

Regulatory Impact Statement

Electoral (Administration) Amendment Bill

EXECUTIVE SUMMARY

Responsibility for electoral administration is currently split between the Chief Electoral Officer (within the Ministry of Justice), the Electoral Commission (an independent Crown entity), and the Chief Registrar of Electors through the Electoral Enrolment Centre (a business unit of New Zealand Post Limited). Ongoing reviews of the electoral structures have found that there are significant flaws with these institutional arrangements, as they duplicate functions, create confusion, and increase costs and complexity for political parties, candidates and the general public. To address these flaws, reviews have recommended that a single electoral agency be given overarching responsibility for electoral administration.

The Electoral (Administration) Amendment Bill will establish a new Electoral Commission (an independent Crown entity), which will be given significant responsibility for electoral administration. Initially, the new Electoral Commission will perform the functions of the current Chief Electoral Officer and Electoral Commission.

Two main options for an integrated electoral agency have been considered:

- a departmental model, providing for a new Electoral Commissioner within the Ministry of Justice; and
- a Crown entity model, providing for a new Electoral Commission as an independent Crown entity.

Based on an evaluation of the options against key variables (independence, accountability, effective discharge of electoral administration functions, organisational capacity, cost effectiveness, and implementation/timing), the Crown entity model is recommended. The Electoral Act 1993 and related enactments will need to be amended to implement the proposal.

The Bill will implement the first stage of a proposal to restructure electoral administration, by establishing the new Electoral Commission and specifying that it receive the statutory functions of the current Chief Electoral Office and Electoral Commission on 1 October 2010.

A second Bill will provide for the transfer of the Chief Registrar of Elector's responsibility for the electoral roll to the new Electoral Commission on 1 October 2012.

Retaining the status quo and establishing a new Officer of Parliament were also considered.

ADEQUACY STATEMENT

The Ministry of Justice prepared this Regulatory Impact Statement (RIS) and considers it to be adequate.

STATUS QUO AND PROBLEM

Responsibility for electoral administration is currently split between the Chief Electoral Officer (within the Ministry of Justice), the Electoral Commission (an independent Crown entity), and the Chief Registrar of Electors through the Electoral Enrolment Centre (a business unit of New Zealand Post Limited).

The Chief Electoral Officer's responsibility includes the conduct of parliamentary general elections and by-elections, referenda, supervising the election advertising rules, and administering the electoral finance provisions of the Electoral Act 1993 that relate to constituency candidates. The current Electoral Commission's responsibility includes distribution of political party funding, registration of party logos and administering the electoral finance provisions of the Electoral Act 1993 that relate to political parties. The Electoral Enrolment Centre is responsible for maintaining the electoral roll, which is used for both central and local authority elections.

Ongoing reviews of the electoral structures have found that there are significant flaws in these institutional arrangements, as they duplicate functions, create confusion, and increase costs and complexity for political parties, candidates and the general public.

In 2001, the Election Framework Taskforce conducted a comprehensive review of the electoral agency arrangements. The Taskforce recommended that a single electoral agency be given overarching responsibility for electoral administration along with mandated statutory independence.

OBJECTIVE

The objective of this proposal is to provide effective and efficient electoral services to the public, to candidates, and to political parties.

ALTERNATIVE OPTIONS

Options were assessed across a range of variables comprising: independence; accountability; effective discharge of electoral administration functions; organisational capacity; cost effectiveness; and, implementation/timing.

Three alternative options were considered:

- the status quo;
- a new Electoral Commissioner within the Ministry of Justice; and
- a new Electoral Commissioner created as an Officer of Parliament.

Retaining the status quo is not preferred as it will:

- continue the unnecessary overlap of roles and duplication of administrative costs;
- provide for disjointed decision-making on electoral matters; and
- limit technological development for use in future elections.

New electoral finance rules will be in place for the 2011 general election. The status quo, under which the Chief Electoral Officer and Electoral Commission are respectively responsible for administering the electoral finance rules that apply to constituency candidates and political parties, runs the risk that the provisions will be interpreted and administered inconsistently. This risk was highlighted during the 2008 general election, where the two agencies were administering new electoral finance legislation and problems with the interpretation of the provisions arose.

Establishing a new Electoral Commissioner within the Ministry of Justice would be highly effective and accountable. However, integrating all electoral functions within the Ministry risks the perception, domestically and internationally, that New Zealand's electoral administration lacks the independence found in other jurisdictions.

