

Regulatory Impact Statement: Strengthening electoral offences relating to improper influence

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| Decision sought | Cabinet approval of amendments to offences in the Electoral Act 1993, made via the Electoral Matters Legislation Amendment Bill. |
| Agency responsible | Ministry of Justice |
| Proposing Ministers | Minister of Justice |
| Date finalised | 16 June 2025 |

This Regulatory Impact Statement (RIS) relates to two proposals to amend offences in the Electoral Act 1993. While addressing different problems, these proposals both relate to offences which regulate improper influence over electors:

1. Proposal 1: to create a new offence which prohibits the provision of free food, drink, and/or entertainment in controlled areas surrounding voting places.
2. Proposal 2: to expand the existing corrupt practices offences of bribery, treating, and undue influence to include prohibiting the use of incentives to improperly influence an elector to not enrol or enrol in a particular way.

Summary: Problem definition and options

What is the policy problem?

There are two policy problems outlined in this RIS, relating to each proposal.

Proposal 1 – strengthening the treating offence

The existing treating offence in the Electoral Act prohibits the use of food, drink, or entertainment to improperly influence a person to vote in a particular way or not vote. The offence requires that a person has corrupt intent to corruptly influence electors by providing them with food, drink, or entertainment. It is not clear what behaviours meet this intent threshold and what is prohibited, which makes it difficult to follow and enforce the rules.

Proposal 2 – enrolment offences

The existing bribery, treating, and undue influence offences in the Electoral Act relate to influencing a person's vote, but they do not include influencing a person not to enrol or to enrol on a particular electoral roll. This constitutes a gap in the Electoral Act.

What is the policy objective?

The proposals will need to:

- Be clear and consistent – electoral laws, and their effects, are clear to all.
- Be fair – electoral laws and procedures provide, and are perceived to provide, a level playing field for all electoral participants.
- Be practicable and enduring – electoral law reflects current practical realities and can accommodate future changes/developments.
- Appropriately consider Te Tiriti o Waitangi – electoral law enables Māori perspectives to be represented in Parliament and reflects the Crown's Treaty obligations.

What policy options have been considered, including any alternatives to regulation?

We have not explored non-regulatory options to address these policy problems because the issues arise out of the legislation itself – either the legislation is unclear or there is a gap in the law. As such, the options outlined below are all regulatory solutions.

Proposal 1- strengthening the treating offence

- Status quo: to be convicted of treating, a person must have corrupt intent to influence a voter by providing them food, drink, or entertainment. The offence is not well understood and not prosecuted often.
- Controlled areas around voting places: add a new offence to prohibit the provision of free food, drink, and entertainment within controlled areas around voting places (*Minister's preferred option in the Cabinet paper*).
- Amend the treating offence to provide more detail: amend the existing treating offence to make it clearer what is required in order to meet the intent threshold.
- Reduce the intent threshold and penalty: lower the intent threshold to a 'reasonable person' test which would make it clearer what is captured by the offence.
- Amend the bribery offence to prohibit bribes of food, drink, and entertainment: combine the bribery and treating offences into a single offence (*Ministry's preferred option*).

Proposal 2 – enrolment offences

- Status quo: the Electoral Act does not contain provisions which prohibit the use of improper incentives to influence a person's enrolment.
- Amend existing electoral offences to create an enrolment offence: amend the Electoral Act to make it an offence to treat, bribe or unduly influence an elector not to enrol or enrol in a particular way (*Minister and Ministry's preferred option*).

What consultation has been undertaken?

No consultation has been undertaken on Proposal 1. Some consultation has been undertaken on issues with the treating offence through other channels, specifically, the Justice Committee Inquiry into the 2023 General Election and the Independent Electoral Review (IER).¹ The general consensus from respondents was that the treating offence is difficult to understand and should be updated. However, there was not a prevailing view on how to resolve the issues with the offence.

No consultation has been undertaken on Proposal 2. The issue that Proposal 2 addresses was raised in a report from the Public Service Commission released in February 2025. As such, there was not sufficient time to undertake consultation on the proposal.

The Ministry has consulted with the Electoral Commission (the Commission), which will be responsible for monitoring behaviour at voting places and receiving complaints for alleged breaches of the new rules. The Ministry has consulted the New Zealand Police, which will be responsible for receiving referrals from the Commission.

