NZCTU
Te Kauae Kaimahi

Submission to the Justice Committee on the:

Electoral Amendment Bill

Submitted by the New Zealand Council of Trade Unions Te Kauae Kaimahi

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This submission is made on behalf of the 32 unions affiliated to the New Zealand Council of Trade Unions Te Kauae Kaimahi (NZCTU). With over 340,000 union members, the NZCTU is one of the largest democratic organisations in New Zealand.

The NZCTU acknowledges Te Tiriti o Waitangi as the founding document of Aotearoa New Zealand and formally acknowledges this through Te Rūnanga o Ngā Kaimahi Māori o Aotearoa (Te Rūnanga), the Māori arm of Te Kauae Kaimahi (NZCTU), which represents approximately 60,000 Māori workers.

Introduction

1. This Bill is a direct assault on New Zealand democracy and is contrary to the values of our open and inclusive society. Key parts of the Bill are reminiscent of voter-suppression tactics associated with anti-liberal and anti-democratic governments internationally. This has no place in New Zealand.
2. If passed in its current form, this Bill will disenfranchise a significant portion of the population and do long-lasting damage to New Zealanders' trust in the integrity of government and the electoral system.
3. The trend of the past three decades has been to enable greater flexibility in voter registration and encourage high voter turnout. This Bill takes us in the opposite direction.
4. Government parties do not have a mandate for this change, as they have neither campaigned nor consulted on it.
5. Officials have advised against key parts of this Bill, and the government's own Attorney-General, Hon Judith Collins, has noted that several aspects of the Bill are inconsistent with the New Zealand Bill of Rights Act 1990.
6. Given this context, it is hard not to conclude that this Bill is a cynical attempt to suppress special votes, which have historically favoured the parties currently in opposition.
7. This submission comments on selected aspects of the Electoral Amendment Bill that the NZCTU is highly concerned by:
    - The new deadline for registration, which is an undue restriction on the right to vote.
    - The reforms to the sections of the Electoral Act covering bribery and treating. The reforms risk criminalising perfectly legitimate activity and may negatively impact voter turnout.
    - The loosening of political finance reporting requirements, which further reduce transparency on the issue of political donations.
    - The disenfranchisement of the New Zealand prison population.
8. The NZCTU recommends the following elements of the Bill are cut:

- The elements of clauses 4–8 that remove the ability to enrol up to and including on polling day.
- Clause 10, and related clauses, which institute a blanket ban on prisoners' right to vote.
- Clauses 43 and 46, which unduly restrict people's ability to legitimately support voter engagement.
- Clauses 119 and 120, which further entrench the lack of transparency in our political donations system and therefore increase the risk that wealthy New Zealanders will exercise undue influence on the election and policy of government.

Closing enrolment early will disenfranchise voters

9. Voter participation is foundational to the democratic legitimacy of government and the long-term health of Aotearoa New Zealand's democratic culture. Currently, eligible voters can enrol at any point during the election period, including on polling day. This enables people to exercise their right to vote and supports high voter turnout.

10. This Bill will significantly restrict the enrolment period. To be eligible to vote, people will now have to enrol before the end of the 13th day before polling day.

11. This is a dramatic change that will effectively strip some New Zealanders of their right to vote – a right protected under the New Zealand Bill of Rights Act 1990 (NZBORA). The Attorney-General has explicitly advised this part of the Bill *"appears to constitute an unjustified limit on s 12 of the NZBORA"*.[1]

12. It is important to note that this Bill is not simply reversing the change to the Electoral Act made by the previous government, which enabled enrolment to occur on polling day itself. What this Bill will create is the most restrictive timeframe for enrolment we have had in decades. This will very likely have the effect of disenfranchising tens-of-thousands of New Zealanders.

13. The sponsoring Minister is justifying this change, and the restriction of the right to vote that it entails, on the basis that it will shorten the length of time it takes to finalise the vote count (the 13-day enrolment deadline is justified on the basis that this aligns with the opening of the special voting period). This rationale should be rejected for the following reasons.

