

Electoral (Māori Electoral Option) Legislation Bill

Government Bill

As reported from the Justice Committee

Commentary

Recommendation

The Justice Committee has examined the Electoral (Māori Electoral Option) Legislation Bill and recommends by majority that it be passed. We recommend all amendments by majority.

About the bill as introduced

The Electoral (Māori Electoral Option) Legislation Bill aims to support Māori participation in parliamentary and local authority elections by removing current restrictions on people transferring between the Māori and general electoral rolls. It would amend the Electoral Act 1993, the Local Electoral Act 2001, and the Bay of Plenty Regional Council (Māori Constituency Empowering) Act 2001.

The bill would replace the current Māori Electoral Option with a continuous option. At present, electors of Māori descent can only change between the Māori and general electoral rolls in a four-month period that occurs every five to six years. This is in the year of a census, or the following year if a census and general election are in the same year. The continuous option approach would enable people of Māori descent to change between the Māori and general electoral rolls at any time, with no restrictions on the number of changes.

The bill includes an exception to the continuous option. A person residing in an area where there was a parliamentary by-election could not move between electoral rolls, except when a local election was being held at the same time.

Legislative scrutiny

As part of our consideration of the bill, we have examined its consistency with principles of legislative quality. We have no issues regarding the legislation's design to bring to the attention of the House.

Proposed amendments

This commentary covers the main amendments we recommend to the bill as introduced. We do not discuss minor or technical amendments.

Special voting in local elections

Section 21(b) of the Local Electoral Act specifies when an elector may vote as a special voter in a local election. They must have qualified as an elector but not be entered on the roll of the specific ward, local board area, community, or constituency. Clause 15 of the bill would amend section 21 to enable an elector who had exercised the Māori option in an election period to vote as a special voter.

We understand that the Electoral Act and Local Electoral Act already allow voters who qualify as electors but are not entered on the roll to vote by special vote. We therefore consider that clause 15 is unnecessary and recommend deleting it.

Ensuring that the integrity of the rolls is maintained

Clause 6, proposed new section 78A, would limit the ability to switch between a Māori and a General electorate in an election period for a by-election. The bill defines “election period” as “the period beginning on the date on which the notice of vacancy is published and ending on the day after the day of the return of the writ”.

During an election period, the Electoral Commission could continue to receive applications to change roll types. However, proposed new section 78A(2) specifies that it could not process applications for a person registered as an elector or named on a dormant roll if it would result in them becoming eligible to vote in a by-election. Proposed new section 78A(3b) provides an exception to section 78A(2). A person could exercise the Māori option during the election period for a by-election if the by-election period coincided with any part of the process for the triennial local election. We understand that this provision is intended to ensure that voters could continue to exercise their roll choice for local elections.

Sections 88 and 98(6) of the Electoral Act specify that the Electoral Commission may not register an elector or remove a name from the roll if the application is received between the day after polling day and the day that the writ is returned. We understand that this aims to uphold the integrity of the vote by giving the Commission time to scrutinise the rolls and determine the official results for an election.

We note that, in situations where a parliamentary by-election and the triennial local election are concurrent, some Māori voters may wish to switch rolls between polling day for the by-election and the day before polling day for the local election. As introduced, new section 78A would allow Māori voters to change rolls up until the return of the writ for the by-election. However, this could include a period when the Electoral Commission was unable to process changes to the roll under sections 88 and 98(6).

To ensure that the integrity of elections is maintained, we believe new section 78A(3)(b) should be consistent with sections 88 and 98(6) of the Electoral Act. We

therefore recommend an amendment to make it clear that voters could continue to change rolls under section 78A(3)(b) unless sections 88 and 98(6) applied.

We also recommend amending the definition of “election period” in proposed new section 78A and inserting a definition for “local election period”. Under our proposed amendments, the election period would end on polling day for by-elections. For local elections, it would begin when a notice under section 52 of the Local Electoral Act was published, and would end on polling day. We consider that these amendments would help the Electoral Commission to implement new section 78A.

Definition of Māori electoral population

Clause 4, amended section 3, would replace the definition of “Māori electoral population” in the Electoral Act. Clause 14, amended section 5, would insert the same definition in the Local Electoral Act. The definition states how the Māori electoral population would be calculated.