Is the preferred option in the Cabinet paper the same as the preferred option in the RIS?

Proposal 1: The proposal in the Cabinet paper is to create a new offence to prohibit the provision of free food, drink, or entertainment within controlled areas around voting places. This is different to the Ministry's preferred option outlined in this RIS, which is to amend the bribery offence to prohibit the use of food, drink, and entertainment to bribe electors, which would replace the treating offence.

Proposal 2: The Cabinet paper proposes to amend the offences regime to prohibit acts of treating, bribery, and undue influence to induce an elector not to enrol or enrol in a particular way. This is the same as the Ministry's preferred option.

Summary: Minister's preferred option in the Cabinet paper (Proposals 1 and 2)

Costs (Core information)

Proposal 1 – strengthening the treating offence

The proposed change will create a new offence, which may result in a marginal increase in complaints for the Commission to examine and refer to the New Zealand Police. There is a

¹ justice.govt.nz/assets/Documents/Publications/Independent-Electoral-Review-Final-Report-November-2023.pdf, November 2023.

potential cost associated with the resources required to handle suspected breaches of the offence, but the likely number of complaints and breaches is not known. There may also be some non-monetised costs to civil society groups and voters, since the proposal may limit the ability to run events to encourage voters to come to voting places.

Proposal 2 – enrolment offences

In creating a new offence, there is potential for more complaints and breaches of the rules, which would require more resources from the Commission and New Zealand Police to handle. The likely number of complaints and breaches is not known, but it is not expected to be significant.

There is also a risk that legitimate activities (for example, campaigns which promote or inform Māori electors about the Māori electoral option) may be suppressed, which creates a non-monetised cost. If the rules are not clear, then it may deter political parties, candidates, and civil society from providing such information, in order to avoid being captured by the offence.

Benefits (Core information)

Proposal 1 – strengthening the treating offence

The proposed change will provide clarity to political parties and candidates about what is permitted near voting places. It will protect voters from any perceived improper influence as they enter voting places.

Proposal 2 – enrolment offences

Voters may be protected from improper influence over their enrolment.

Balance of benefits and costs (Core information)

Does the RIS indicate that the benefits of the Minister’s preferred option are likely to outweigh the costs?

Proposal 1 – strengthening the treating offence

We do not consider that the benefits outweigh the costs of this proposal. However, we note that there is limited information which would enable us to accurately predict the monetised costs that would be incurred as a result of an additional offence, which could create more complaints or breaches of the rules to investigate.

Proposal 2 – enrolment offences

On balance, we consider that the benefits outweigh the potential costs, given the proposal resolves a gap in the electoral offences framework.

Implementation

How will the proposal be implemented, who will implement it, and what are the risks?

The proposal will be progressed through the Electoral Matters Legislation Amendment Bill and will come into effect for the 2026 General Election.

The Commission will be responsible for compliance with the rules and would refer any suspected offending to the New Zealand Police for investigation and, where appropriate, prosecution. It will be important for people to understand the new rules, so the Commission will need to develop public communications about the change and update the guidance for political parties and candidates.

Limitations and Constraints on Analysis

We have not undertaken consultation on these proposals. In the absence of public consultation, there is a risk of unintended consequences.

While there have been allegations, we do not have any substantiated evidence of cases where electors have been improperly influenced not to enrol or enrol in a particular way. Therefore, Proposal 2 addresses a theoretical risk to electors.

Summary: Ministry's preferred option (Proposal 1)

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| Costs (Core information) |
| Replacing the treating offence with an expanded bribery offence may result in a clearer offence that is more readily enforceable. This may result in a higher number of reported breaches, since offending behaviour is more easily identified. This could generate a marginal increase in complaints and cases for the Commission and New Zealand Police, resulting in a potential monetised cost. Given the low number of complaints relating to bribery over the last three election cycles, any cost increases are unlikely to be significant. |
| Benefits (Core information) |
| Clearer rules enable more freedom for political parties, candidates, and civil society to plan events leading up to elections. There are potential benefits of higher voter engagement because activities which target voter participation will have more freedoms (in contrast to the Minister's preferred option which prohibits such activities around voting places), while managing the risk of improper influence over electors. This may only be a marginal benefit. |
| Balance of benefits and costs (Core information) |
| Does the RIS indicate that the benefits of the Minister's preferred option are likely to outweigh the costs? On balance, we consider that the benefits, although marginal, outweigh the costs of the proposal. The non-monetised benefits are difficult to quantify, but there may be an improvement on the status quo, particularly over time as political parties, candidates, civil society, and voters become more familiar with the rules. |

I have read the Regulatory Impact Statement and I am satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impact of the preferred option.