14. First, on a principled basis, and under the NZBORA, the right to vote must be weighted far higher than the timeliness of the vote count. Indeed, unlike the right to vote, the timeliness of the vote count is not an NZBORA-protected right. If there are trade-offs to be made between these two goals, then the former must be favoured over the latter.

15. Second, the number of eligible voters who could be affected by this policy is significant. The figures cited in the Ministry of Justice's Regulatory Impact Statement indicate around

[1] Hon Judith Collins KC, Attorney-General, *Report of the ATTORNEY-GENERAL under the New Zealand Bill of Rights Act 1990 on the Electoral Matters Legislation Amendment Bill* [PCO 26217/7.2], 26 June 2025, p. 13.

230,000 people would have been affected if this law was in place for the 2023 election.[2] It has been possible since 1993 to enrol right up until midnight before polling day, and more recently on polling day itself. This is now a deeply embedded expectation for voters. As such, although we can expect some change in enrolment behaviour over time if this becomes law, it is almost certain this would take a long time to bed in. In the meantime, potentially very large numbers of people would be disenfranchised. Over the longer run, it is highly likely a considerable number of eligible voters who are marginally attached to civic life will be permanently affected.

16. Third, we know the potential voters most likely to be affected by this law change are low-income households, Māori, Pasifika, Asian, and the young. These communities are more likely to be non-voters and to shift house – and therefore electorate – frequently. According to the Ministry of Justice, almost half of Māori voters aged 18 to 19 enrolled or updated their details during the voting period in 2023. It is unrealistic to think that all these potential voters will enrol earlier to accord with this law change in the 2026 election or beyond. The fact that Māori will likely be disproportionately impacted also raises the question of whether this aspect of the Bill is consistent with the government's obligations under Te Tiriti o Waitangi.

17. Fourth, as the Attorney-General has advised, the *"registration deadline does not appear to represent the least restrictive means for achieving the relevant public goal"*.[3] In other words, given that the right to vote is protected by the NZBORA, the government is under the obligation to find the least restrictive means of fulfilling its policy objective. It has not done this.

18. Fifth, and building on the previous point, the costs of this measure in terms of the restriction of the right to vote clearly outweigh the potential benefits in terms of improving the timeliness of the vote count. Indeed, the potential benefits are highly uncertain. The Ministry of Justice has advised that *"It is uncertain whether any package of changes could reduce the count timeframes for the next general election from 20 days after election day to 14 days"*.[4] The Ministry has further noted that *"an earlier enrolment deadline may merely shift enrolment demand in the run up to the election rather than reduce it, which could strain other critical election processes. Its impact on reducing special votes is also uncertain, which may mean that its benefits for timeliness are limited"*.[5] The sponsoring Minister also admitted this in his Cabinet paper, noting *"…the benefits of an earlier deadline are uncertain and may not enable a significantly faster vote count in 2026"*.[6] The lack of expected benefit here further raises the question of how the restriction on the right to vote can be considered justifiable under s 5 of the NZBORA.

19. Sixth, we expect this change will have a detrimental effect on public trust in the electoral process and legitimacy of government. It is highly likely that people will show up to enrol and vote during the advance voting period and polling day only to discover their vote won't be

[2] Ministry of Justice, *Regulatory Impact Statement: Improving the timeliness of the official vote count*, 27 March 2025, p. 16.
[3] *Report of the ATTORNEY-GENERAL*, p. 10.
[4] *RIS: Improving the timeliness of the official vote count*, p. 4.
[5] *RIS: Improving the timeliness of the official vote count*, p. 25.
[6] Hon Paul Goldsmith, *Cabinet Paper 1: Electoral Matters Bill – Policy approvals (timeliness and efficiency)*, 7 April 2025, p. 4.

counted. This will be toxic and will damage people's trust in government. This is a particular risk among vulnerable communities who may already have low levels of trust in government.

20. Seventh, government parties have neither campaigned nor consulted on this law change. As such, they cannot claim to have a democratic mandate for it. This is particularly relevant given the constitutional significance of the Bill. Again, this risks undermining public trust in the legitimacy of government and the integrity of elections. This is especially the case given that special votes tend to favour parties currently in opposition: this makes it appear as an attempt by the current government to deliberately suppress turnout to boost their chances of re-election. Whether or not this is indeed the government's intention is immaterial.