The Officer of Parliament model provides a high level of independence through institutional separation from the Executive branch of government. However, the Officer of Parliament's lack of responsible Minister would mean that it would have reduced accountability for the delivery of electoral services and the expenditure of tens of millions of taxpayers' dollars every election cycle. A new Officer of Parliament could not be implemented in time to manage the 2011 general election due to the additional policy processes and the legislative drafting required. The proposal also does not meet the existing criteria for establishing an Office of Parliament in New Zealand determined by Parliament's Finance and Expenditure Committee in 1989.¹

PREFERRED OPTION

The preferred option is to establish a new Electoral Commission as an independent Crown entity, as it will provide the best balance of high independence with good accountability and the ability to administer the electoral functions to a high standard. The new Electoral Commission will have the following functions: conducting parliamentary general elections, by-elections and referenda; supervising candidate election expense and donation returns; registering political parties and logos; supervising party donations and expenditure returns; reporting on electoral matters referred by the House or Minister of Justice; allocating broadcasting time and funding to political parties; supervising compliance with the election broadcasting regime; and promoting public awareness of electoral matters. This combines the statutory functions of the current Chief Electoral Officer and Electoral Commission. In structural terms,

¹ The Finance and Expenditure Committee stipulated that:

- an Office of Parliament must only be created to provide a check on the arbitrary use of power by the Executive;
- an Office of Parliament must only be created to discharge functions that the House of Representatives itself, if it so wished, might carry out;
- Parliament should consider creating an Office of Parliament only rarely;
- Parliament should review from time to time the appropriateness of each Office of Parliament's status as such; and
- each Office of Parliament should be created in separate legislation principally devoted to that Office.

this amounts to a merger of the Chief Electoral Office and the current Electoral Commission.

The new Electoral Commission will be governed by a board of three members, comprising: the Chairperson; the Chief Electoral Officer (who will also be Chief Executive of the Commission); and one other member. Members of the Commission will be appointed by the Governor-General, for a term of up to five years, on the advice of the Minister of Justice. The term will be renewable. Members will be able to be removed by the Governor-General under the Crown Entities Act 2004.

The board of the Electoral Commission will be able to appoint electoral officials as deputies, to act in the case of a member's absence or incapacity. However, the appointment of Chairperson and Deputy Chairperson remain appropriately with the Governor-General or as otherwise specified by Schedule 5 of the Crown Entities Act 2004.

The Electoral Commission will be required to report to the Minister of Justice on the conduct of the election within six months of the return of the writ after a general election, who will in turn provide any report to the House of Representatives.

The current Chief Electoral Officer and Electoral Commission will be disestablished and their functions undertaken by the new Electoral Commission.

The perceived benefits arising from this option are:

- providing for integrated, efficient and consistent oversight and decision-making across electoral policy and operations; and
- providing for a continued high level of service to the public, candidates and political parties.

A cost saving to government of 3.19 percent is expected for the operation of the new Electoral Commission (in comparison to the combined operating budgets of the current Electoral Commission and Chief Electoral Office). The estimated establishment cost for the new electoral agency is \$0.632m, which will be met from within existing baselines.

This option will be implemented through a Bill that will amend the Electoral Act 1993 and other enactments consequentially. The provisions of the Crown Entities Act 2004 will also apply to the Electoral Commission except where the Electoral Act 1993 will provide otherwise.

Through a second bill, which will take effect following the 2011 general election, the Electoral Commission will be given the Chief Registrar of Elector's responsibility for the electoral roll. It is expected that the new Electoral Commission will contract the Electoral Enrolment Centre in New Zealand Post to continue to deliver enrolment services.

IMPLEMENTATION AND REVIEW

This proposal will be implemented in two stages.

It is intended that the Electoral (Administration) Amendment Bill, implementing the first stage, will be enacted in May 2010. The members of the new Electoral

Commission will be appointed in order to prepare the entity to operate. As of 1 October 2010, the new Electoral Commission will carry out the functions of the current Chief Electoral Officer and Electoral Commission (the current offices being simultaneously revoked and disestablished). The new Electoral Commission will administer the 2011 general election.

A second Bill will provide for the transfer of the Chief Registrar of Elector's responsibility for the electoral roll to the new Electoral Commission on 1 October 2012.

The performance of the new Electoral Commission will be reviewed through the entity's annual reporting cycle and a report which must tabled in the House following each general election.

CONSULTATION

The State Services Commission, Treasury, Crown Law, Department of Internal Affairs, Chief Electoral Officer, Chief Executive of the Electoral Commission, National Manager of the Electoral Enrolment Centre, and Parliamentary Counsel Office were consulted during the preparation of the proposal and their comments incorporated. The Department of the Prime Minister and Cabinet was informed of its contents.