Responsible Manager(s) signature:

Kathy Brightwell

General Manager, Civil and
Constitutional Unit

13/6/2025



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| Quality Assurance Statement | |
| Reviewing Agency: Ministry of Justice | QA rating: Partially meets |
| Panel Comment: The Ministry of Justice's Regulatory Impact Assessment quality assurance panel has reviewed the Regulatory Impact Statement (RIS) <i>Strengthening electoral offences relating to improper influence</i> prepared by the Ministry of Justice and considers that the information and analysis summarised in the RIS partially meets the Quality Assurance criteria. The RIS is complete, concise, and clearly analyses a range of options and their costs and benefits. The analysis is constrained by a lack of public consultation on the specific proposals, which are largely novel. While information from previous consultation on similar issues is noted, the panel did not consider this to be an effective proxy for consultation given the constitutional significance of electoral law. The panel considers the RIS is otherwise robust and can be relied on by Ministers to support their decision-making. | |

Section 1: Diagnosing the policy problem

What is the context behind the policy problem and how is the status quo expected to develop?

1. The offences in the Electoral Act 1993 support the legitimacy and integrity of New Zealand's electoral system. The purpose of the offences is to regulate activities which have the potential to make an election unfair or otherwise bring into question the integrity of electoral processes or the results of an election.
2. Corrupt practices are a class of offences in the Electoral Act which target behaviour that poses a significant threat to the electoral system. There are a range of corrupt practices offences throughout the Electoral Act. The key offences for the purpose of this RIS are:
 - a. **Section 216 – Bribery:** the use of monetary incentives to influence a person to vote or not vote.
 - b. **Section 217 – Treating:** when food, drink, or entertainment is provided corruptly to induce a person to vote or not vote.
 - c. **Section 218 – Undue influence:** the threat or use of force or pressure to influence a person to vote or not vote.
3. These corrupt practices offences are punishable by up to two years in prison and/or a fine of up to \$40,000. Those found guilty will be added to the Corrupt Practices List – meaning they cannot enrol to vote in general or local elections for three years and cannot stand as a candidate. Members of Parliament (MPs) convicted of a corrupt practice will also lose their seat. The serious penalties for committing a corrupt practice offence reflect the gravity of the offending.
4. Complaints under these sections are made to the Electoral Commission, which examines the circumstances to determine whether there has been a breach of the rules. If the Commission considers that electoral rules have been breached, it refers the case to the New Zealand Police, which will investigate and, where appropriate, prosecute the offending.
5. The number of complaints relating to bribery, treating, or undue influence are low. Table 1 below outlines the number of complaints that have been made, and the number of subsequent referrals, over the last three election cycles.

Table 1 – number of complaints and referrals during elections from 2017-2023

| Election | Complaints | Referrals |
|----------|--|--------------|
| 2023 | 4 (treating) | 1 (treating) |
| 2020 | 2 (treating) 1 (undue influence) | None |
| 2017 | 5 (treating) 1 (undue influence) 2 (bribery) | 1 (bribery) |

6. The United Kingdom, Canada, and Australia all have a range of offences which target behaviour broadly similar to the bribery, treating, and undue influence offences. However, only the United Kingdom has a specific treating offence. In Australia, treating-type behaviour is captured by the bribery offence, and in Canada the same behaviour is targeted by bribery and offences relating to influencing electors at polling places.