21. We are sympathetic to the idea that the vote should be concluded within a reasonable timeframe. However, the extension of the timeframe over recent elections from 14 days to 20 days does not justify the extreme measures this Bill will implement. There are other ways to achieve the objective of safeguarding the timeliness of the vote count, including the automatic updating of enrolment details that the Bill provides for, and greater resourcing for public campaigning on the importance of timely enrolment. We note the Attorney-General has recommended that:

> *the fact that automatic updating of electoral details is predicted to be reasonably effective in cutting down special votes and therefore improving the speed of the vote count, over time, means it may be less apparent there is a pressing need also for a registration deadline, and specifically a deadline that is 13 days in advance of polling day.*[7]

22. **The elements of clauses 4–8 that remove the ability to enrol up to, and including on, polling day should be scrapped. The status quo should be maintained, which allows people to enrol throughout the entirety of the election period, including polling day. The government's priority should be to enable a maximally inclusive voting system that supports high voter turnout.**

Amendments to section 216 (Bribery) and new section 218A (Providing food, drink, or entertainment around polling places)

23. The NZCTU opposes clause 43, which amends s 216 (Bribery) of the Act. The amendment unjustifiably broadens the offense of bribery.

24. The clause casts a wide net over actions that could support voter engagement. On the face of it, it covers actions such as providing someone a lift to the polling booth, putting on a post-voting meal for friends, providing someone with bus fare to get to the polling booth, and so on. None of these actions can realistically be considered bribery. Indeed, it is undesirable to curtail these kinds of actions, as they support voter turnout, particularly in lower-income communities.

[7] *Report of the ATTORNEY-GENERAL*, p. 12.

25. We are concerned this amendment will have a chilling effect on people's willingness to perform legitimate and helpful actions that assist people to exercise their right to vote and encourage voter turnout. We note the Attorney-General has advised this amendment likely breaches the NZBORA, specifically s 12 and s 14.[8]

26. The NZCTU also opposes clause 46, which inserts the new s 218A (Providing food, drink, or entertainment around polling places). This clause will outright ban the provision of free food, drink, or entertainment within 100 metres of a polling booth, even if this food, drink, or entertainment is provided with no intent to influence a person's voting behaviour. It extends this across the entire advance-voting period and polling day itself.

27. As with the amendments to s 216, this is unduly restrictive and will likely be harmful to voter turnout. Providing manaakitanga near polling booths can be an important way of encouraging civic engagement, particularly among low-income citizens who may otherwise not be inclined to engage in the electoral process. This is a non-partisan activity aimed at encouraging people to come to voting places. It is very different from treating with the intent of influencing *how* someone votes in a partisan manner.

28. As with the proposed restriction on voter enrolment, this change will directly affect Māori communities and their ability to practice their culture. Manaakitanga is intrinsic to Māori culture but the new s 218A effectively criminalises this practice within 100 metres of a polling booth. This may make it more difficult to support voter turnout in Māori communities.

29. We therefore question whether s 20 of the NZBORA may be engaged here: *"A person who belongs to an ethnic, religious, or linguistic minority in New Zealand shall not be denied the right, in community with other members of that minority, to enjoy the culture, to profess and practise the religion, or to use the language, of that minority"*. We encourage the Committee to consider this issue.

30. We note that, as with other elements of the Bill, officials have advised against this amendment. The Ministry of Justice's Regulatory Impact Statement rates this option as worse than the status quo on the basis that it could disadvantage areas with low voter turnout by suppressing non-partisan activities designed to encourage participation; is inconsistent with the 10-metre buffer zone for campaign advertising near polling places; and has the potential to have a disproportionate impact on Māori communities.[9]

31. **Clauses 43 and 46 may unduly restrict people's ability to legitimately support voter engagement and should therefore be scrapped. The government's objective should be to effectively criminalise actions that constitute genuine bribery or corrupt practice while not inhibiting legitimate efforts to support voter engagement.**

[8] *Report of the ATTORNEY-GENERAL*, p. 15.
[9] Ministry of Justice, *Regulatory Impact Statement: Strengthening electoral offences relating to improper influence*, 16 June 2025, p. 13.

