (not the *election period*).

7.5 The present provision is important, because Māori are prevented from changing rolls for a period of three months before polling day.[89] There appears no further provision in the Bill defining what the word 'election' in the proposed new clauses is intended to mean.

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86 We note that, while proposing this as a possible compromise solution, we consider that it has potential flaws and is an inadequate answer to the issue compared to the preferred solution of incorporating the provision of food, drink, and entertainment into the section 216 bribery provision, as the RIS recommends.

87 Local Government Act 2002, s 258M provides that "[t]he Minister may, by notice in the *Gazette*, call a general election of a local authority if the Minister believes, on reasonable grounds, that the membership of the local authority is such that the local authority is unable or unwilling to perform its functions and duties and exercise its powers or there is a significant or persistent failure by the local authority to do so in respect of 1 or more of those functions, duties, and powers."

88 Electoral Act 1993, s 89DA (updating Māori option details).

89 Electoral Act 1993, s 78B (Māori option may not be exercised in local government election period), meaning 3 months before polling day: 78B(4).

(a) The underlying intention may only be, for example, to revise the statutory terminology in a way more compatible with future moves away from a 'polling day' involving physical voting for local government elections — so that 'election' in that case should then be understood (perhaps) to encompass the entirety of the polling or voting period, and information should be provided not less than 3 months ahead of the commencement of that period. However, this would not resolve the Law Society's concerns, which relate to ensuring Māori voters have sufficient notice and sufficient time to change rolls outside of the 3-month prohibition on exercising the electoral option (being the *election period*, not the polling period).

(b) At best, the term 'election' is not usefully defined for such (possibly) intended new purposes; and its meaning in other parts of the legislation may conflict with intentions that it should signal the commencement (not conclusion) of the election period. Under the Local Electoral Act, "election means *election to any office* in, under, or in connection with any local authority, local board, community board, or other body required by law to be filled by the election of the electors of any local government area" (which will occur on — or in fact perhaps after — polling day).[90]

(c) The Law Society is consequently concerned that, if the choice of new drafting language were taken to imply a purposeful departure from the present statutory references to the 3-month 'election period', this could leave insufficient time or no time for Māori to exercise the option to change rolls. It would be consistent with the draft clause, for example, for the Electoral Commission to send out reminders 3 months and 1 day before a local government election. That would leave Māori with no effective period in which to change rolls.

7.6 Given its potential consequence, the Law Society urges the Committee to test this point with officials. We recommend, if needed to correct or clarify the point, that new section 89DA(2) in clause 65 be changed, so that consistent with the present position, Māori are informed of their right to exercise the option in a way that ensures they have at least three months to exercise that option ahead of any election period in which they are unable to do so. We note that, whereas ordinary triennial local government elections are statutorily set and will fall at predictable times, the extraordinary types of election now included may be triggered at variable notice. If this has the effect that in the extraordinary types of election referred to an election may not be triggered at any less than 6 months' notice (to protect the entitlement of Māori to exercise the Māori option), the Law Society would support this result.

8 Recommendations

8.1 Clause 4(2) and the new definition of "close of registration" in section 3(1) **should not proceed**.

90 Local Electoral Act, s 5(1); see also, to similar effect, "election" as defined under the Electoral Act which means 'an election of a member of the House of Representatives'.

8.2 Clause 10(2) and new section 86B **should not proceed**. Alternatively, should the measure proceed, clause 10(2) and new section 86B should be amended to exclude from their ambit people whose offence was committed before enactment, where a sentence of less than three years was imposed after the Bill comes into force.

8.3 In clauses 43 and 44:

(a) **Amend** clause 43 to provide a mens rea element, to the effect that the offences occur if a person does any of the specified things "corruptly" or "with corrupt intent", mirroring section 217 regarding treating.

(b) **Seek further advice** of officials relating to whether the offence should extend to future benefits and illusory benefits (and any necessary drafting changes to achieve this).

(c) **Remove** from the Bill the parts of clauses 43 and 44 that criminalise conduct in relation to the Māori option, to enable consultation, further analysis, and development of appropriately informed drafting.

8.4 In clause 46:

(a) **Delete** clause 46 and as proposed in the Regulatory Impact Statement, incorporate the provision of food, drink, and entertainment into the section 216 bribery provision;

OR

(b) **Amend** clause 46 to:

(i) limit the controlled area to the specific polling place itself; and

(ii) provide that new section 218A does not apply to Māori organisations and venues, and events run by Māori organisations and consider any additional exceptions that may be required for other communities.

8.5 In clause 65:

(a) **Seek advice** on the choice of the term "election" as opposed to "election period".

(b) **If needed, amend** new section 89DA(2) in clause 65, so that consistent with the present position, Māori are informed of their right to exercise the option in a way that ensures they have no less than three months to exercise the option ahead of any election period in which they are unable to do so.

Nāku noa, nā

Frazer Barton
President