Proposal 1 – strengthening the treating offence

7. In its inquiry into the 2023 General Election, the Justice Committee (the Committee) heard concerns from submitters that there may have been breaches of the treating rules when food, drink, and entertainment was provided at Manurewa Marae while voting was taking place. The Committee noted that the offence is not clear and recommended that it be reviewed.
8. The offence of treating has existed in New Zealand statute since 1858.² Treating was created to cover a specific form of bribery, where food, drink, and entertainment is used to bribe electors. The offence's relevance was reduced by the introduction of the secret ballot, since the way a person voted cannot be verified by the person seeking to influence their vote. However, there remains a risk that the provision of food, drink, or entertainment could influence electors.
9. Treating is a corrupt practices offence; it requires a person to have corrupt intent to corruptly influence an elector by providing them food, drink, or entertainment. The particular context of treating's inception and the high penalty for offending creates a high threshold which is unclear in the context of modern elections.
10. This high threshold has been a point of confusion for candidates, political parties, civil society, and electors, and has been noted in multiple reviews of the Electoral Act.³ It is not clear what conduct is considered treating, and what is not. As such, the treating offence has largely laid dormant,⁴ with no prosecutions for treating in recent decades.
11. As a result of these issues with the offence's clarity, the treating rules may not adequately capture harmful behaviour where electors are improperly influenced through the provision of food, drink, or entertainment. The current rules also deter behaviour which does not cause harm and could be beneficial to a healthy functioning democracy.

Proposal 2 – enrolment offences

12. In June 2024, the Public Service Commission launched an inquiry into allegations that personal information collected for the 2023 Census and COVID-19 vaccines was misused by service providers at Manurewa Marae. The final report on the findings of the inquiry was released in February 2025.⁵
13. In the course of the inquiry, the reviewers heard an out-of-scope allegation of inappropriate incentives being given to Census data collectors and/or members of the public to encourage people to enrol or switch to the Māori electoral roll. Since these allegations were out of scope, they have not been substantiated. However, they raise the question of whether the Electoral Act should be amended to prohibit improper influence over a

² Section 3, Corrupt Practices Prevention Act 1858.

³ Recent examples include the Justice Committee Report *Inquiry into the 2023 General Election* at page 31, <https://selectcommittees.parliament.nz/v/6/1830394c-03f3-4677-515b-08dd01d456dc>; the Electoral Commission Report on the 2023 General Election at pages 77-78, <https://elections.nz/assets/2023-General-Election/Report-on-the-2023-General-Election.pdf>; and the Independent Electoral Review *Final report* (November 2023) at page 444, <https://www.justice.govt.nz/assets/Documents/Publications/Independent-Electoral-Review-Final-Report-November-2023.pdf>.

⁴ Discussed in *Wairau Election Petition* (1912) 31 NZLR 321 at 325. This was a case that related to treating, and the judge noted that the treating offence was not well understood, and as a result was a largely dormant provision.

⁵ Public Service Commission *Inquiry into how government agencies protected personal information provided for the 2023 Census and COVID 19 vaccination purposes* (December 2024), <https://www.publicservice.govt.nz/assets/PSC-Inquiry-Personal-Information-Final-Report-5-December-2024.pdf>.

person's choice of electoral roll, just as the Act prohibits such influence over a person's vote. The offences and penalties framework in the Electoral Act does not include offences against influencing the way a person enrolls.

14. While there have not been substantiated instances of improper influence over people's choice of electoral roll, we consider that this could happen in future elections. Under the status quo, there is risk that this gap in the legislation could be exploited to the detriment of Māori electors. Māori electors are the only electors who may decide which electoral roll to register for, and thus may be improperly influenced in that choice.

What is the policy problem or opportunity?

Proposal 1 – strengthening the treating offence

15. There are two aspects of the treating offence which are unclear:
 - a. **Treating must be corrupt:** There needs to be an intention to corruptly influence a voter. In practice this is difficult to identify, since there is a significant grey area between corrupt and non-corrupt influencing.
 - b. **'Light supper' exception:** There is an exception for a 'light supper' provided after an election meeting. In practice it is challenging to determine what a 'light supper' is.
16. This lack of clarity means in the lead up to general elections, the Commission receives complaints about treating and requests from parties for a view on whether planned events or activities comply with the rules. Example of such activities include:
 - a. A party giving away food at events other than election meetings;
 - b. Handing out low value items (e.g., fridge magnets) when door knocking;
 - c. Providing free entertainment at a party event; and
 - d. Prizes and giveaways for auctions and raffles.
17. As a result of this confusion, it is difficult for parties to follow the rules and for the Commission and New Zealand Police to enforce the law. The risk is that the offence may be ineffective while limiting legitimate activities to encourage voter turnout.
18. There is also a tension between the treating offence and the cultural practice of manaakitanga. Manaakitanga is the practice of hospitality, for example, providing food and drink at an event, to show appreciation and care for a person or people. While the treating offence does not expressly limit manaakitanga because treating requires corrupt intent to influence an elector, the lack of clarity with the offence means that culturally appropriate practices may be suppressed.