Political finance reporting requirements

32. The NZCTU opposes clauses 119 and 120, which amend s 210 and s 210C of the Act. The changes adjust the threshold for declaring donations over $5,000 a year to $6,000 and double the amount of time a Party has to report a donation exceeding $20,000 during the regulated period from 10 to 20 working days. Taken together, these changes further reduce the transparency of our political donations system.

33. Compared to our peer countries, New Zealand's political donations system is relatively opaque. This increases the risk that a minority of wealthy New Zealanders can exercise outsized influence over the electoral process and government policy. Indeed, multiple donations scandals show this to be the case. In a 2022 report, Rashbrooke and Marriott compiled significant evidence showing how wealthy donors have been able to gain access to politicians in New Zealand in recent years; they also found evidence of donation-splitting activities designed to conceal the identity of donors.[10]

34. Currently, s 210 requires that political parties disclose in their annual returns the identities of people who donated more than $5,000 that year. This is to support public transparency around who is potentially gaining access to politicians. The NZCTU's view is that this threshold is already too high. Realistically, $5,000 per annum is far more than what most New Zealanders can afford to donate to a political party in a year – it is a level at which only wealthy New Zealanders can afford. Rashbrooke and Marriott's analysis also finds that $5,000 is well above the threshold at which access to politicians – the necessary precursor to political influence – can be purchased in New Zealand.[11]

35. Section 210C requires that, during the regulated period (i.e., once the Prime Minister has given public notice of polling day) any donation of over $20,000 must be declared within 10 working days. This declaration must include the identity of the donor. This tight turnaround time is required because it is recognised a donation of this size can have a rapid and material influence over political decision making. It is therefore necessary to promptly make this information public. Our view is that this threshold is also too high.

36. The political donations system needs to be more tightly regulated. After extensive consultation with the New Zealand public, the Independent Electoral Review (IER) recommended, among other changes to political donations:

    - The disclosure threshold for donors to political parties should be reduced from more than $5,000 in a year to more than $1,000 in a year.
    - During the regulated period, parties and candidates should be required to disclose donations and loans received above $10,000 within 10 working days.[12]

[10] Max Rashbrooke and Lisa Marriott, *Money for Something: A report on political party funding in Aotearoa New Zealand*, Victoria University of Wellington, 2022, chapters 3–4.
[11] Rashbrooke and Marriott, *Money for Something*, p. 67.
[12] Independent Electoral Review, *Final Report: Our recommendations for a fairer, clearer, and more accessible electoral system*, 2023, pp. 302–341. Rashbrooke and Marriott recommend setting the disclosure threshold at $1,500 per year: *Money for Something*, p. 67.

37. In the context of rising wealth inequality and declining trust in democracy, it has never been more important to ensure we have a transparent donations system that prevents wealthy individuals or groups from purchasing political influence. The amendments made by this Bill take us in the opposite direction.

38. Clauses 119 and 120, which further muddy the waters of our political donations system, should be scrapped. The government should instead consider implementing the political donations recommendations outlined by the IER.

Restricting the right of prisoners to vote

39. The NZCTU opposes the removal of prisoners' right to vote. The status quo is that individuals detained under a sentence of life imprisonment, preventative detention, or a term of 3 years or more cannot be registered to vote. Clause 10 of the Bill expands this, so that any person detained in prison under a sentence of imprisonment is disqualified from registration.

40. As the Attorney-General notes in her report to government, this is an unjustifiable restriction of the right to vote, as has been determined in multiple legal cases and previous Attorney-General reports.[13] In 2015 the High Court ruled that the blanket ban then in place was an unjustifiable limitation on NZBORA rights, and this was upheld by the Court of Appeal and Supreme Court.[14]

41. This is principally because a blanket ban introduces the randomness of timing into the restriction of the right to vote. To illustrate, a person who was imprisoned on a minor charge for several months might be disenfranchised if their term of imprisonment coincides with an election, whereas a person who has committed a serious offence but is awaiting sentencing during the election will be able to vote.