As introduced, the definitions refer to the total number of Māori persons, on counting or census day, registered as electors of Māori or General electoral districts and named on the dormant rolls for Māori or General electoral districts. However, we received advice that it is not possible to be on the Māori or general roll and the dormant roll at the same time. Therefore, we recommend amending clauses 4 and 14 to specify that the definition refers to voters registered for either Māori or General electoral districts, or people named on the dormant roll.

New Zealand National Party differing view

National members support the status quo in relation to the Māori electoral option, which is that a Māori elector has the opportunity to choose the roll on which they are an elector, i.e. General or Māori, within a 4-month period following each census. This ensures the correct proportionality is maintained, so that Māori and General electorates have the same voting age population. We are open, however, to providing more opportunities between censuses, but not to the extent proposed in this bill.

Providing the opportunity to switch between rolls at any time and as many times as a person likes, as proposed by the bill, leaves the system open to tactical roll switching. This is acknowledged in the bill with regard to by-elections, where people could shift between rolls for tactical purposes. The bill rightly precludes roll switching during a by-election.

The bill does not include an equivalent prohibition in relation to the period around general elections. It should do so, because the same opportunity for tactical roll switching applies—meaning that one group of New Zealanders have the opportunity to choose which roll will provide the greatest advantage in any given election (the outcome of a person’s Māori electorate might be a forgone conclusion, while the General electorate in which they live might be highly marginal, or vice versa).

We are disappointed, given the desirability of bipartisan support for electoral law changes, that no effort has been made by the Government to accommodate our concerns.

We note also that the committee is awaiting written advice on the impact of clause 5 of the bill requiring 75 percent support of Parliament, and still await that advice.

ACT New Zealand differing view

ACT supports the intention of this bill. That is, enabling those registered on either the General or Māori rolls greater flexibility to change electoral rolls. The vision is that the policy will encourage more voters of Māori descent to participate during election periods.

ACT agrees that the current requirement of an elector having to stay on the Māori roll for five years is nonsensical. However, we do not agree that any elector should have the ability to swap and change electoral rolls as often as they like, the exception being during a by-election. This is called the continuous model.

It is our view that one person, one vote means that any elector who changes their electoral roll choice should do so only once within an electoral cycle. The option to swap rolls is not available to every elector. As one submitter has pointed out, this does not put all voters on an even playing field. Having consistency in allowing a roll change to occur only once within an election cycle shows a fairness to participation for all potential voters.

A local council expressed concerns around administration of information with the continuous model being implemented. ACT shares the same concerns which also include potential costs to local councils both in time and money when it comes to management of the process. We note advice from the officials that they had no concerns and in their departmental report referred to no issues around collecting fluctuating statistical data as other avenues can be used to make local determinations. In our opinion this may mean councils with less budget would be forced to access statistical information for planning purposes from other agencies with unknown cost implications.

Much can be said about the impact the policy in this format can have around encouragement of participation in elections. While encouraging one group of electors, we are potentially discouraging another by disadvantaging them from accessing the same voting rights that their peers receive within a continuous model.

The amendments made to date at select committee are agreed to by us. However, we cannot support the continuous model as drafted. ACT says that those that make a choice to change rolls should stand by their decision for one election cycle. We would support this bill in its entirety if a change was made to allow only one electoral roll change per election cycle, i.e. once every three years.

Appendix

Committee process

The Electoral (Māori Electoral Option) Legislation Bill was referred to the committee on 30 June 2022.

We called for submissions on the bill with a closing date of 30 July 2022. We received and considered 121 submissions from interested groups and individuals. We heard oral evidence from 13 submitters at hearings in Wellington and by videoconference.

We received advice on the bill from the Ministry of Justice. The Office of the Clerk provided advice on the bill's legislative quality. The Parliamentary Counsel Office assisted with legal drafting.

Committee membership

Ginny Andersen (Chairperson)

Hon Paul Goldsmith

Emily Henderson

Nicole McKee

Hon Mark Mitchell

Simon O'Connor

Willow-Jean Prime

Vanushi Walters

Arena Williams

Key to symbols used in reprinted bill

As reported from a select committee

text inserted by a majority

~~text deleted by a majority~~

Hon Kiritapu Allan

Electoral (Māori Electoral Option) Legislation Bill

Government Bill

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The Parliament of New Zealand enacts as follows:

1 Title

This Act is the Electoral (Māori Electoral Option) Legislation Act **2022**.