Proposal 2 – enrolment offences

19. The Electoral Act contains provisions which prohibit the use of improper incentives to influence a person's vote. However, there are no provisions which regulate influence over how a person enrolls, although some behaviour (for example, the use of violence) may be captured by other statutes, such as the Crimes Act 1961. Using incentives may be permissible in some cases, and they may provide a benefit to the electoral system by improving voter participation. Figure 1 below provides examples of how incentives can be used to influence electors, none of which is regulated by the Electoral Act. We consider that this constitutes a gap in the Electoral Act.

Figure 1 – examples of acceptable and unacceptable use of incentives

| Acceptable use of incentives | Unacceptable use of incentives |
|---|--|
| Party A runs an event for their electorate MP who plans to stand again in the next election. They make a speech encouraging enrolment. The event has corporate sponsorship, and 20% discounts are given to attendees. | Individuals working for a civic group promise members of the public that they will give money to anyone in that electorate who switches from the Māori roll. |
| Party B runs an event for their candidate in a Māori electorate. There is food and drink to encourage attendance, and enrolment forms and MEO information are available. | Party C runs an event and provides food only to those who complete enrolment forms enrolling on a particular electoral roll. |

20. While any voter could be inappropriately influenced not to enrol (and therefore prevented from voting), only Māori electors can choose their electoral roll. Therefore, a new offence may predominately affect Māori electors.
21. We do not have evidence that Māori electors have been improperly influenced when deciding which electoral roll to register for; however, we think there is potential for this gap to be exploited to the detriment of Māori electors. Māori electors may be targeted by those who wish to influence their roll choice, which would inhibit the ability of those electors to freely exercise their electoral rights to the fullest extent. We consider that protecting this right is part of the Crown's obligations under Te Tiriti o Waitangi / the Treaty of Waitangi.

What objectives are sought in relation to the policy problems?

22. The Ministry seeks to achieve four objectives in addressing the policy problems:
 - a. **Clear and consistent:** electoral laws, and their effects, are clear to all.
 - b. **Fair:** electoral laws and procedures provide, and are perceived to provide, a level playing field for all electoral participants.
 - c. **Practicable and enduring:** electoral law reflects current practical realities and can accommodate future changes/developments.
 - d. **Appropriately consider Te Tiriti o Waitangi:** electoral law enables Māori perspectives to be represented in Parliament and reflects the Crown's Treaty obligations.

What consultation has been undertaken?

23. The specific proposal to strengthen treating in the Cabinet paper has not been included in previous consultation. The issue of treating was discussed in recent public consultation on the Independent Electoral Review (the IER) in 2022-2023 and the Justice Committee Inquiry into the 2023 General Election (the 2023 Election Inquiry). In general, there was agreement that the treating offence is a source of confusion, and changes are required.
24. The 2023 Election Inquiry considered treating in the context of a marae being used as a voting place and providing food and drink to voters. Three submitters referred to the treating offence but did not agree on the specific problem with the offence. In its report, the Committee recommended a review of the treating offence, including whether the provision of any food or drink at voting places should be prohibited, noting that this should take into account cultural considerations.
25. The IER consulted on issues with the treating offence, including a proposal to remove the offence entirely and undertake a comprehensive review of the offences framework in the

Electoral Act. Three organisations and a few individuals were against the proposal to repeal the treating offence, whereas the same number supported it.

26. No consultation has been undertaken on Proposal 2. The issue that is addressed by Proposal 2 was raised too late to complete meaningful consultation prior to introducing the Electoral Matters Legislation Amendment Bill.

Section 2: Assessing options to address the policy problem

What criteria will be used to compare options to the status quo?