42. The Waitangi Tribunal has also determined that a blanket ban of this kind is a serious breach of Te Tiriti/the Treaty, on the basis that it disproportionately affects Māori due to their over-representation in the prison system. As the Tribunal concluded in its 2020 report, referring to the blanket ban that was in place from 2010, *"the Crown has failed in its duty to actively protect the right of Māori to equitably participate in the electoral process and to exercise their tino rangatiratanga individually and collectively"*.[15]

43. Given the disproportionate number of Māori who are incarcerated, stripping prisoners of their right to vote would appear to constitute an indirect means of undermining the voting rights of (i.e., discriminating against) an ethnic minority. We therefore question whether this part of the Bill is inconsistent with s 19 of the NZBORA, which affirms people's right to be free of discrimination on the basis of race, sex, and other characteristics (see s 21 of the Human Rights Act 1993) and whether it constitutes an indirect form of discrimination under s 65 of the Human Rights Act.

[13] *Report of the ATTORNEY-GENERAL*, p. 3.
[14] *Taylor v Attorney-General* [2015] NZHC 1706.
[15] Waitangi Tribunal, *He Aha I Pērā Ai? The Māori Prisoners' Voting Report*, 2020, p. 33.

44. In addition, this restriction is inconsistent with the objective of rehabilitation. Most people in the prison system have come from disadvantaged or difficult backgrounds and are already marginally connected to civic life. Restricting their ability to engage in the democratic process directly undermines efforts to get prisoners engaged in civic life and to develop a sense of social connectedness and responsibility. This is also relevant to the issue of protecting Māori communities. In its 2020 report, the Waitangi Tribunal found that, because it undermines rehabilitation and reintegration, *"disenfranchising Māori prisoners has continued to impact on the individual following release from prison and that this impact extends beyond the individual to their whānau and their community"*.[16]

45. Finally, as the Ministry of Justice has noted in advising against this part of the Bill, disqualifying all prisoners from voting is contrary to New Zealand's obligations under Article 25 of the International Covenant on Civil and Political Rights.[17] The UN Human Rights Committee has stated that blanket voting bans for prisoners are inconsistent with this Article and has highlighted the racial implications that these bans tend to have, due to the disproportionate incarceration rates that ethnic minorities are subject to.

46. The NZCTU recommends that the part of clause 10 relating to the disqualification of prisoners from voting, and all other related clauses, are dropped from this Bill.

Setting the advance voting period in law

47. The NZCTU is comfortable with the amendments proposed to s 171B, which sets the advance voting period at 12 days. This will help ensure that advance voting, which is increasingly popular, is maintained across electoral cycles. **However, we recommend this is revised to "a minimum of 12 consecutive days" to enable the Electoral Commission flexibility to extend the advance voting period should it deem that necessary.**

48. We also note that the Electoral Commission is facing funding constraints, which may impact its ability to manage elections effectively over time. Currently, the advance voting period is at the discretion of the Electoral Commission, which enables it to fit the delivery of advance voting to its budget. **If the advance voting period is embedded in legislation in this way, then the Electoral Commission needs to be provided with sufficient resources to properly deliver this.**

Conclusion

49. The NZCTU reiterates its opposition to key elements of this Bill that will restrict voter turnout, effectively disenfranchise a significant portion of the population, and trample on fundamental rights protected by the NZBORA. The restriction of voter enrolment will have particularly negative impacts on low-income, Māori, Pasifika, Asian, and young people.

[16] Waitangi Tribunal, *He Aha I Pērā Ai*, p. 34.
[17] Ministry of Justice, *Briefing: Additional electoral reforms: updated and draft Cabinet papers*, 24 March 2025, p. 7.

50. We are deeply disturbed by these elements of the Bill and expect they will have a corrosive impact on New Zealand democracy over time.
51. We reiterate that government parties have neither campaigned nor consulted on these changes and therefore cannot claim a mandate for them. This is especially problematic given these are changes to the bedrock of our democratic system.
52. We remind the Justice Committee that the government's own Attorney-General has advised that several elements of the Bill appear inconsistent with key rights protected by the NZBORA.
53. We thank the Committee for the opportunity to submit on this Bill and look forward to making an oral submission.

For further information, please contact

Jack Foster

Policy Analyst

jackf@nzctu.org.nz