2 Commencement

This Act comes into force on 31 March 2023.

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Part 1

Amendments to Electoral Act 1993

3 Principal Act

This Part amends the Electoral Act 1993.

4 Section 3 amended (Interpretation)

10

(1) In section 3(1), replace the definition of **Maori electoral population** with:

Māori electoral population means a figure representing both the persons registered as electors of the Māori electoral districts and a proportion of Māori persons who are not registered as electors of any electoral district and a proportion of Māori persons under the age of 18 years, which figure must be fixed—

15

(a) by ascertaining a proportion determined by dividing—

(i) the total number of persons, on counting day, ~~registered as electors of Māori electoral districts and named on the dormant rolls for Māori electoral districts; by either—~~

(A) registered as electors of Māori electoral districts; or

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(B) named on the dormant rolls for Māori electoral districts; by

(ii) the total number of Māori persons, on counting day, ~~registered as electors of Māori electoral districts or General electoral districts and named on the dormant rolls for Māori electoral districts or General electoral districts; and either—~~

25

	(A) <u>registered as electors of Māori electoral districts or General electoral districts; or</u>	
	(B) <u>named on the dormant rolls for Māori electoral districts or General electoral districts; and</u>	
	(b) by applying the proportion ascertained under paragraph (a) to the total number of ordinarily resident Māori persons on census day	5
(2)	In section 3(1), insert in their appropriate alphabetical order: counting day has the meaning given in section 79(2) on census day has the meaning given in section 79(2)	
5	Section 35 amended (Division of New Zealand into General electoral districts)	10
(1)	Replace section 35(5) with:	
(5)	The Electoral Commission must supply the Government Statistician with the information required to be supplied under section 79(1) in accordance with that section.	15
(2)	Replace section 35(6)(b) with:	
(b)	has been supplied by the Electoral Commission with the information required to be supplied under section 79(1) ,—	
(3)	In section 35(6), replace “at the close of the last day of that period” with “on counting day”.	20
6	Sections 76 to 79 replaced	
	Replace sections 76 to 79 with:	
76	Māori option	
(1)	A Māori who is eligible to be registered as an elector may choose to be registered as an elector of—	25
(a)	a Māori electoral district; or	
(b)	a General electoral district.	
(2)	The option under subsection (1) (the Māori option) may be exercised by a person in accordance with section 77 .	
77	Exercise of Māori option	30
	<i>Exercise of option by 17-year olds</i>	
(1)	A Māori who is 17 years old may exercise the Māori option at the time they apply for registration as an elector under section 82(2).	
	<i>Exercise of option when person applies for registration as elector</i>	
(2)	A Māori may exercise the Māori option at the time they apply to be registered for registration as an elector in an application under section 83.	35

	<i>Exercise of option by registered elector</i>	
(3)	A Māori who is registered as an elector may, at any time, exercise the Māori option by advising the Electoral Commission,—	
	(a) in the case of a person registered as an elector of a Māori electoral district, that they wish to be registered as an elector of a General electoral district:	5
	(b) in the case of a person registered as an elector of a General electoral district, that they wish to be registered as an elector of a Māori electoral district.	
78	Process for and effect of exercise of Māori option	10
	<i>How option is exercised</i>	
(1)	A person may exercise the Māori option by indicating their choice,—	
	(a) in writing, by completing and signing a form that the Electoral Commission has approved and returning it to the Electoral Commission:	
	(b) in an approved electronic medium, by providing the required information:	15
	(c) in an application for registration as an elector.	
	<i>Representatives may act on behalf of some persons</i>	
(2)	A person who is outside New Zealand or who has a physical or mental impairment may exercise the Māori option through a representative and section 86 applies with any necessary modifications.	20
	<i>Effect of exercise of option</i>	
(3)	The exercise of the Māori option (if not made in an application under section 83) is to be treated as an application for registration as an elector for the purposes of—	25
	(a) the definition of electoral roll in section 3(1); and	
	(b) sections 89, 89A, 98, and 103.	
78A	Māori option paused for registered electors and persons on dormant roll if by-election called	
(1)	This section applies if the Speaker has published a notice of vacancy for an electoral district.	30
(2)	In the election period, the Electoral Commission must not do either of the following for a person relating to that district if the result will be that the person is eligible to vote in <u>the</u> by-election to fill that vacancy:	
	(a) give effect to advice given under section 77(3) (by a person who is registered as an elector):	35
	(b) if processing an application under section 83 in which the Māori option is exercised by a person named on a dormant roll, give effect to the	

choice made by the person if it would register them as an elector for a different type of district from that for which they were previously registered.