27. The following criteria have been used to compare options to the status quo:
- Clarity:** whether the rules are clear and simple to follow and enforce.
 - Impartial:** whether the rules are fair, or whether they benefit or disadvantage any one group. The rules uphold electoral rights with respect to equal suffrage.
 - Risk minimisation:** whether risks to electoral integrity are managed, including real and perceived risks.
 - Effect on campaigning:** whether there is a positive or negative effect on campaigning and/or efforts to increase voter participation.
 - Te Tiriti o Waitangi:** whether Māori perspectives are considered, and the Crown's obligations under Te Tiriti are met.
28. All five of these criteria have been weighted equally in our analysis of Proposal 1.
29. The primary purpose of Proposal 2 is to address a hypothetical risk that electors will be improperly influenced not to enrol or enrol in a particular way. As such, the risk minimisation criterion is weighted at a value of 1.5 times more than the other criteria in our analysis of Proposal 2.

Proposal 1 – strengthening the treating offence

What scope will options be considered within?

30. Following the Committee recommendation to review the treating offence, the Minister of Justice requested advice on options to strengthen the treating offence and ensure it is enforceable.
31. The IER recommended that the treating offence be repealed, which the Minister had previously ruled out. Therefore, this option was not considered.
32. A non-regulatory option that is available, but not explored in detail in this RIS, is for the Commission to provide further guidance on the treating rules. The issue we have identified is with the offence itself – it is unclear and difficult to know what conduct will be captured by the offence. To develop guidance that provides the level of assurance that stakeholders want, the Commission would assume a high level of risk in interpreting the legislation to create this guidance. It is the role of the courts to determine whether an individual has, in fact, committed the offence of treating, and case law provides useful information on how to apply the legislation. There is very little jurisprudence that the Commission can draw on to develop guidance, so we do not consider that this non-regulatory option is feasible.

What options are being considered?

Option 1 – Status Quo

33. Under the current settings, a person is found guilty of the treating offence if they have the corrupt intent to use food, drink, or entertainment to corruptly influence an elector's vote. This offence is rarely used and there have been no recent successful prosecutions.

Option 2 – Controlled areas around voting places (*Minister's preferred*)

34. This option would retain the existing treating offence and create an additional offence which prohibits the provision of free food, drink, and/or entertainment in controlled areas around voting places. This would supplement the existing treating offence.
35. Under this option, the 'controlled area' around voting places would be 50 metres from the entrance of a voting place while voting is taking place. This option would prevent voters from being provided free food, drink, or entertainment as they approach and enter the voting place.
36. This option would take a similar approach to the 10-metre "buffer zones" around voting places where election advertising and campaigning is prohibited during advance voting.⁶ Buffer zones are also measured from the entrance of the voting place,⁷ but the controlled area would cover a larger area. This discrepancy between the buffer zones and the controlled areas may create some confusion for parties, candidates and civil society about the rules that apply around voting places. However, this difference may be appropriate as the narrower (10m) area for the prohibition on election advertising and campaigning reflects that it restricts the freedom of expression.
37. The offence under this option will be classed as an 'illegal practice' under the Electoral Act, which is punishable by a fine of up to \$10,000.⁸ This contrasts the penalty for a corrupt practice which is much higher and may include imprisonment. The offence will not require that a person intends to corruptly influence an elector. Instead it will only require that they knowingly provided food, drink, or entertainment within the controlled area. This will exclude inadvertent acts which stop when requested by the Commission. Therefore, a lower penalty is in line with the offence or act committed.
38. The offence will only apply to *free* food, drink, or entertainment. Goods supplied under market value or for a nominal fee would not be prohibited under the offence, which is a potential loophole. However, introducing a framework of assessing the market value of goods would complicate the enforcement of the offence and create additional work for the Commission.
39. Standard defences of 'reasonable excuse' will apply (including where the contravention was necessary e.g., to protect the health of an individual). An additional defence will also apply where the provision of entertainment is a regular component of the business (e.g., where a shop regularly plays music that can be heard within the controlled area).

Option 3 – Amend the treating offence to provide more detail

40. This option would clarify the corrupt intent requirement and light supper exception in the offence. Clarifying 'corrupt intent' would include providing factors that should be

⁶ See section 197A of the Electoral Act 1993.

