

Electoral (Integrity) Amendment Bill

Government Bill

Explanatory note

General policy statement

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

Departmental disclosure statement

The Ministry of Justice is required to prepare a disclosure statement to assist with the scrutiny of this Bill. The disclosure statement provides access to information about the policy development of the Bill and identifies any significant or unusual legislative features of the Bill.

A copy of the statement can be found at <http://legislation.govt.nz/disclosure.aspx?type=bill&subtype=government&year=2017&no=6>

Clause by clause analysis

Clause 1 is the Title clause.

Clause 2 is the commencement clause, and provides that the Bill comes into force on the day after the date on which it receives the Royal assent.

Clause 3 states that the Bill amends the Electoral Act 1993 (the **principal Act**).

Clause 4 amends section 55, which sets out when the seat of a member of Parliament becomes vacant. The amendment provides that the seat of a member of Parliament will also become vacant when the member ceases, under *new section 55A*, to be a parliamentary member of a political party for which he or she was elected.

Clause 5 of the Bill inserts *new sections 55AAB to 55E*.

New section 55AAB sets out the purposes of *new sections 55A to 55E*.

New section 55A applies to all members of Parliament other than members who were elected as independent members. The seat of a member of Parliament to whom this section applies becomes vacant if the member ceases to be a parliamentary member of the political party for which the member was elected. A member ceases to be a parliamentary member of the political party for which the member was elected only if—

- the member delivers to the Speaker a written notice that complies with *new section 55B* (which is a notice indicating that the member has resigned from parliamentary membership of the political party to which he or she was elected or wishes to be recognised for parliamentary purposes as either an independent member of Parliament or a member of another political party); or
- the parliamentary leader of the political party for which the member of Parliament was elected delivers to the Speaker a written notice that complies with *new section 55C*.

New section 55B sets out the formal requirements for a notice issued by a member of Parliament to the Speaker.

New section 55C sets out the formal requirements for a notice issued by the parliamentary leader of a political party to the Speaker.

New section 55D sets out the procedure that must be followed before a notice can be issued by the leader of a political party to the Speaker. In order to be effective, a notice from the parliamentary leader of a political party must be accompanied by a statement in writing, signed by that leader, indicating that the parliamentary leader reasonably believes that the member of Parliament concerned has acted in a way that has distorted, and is likely to continue to distort, the proportionality of political party representation in Parliament as determined at the last general election.

The statement must also indicate that the parliamentary leader has delivered to the member of Parliament concerned written notice—

- informing the member that the parliamentary leader considers that the relevant provisions apply to the member, and the reasons for that opinion; and
- advising the member that he or she has 21 working days from the date of receiving the notice to respond to the matters raised in the notice by notice in writing addressed to the parliamentary leader.

Additionally, the statement must indicate that, after consideration of the conduct of the member and his or her response (if any) by the parliamentary members of the political party for which the member was elected, the parliamentary leader of that party

confirms that at least two-thirds of the parliamentary members of that party agree that notice should be given by the parliamentary leader under *new section 55A(3)(b)*.

Finally, the statement must confirm that all other requirements imposed by the rules of the political party for which the member was elected that relate to the giving of a notice under *new section 55A(3)(b)* have been complied with, or that the party's rules impose no such further requirements.

New section 55E sets out definitions of the terms parliamentary leader and political party for which the member of Parliament was elected.

New sections 55AAB to 55E reinstate in the principal Act the operative provisions of the Electoral (Integrity) Amendment Act 2001, which expired at the close of 17 September 2005. Those provisions were considered by the Supreme Court in *Prebble & Ors v Huata* [2005] 1 NZLR 289. In that case, the Supreme Court decided that the leader of the ACT party could deliver a notice to the Speaker under section 55A(3)(b) to create a vacancy in the seat of Donna Awatere Huata, who was no longer a member of the ACT party, but whose status for parliamentary purposes was as an independent member. The Supreme Court ruled that the leader of the ACT party had reasonable grounds for belief that the proportionality of political party representation was distorted when a member of Parliament continued to serve in Parliament after ceasing to be a member of the political party for which she was elected (the ACT party).

Clause 6 amends section 133 so that if, after a petition has been presented against the return of a member representing an electoral district, his or her seat becomes vacant under either section 55 or *new section 55A*, the vacancy is not filled until after the petition has been dealt with.