(2A) To avoid doubt, **subsection (2)** relates to changing the type of district in which the person is entitled to vote only and does not otherwise affect any other section in this Act relating to the registration of electors. 5

(3) **Subsection (2)** does not apply—

(a) if no writ is issued under section 131:

(b) ~~for any period during which any part of the process for the by-election, and any part of the process for an election under section 10(2) of the Local Electoral Act 2001 for a corresponding local electoral district, are both underway~~ for any part of a local election period for an election in a corresponding local electoral district that overlaps with the election period for the by-election. 10

(4) In this section,— 15

corresponding local electoral district means a district of a local authority that has a geographical area that overlaps with the geographical area of the electoral district in which ~~the~~ a by-election is being held

election period means the period beginning on the date on which the notice of vacancy is published and ending ~~on the day after the day of the return of the writ~~ polling day 20

local election period means a period beginning on the day a notice is issued for an election under section 52 of the Local Electoral Act 2001 and ending on polling day

person relating to that district means a person— 25

(a) whose place of residence in the district in which the vacancy has arisen and for which registration as an elector is claimed is the same as their place of residence immediately before the notice of vacancy was published; or

(b) who has moved their place of residence, for which registration as an elector is claimed, within or into the district in which the vacancy has arisen. 30

79 Determination of Māori electoral population

(1) For the purpose of enabling the Government Statistician to calculate the Māori electoral population, the Electoral Commission must, as soon as practicable after counting day, supply to the Government Statistician the following information as on counting day: 35

(a) the total number of persons registered as electors of Māori electoral districts; and

- (b) the total number of Māori persons registered as electors of General electoral districts; and
- (c) the total number of persons whose names are on the dormant rolls maintained under section 109 for Māori electoral districts; and
- (d) the total number of Māori persons whose names are on the dormant rolls maintained under section 109 for General electoral districts. 5
- (2) In this Act,—
- counting day**—
- (a) means on census day; or
- (b) if a periodic census and a general election take place in the same calendar year, means 1 April in the following year 10
- on census day**, in relation to a number or information, means that number or information as determined by the last periodic census.
- 7 Section 86B amended (Prison manager to collect and send enrolment information to Electoral Commission)** 15
- Replace section 86B(1)(b) with:
- (b) if the prisoner is Māori, whether their choice is to be registered in a Māori electoral district or a General electoral district.
- 8 Section 89 amended (Procedure following application for registration)**
- Repeal section 89(2). 20
- 9 Section 89D amended (Inquiry to be made to update electoral rolls)**
- After section 89D(5), insert:
- (5A) An inquiry under subsection (1), for a Māori registered as an elector,—
- (a) must inform the elector that they are currently registered in a Māori electoral district or a General electoral district (whichever applies); and 25
- (b) must inform the elector that they are entitled to exercise the Māori option under **section 76** at any time and change the type of district in which they are registered; and
- (c) must include a form or information about an approved electronic medium to use to exercise the Māori option; and 30
- (d) may give information about the differences between the 2 types of electoral districts that the Electoral Commission considers would be useful.
- (5B) To avoid doubt, **section 78** applies to the exercise of the Māori option following an inquiry under this section.
- 10 Section 89F amended (Procedure following inquiry under section 89D)** 35
- (1) In section 89F(2) and (3)(a) and (b), replace “89D(5)(c)” with “89D(5)(b)”.