⁷ Where voting is taking place in an area within a larger complex, the Commission can designate a smaller voting area and specific entrance from which the controlled area and buffer zone are measured.

⁸ Compare to the current penalty for treating (a corrupt practice) in section 224 of the Electoral Act, which is a penalty of up to two years in prison, a fine of up to \$40,000, and those found guilty will be added to the Corrupt Practices List for three years.

considered in determining whether the threshold has been met. Amending the ‘light supper’ exception would explain what is considered a ‘light supper’.

41. While the case law on treating is sparse, some legal commentary⁹ suggests the factors which may be considered. These include how close it is to an election, proximity to a polling place, how often the treating occurs, who can receive the incentive (i.e., whether it is open to all, regardless of voter eligibility), what is customary, and whether the incentive is excessive in the circumstances. It is also relevant whether the recipient is aware, or believed, that by receiving the incentive they were under an obligation to vote in a particular way.
42. The ‘light supper’ exception could be clarified by using more modern terminology (for example, non-alcoholic beverage and a light snack). There is a risk that the new terminology is also ambiguous and does not resolve the confusion.

Option 4 – Reduce intent threshold and penalty

43. This option would replace the corrupt intent threshold with a ‘reasonable person’ test. The lower threshold would make it easier to identify what behaviour is captured by the offence by assessing, in the circumstances, whether it is reasonable to conclude that the person intended to improperly influence an elector through the provision of food, drink, or entertainment.
44. A lower threshold would make a clear connection between the incentive given and the outcome sought by providing it. This option seeks to make it clearer that genuine intent is required to improperly influence a voter, and this is different to customary practices such as manaakitanga.
45. A lower penalty would be proportionate to the lower intent threshold, so this option would amend treating to be an illegal practice rather than a corrupt practice.

Option 5 – Amend the bribery offence to prohibit the use of food, drink, or entertainment to bribe electors (*Ministry’s preferred*)

46. This option would remove the distinction between the two offences and combine treating into the bribery offence. This would amend the bribery offence to include the provision of food, drink, or entertainment.
47. Treating is similar to bribery in the sense that an incentive is provided with the intention of procuring a specific outcome. The key difference is the incentive that is offered – for bribery, it is something of pecuniary value, and for treating it is food, drink, or entertainment. The purpose of combining these into a single offence is to remove the distinction to make it easier to understand and apply.

What option is likely to best address the problem, meet the policy objectives, and deliver the highest net benefits?

48. Table 2, below, sets out our summary assessment of all the options against the criteria discussed at paragraph 27.
49. Our preferred option is Option 5. Treating is a form of bribery, in the sense that an incentive is provided with the intention of procuring a specific outcome. In our view, the distinction between the two offences is artificial, and section 217 can be removed in favour of an expanded bribery offence.

⁹ See for example, *Wairau Election Petition* (1912) 31 NZLR 321 at 326, and *Halsbury’s Laws of England* (2023) Volume 38A at 900-901.

50. People are generally more familiar with the concept of bribery, whereas treating is more ambiguous and not a commonly used term. Option 5 addresses the problem identified with the treating offence, by seeking to make it easier to understand and follow the rules, while still supporting electoral integrity by targeting inappropriate use of bribes. It would strengthen the electoral offences framework by being more enforceable than the status quo.

Is the Minister's preferred option in the Cabinet paper the same as the agency's preferred option in the RIS?

51. No. The Cabinet paper recommends Option 2 (controlled areas around voting places). The Minister's preference reflects a stronger weighting given to options which articulate specific rules, and target the perceived risks around food, drink, and entertainment being provided around voting places. Option 2 lowers the intent threshold and prohibits specific actions. Therefore, it is straightforward to identify and prosecute offending and is more readily enforceable than the status quo in the specific circumstances where the offence applies (i.e., where the provision of free food, drink, and entertainment takes place within the controlled area when voters are voting).
52. A key drawback of this option is that it is a blunt tool which does not exclusively capture harmful or corrupt behaviour. It draws a superficial line around voting places which may be arbitrary if the influencing behaviour occurs just outside the controlled area. For example, a stall providing free food could be set up 55 metres from the voting place and would not be prohibited, but one set up 10 metres closer (i.e., within the 50-metre controlled area) would be prohibited. Both stalls could have the same effect on voters but will be treated unequally under the law.
53. The focus of Option 2 is on the immediate perceived risk to voters near voting places; however, it does not address risks outside of the controlled area. In our view, Option 5 addresses broader risks at all times during the election cycle, not only while voting is taking place. We consider that Option 5 would clarify the law to make it easier to understand and, therefore, enforce. In that sense, the law would be stronger, and more thoroughly addresses the issues we have identified with the current law.