Hon Andrew Little

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The Parliament of New Zealand enacts as follows:

1 Title

This Act is the Electoral (Integrity) Amendment Act **2017**.

2 Commencement

This Act comes into force on the day after the date on which it receives the Royal assent. 5

3 Principal Act

This Act amends the Electoral Act 1993 (the **principal Act**).

4 Section 55 amended (How vacancies created)

After section 55(1)(f), insert:

- (fa) if, **under section 55A**, he or she ceases to be a parliamentary member of the political party for which he or she was elected; or

5 New sections 55AAB to 55E inserted

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After section 55AA, insert:

55AAB Purpose of sections 55A to 55E

The purpose of **sections 55A to 55E** is to—

- (a) enhance public confidence in the integrity of the electoral system; and
 (b) enhance the maintenance of the proportionality of political party representation in Parliament as determined by electors. 10

55A Member of Parliament ceasing to be parliamentary member of political party

- (1) This section applies to every member of Parliament, except a member elected as an independent. 15
- (2) The seat of a member of Parliament to whom this section applies becomes vacant if the member of Parliament ceases to be a parliamentary member of the political party for which the member of Parliament was elected.
- (3) For the purposes of **subsection (2)**, a member of Parliament ceases to be a parliamentary member of the political party for which the member of Parliament was elected only if— 20
- (a) the member of Parliament delivers to the Speaker a written notice that complies with **section 55B**; or
- (b) the parliamentary leader of the political party for which the member of Parliament was elected delivers to the Speaker a written notice that complies with **section 55C**. 25

55B Notice from member of Parliament

A written notice under **section 55A(3)(a)** must—

- (a) be signed by the member of Parliament by whom it is given; and
 (b) be addressed to the Speaker; and 30
- (c) notify the Speaker that the member of Parliament—
- (i) has resigned from the parliamentary membership of the political party for which the member of Parliament was elected; or
- (ii) wishes to be recognised for parliamentary purposes as either an independent member of Parliament or a member of another political party. 35

55C Notice from parliamentary leader of political party

A written notice under **section 55A(3)(b)** must—

- (a) be signed by the parliamentary leader of the political party for which the member of Parliament who is the subject of the notice was elected; and
- (b) be addressed to the Speaker; and
- (c) be accompanied by a statement that complies with **section 55D**.

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55D Form of statement to be made by parliamentary leader

The statement referred to in **section 55C(c)** must be in writing and signed by the parliamentary leader concerned, and must—

- (a) state that the parliamentary leader reasonably believes that the member of Parliament concerned has acted in a way that has distorted, and is likely to continue to distort, the proportionality of political party representation in Parliament as determined at the last general election; and
- (b) state that the parliamentary leader has delivered to the member of Parliament concerned written notice—
 - (i) informing the member that the parliamentary leader considers that **paragraph (a)** applies to the member and the reasons for that opinion; and
 - (ii) advising the member that he or she has 21 working days from the date of receiving the notice to respond to the matters raised in the notice by notice in writing addressed to the parliamentary leader; and
- (c) state that, after consideration of the conduct of the member and his or her response (if any) by the parliamentary members of the political party for which the member was elected, the parliamentary leader of that party confirms that at least two-thirds of the parliamentary members of that party agree that written notice should be given by the parliamentary leader under **section 55A(3)(b)**; and
- (d) state either—
 - (i) that all other requirements imposed by the rules of the political party for which the member of Parliament was elected relating to the giving of a notice under **section 55A(3)(b)** have been satisfied; or
 - (ii) that there are no other requirements imposed by the rules of the political party for which the member of Parliament was elected relating to the giving of a notice under **section 55A(3)(b)** to be satisfied.

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55E Definitions

For the purposes of **sections 55A to 55D**, unless the context otherwise requires,—

parliamentary leader, in relation to a political party, means—

- (a) the member of Parliament recognised for the time being as the parliamentary leader of the political party by the majority of parliamentary members of that party; or 5
- (b) the member of Parliament for the time being acting as the parliamentary leader of that party

political party for which the member of Parliament was elected means,— 10

- (a) in the case of a member elected to represent an electoral district, the political party that nominated the member as a constituency candidate; and
- (b) in the case of a member of Parliament elected from a party list submitted under section 127, or declared to be elected under section 137(4) to supply a vacancy, the political party on whose list the member’s name appeared. 15

6 Section 133 amended (No writ to issue pending election petition)

In section 133, after “section 55”, insert “or **55A**”.