- (2) In section 89F(4), replace “89D(5)(c)(i)” with “89D(5)(b)(i)”.
- (3) In section 89F(5), replace “89D(5)(c)(ii)” with “89D(5)(b)(ii)”.
- 11 Section 89G amended (Elector who cannot be contacted to be included in dormant roll)**
In section 89G(1)(a), delete “or a notice sent under section 78(2)”. 5
- 12 Section 98 amended (Removal of names from roll by Electoral Commission)**
Replace section 98(1)(g) with:
(g) the name of every Māori person who has exercised the Māori option under **section 76** and chosen to be registered as an elector for a different type of electoral district: 10

Part 2

Amendments to Local Electoral Act 2001

- 13 Principal Act**
This Part amends the Local Electoral Act 2001. 15
- 14 Section 5 amended (Interpretation)**
- (1) In section 5(1), insert in their appropriate alphabetical order:
- dormant roll** means a dormant roll referred to in section 109 of the Electoral Act 1993
- General electoral district** has the meaning given in section 3(1) of the Electoral Act 1993 20
- Māori** has the meaning given in section 3(1) of the Electoral Act 1993
- Māori electoral district** has the meaning given in section 3(1) of the Electoral Act 1993
- on census day**, in relation to a number or information, means that number or information as determined by the last periodic census 25
- (2) In section 5(1), replace the definition of **Māori electoral population** with:
- Māori electoral population** means a figure representing both the persons registered as electors of the Māori electoral districts and a proportion of Māori persons who are not registered as electors of any electoral district and a proportion of Māori persons under the age of 18 years, which figure must be fixed— 30
- (a) by ascertaining a proportion determined by dividing—
- (i) the total number of persons, on census day, ~~registered as electors of Māori electoral districts and named on the dormant rolls for Māori electoral districts; by either—~~ 35

- (A) registered as electors of Māori electoral districts; or
 (B) named on the dormant rolls for Māori electoral districts; by
 (ii) the total number of Māori persons, on census day, ~~registered as electors of Māori electoral districts or General electoral districts and named on the dormant rolls for Māori electoral districts or General electoral districts; and either—~~ 5
 (A) registered as electors of Māori electoral districts or General electoral districts; or
 (B) named on the dormant rolls for Māori electoral districts or General electoral districts; and 10
 (b) by applying the proportion ascertained under paragraph (a) to the total number of ordinarily resident Māori persons on census day

15 ~~Section 21 amended (Special voting)~~

- (1) ~~After section 21(b), insert:~~
 (ba) ~~the elector has exercised the Māori option under **section 76** of the Electoral Act 1993 in an election period and as a consequence paragraph (b) applies; or~~ 15
 (2) ~~In section 21, insert as subsection (2):~~
 (2) ~~In **subsection (1)(ba)**—~~
~~**election period** means the period beginning at the time prescribed for the rolls to close prior to an election (see section 50) and ending on the day before polling day.~~ 20

16 Schedule 1A amended

In Schedule 1A, replace clause 7(2) with:

- (2) The numbers included in the certificate must be derived from information contained in— 25
 (a) the most recent report of the Government Statistician to the Surveyor-General and ~~to~~ the other members of the Representation Commission made under section 35(6) of the Electoral Act 1993; or
 (b) if **subclause (2A)** applies, ~~from~~ the alternative report referred to in **subclause (2A)(b)**. 30
 (2A) In a year where a periodic census is held but a report under section 35(6) of the Electoral Act 1993 is not due to be completed (for the purposes of that Act) until after 1 April of the following year (see the definition of counting day in **section 79(2)** of that Act)— 35
 (a) the Electoral Commission must, as soon as practicable after census day, supply to the Government Statistician the information listed in **section 79(1)** of that Act as on census day; and

- (b) the Government Statistician must prepare an alternative report for the purposes of this Act, with the information referred to in **paragraph (a)**.

17 Consequential amendments to Bay of Plenty Regional Council (Maori Constituency Empowering) Act 2001

- (1) In section 3, replace the definition of **Māori electoral population** with: 5
Māori electoral population has the same meaning as in section 5(1) of the Local Electoral Act 2001
- (2) Replace section 9(2) with:
- (2) The numbers included in the certificate must be derived from information contained in the most recent of the reports referred to in **clause 7(2) of Schedule 1A** of the Local Electoral Act 2001. 10

Legislative history

21 June 2022
 30 June 2022

Introduction (Bill 139–1)
 First reading and referral to Justice Committee