Table 2: Assessment of options compared to the status quo/counterfactual

| | Option 1 – Status Quo | Option 2 – Controlled areas around voting places | Option 3 – Amend the offence to provide clarifying details | Option 4 – Reduce intent threshold and penalty | Option 5 – Amend the bribery offence to prohibit the use of food, drink, or entertainment to bribe electors |
|-----------------------|-----------------------|---|---|--|---|
| Clarity | 0 | <div>+</div> <p>Clearly captures the provision of free food, drink, or entertainment within the specified area.</p> <p>Entertainment may be difficult to regulate in all cases, for example, if the entertainment can be heard within the controlled area but is technically taking place outside it.</p> | <div>0</div> <p>Could provide some clarity on whether the intent threshold has been met. However, there is a small risk that providing more detail creates new grounds for confusion.</p> <p>Unclear to what extent this would improve clarity for the Commission or New Zealand Police, given they are already aware of and apply the relevant legal commentary.</p> | <div>+</div> <p>Scaling down the intent threshold will likely make it clearer and easier for political parties, civil society, and law enforcement to identify behaviour which is captured by the offence.</p> | <div>+</div> <p>Bribery is a better understood activity, so it will be easier to understand what it means to bribe a person with food, drink, or entertainment.</p> |
| Impartiality | 0 | <div>-</div> <p>Could disadvantage areas with low voter turnout, because it would suppress non-partisan activities which seek to encourage people to come to voting places. This would affect voters in some areas more than others, which could generate inequality.</p> | <div>0</div> <p>Option does not change the application of the rules, but it clarifies how they apply.</p> | <div>0</div> <p>Unlikely to disadvantage any particular group.</p> | <div>0</div> <p>Unlikely to disadvantage any particular group.</p> |
| Risk minimisation | 0 | <div>+</div> <p>Addresses the perceived risk of voters being influenced near voting places.</p> <p>Creates a superficial line around voting places. Does not prohibit the provision of food, drink, or entertainment that is discounted.</p> | <div>+</div> <p>Could better address the risk to electoral integrity if it is easier to know what complies with the law.</p> | <div>+</div> <p>Targets the perceived risk to electoral integrity by assessing what was reasonably known when providing food, drink, or entertainment.</p> | <div>++</div> <p>Targets the actual risk to electoral integrity, where voters are deliberately being improperly pressured and influenced by the provision of food, drink, or entertainment.</p> |
| Effect on campaigning | 0 | <div>-</div> <p>The 50-metre controlled area is inconsistent with the 10-metre buffer zone where advertising and campaigning is prohibited during the advance voting period. This could cause confusion and make it difficult for political parties, candidates, and civil society to understand what is permitted in different areas around voting places.</p> | <div>+</div> <p>If the rules are clearer, it is easier for political parties and civil society to understand and follow the rules. This could have a avoid the potentially chilling effect on permissible campaigning if the rules are difficult to understand.</p> | <div>+</div> <p>Under the status quo, political parties and civil society are overly cautious to avoid accidental breaches of the rules.</p> <p>Clearer rules provide certainty around the campaign activities that are permitted.</p> | <div>+</div> <p>Bribery requires a specific actus reus,¹⁰ so it will be more straightforward for political parties to identify that behaviour and avoid doing it in their campaigns.</p> <p>Could have a positive effect on civil society campaigns to boost voter turnout if it is easier to know what they can do without being captured by the offence.</p> |
| Te Tiriti o Waitangi | 0 | <div>-</div> <p>Potential to have a disproportionate effect on voting places that service Māori communities. It is consistent with the practice of manaakitanga to welcome and show appreciation for people with food, drink, and/or entertainment. This option would prohibit and criminalise these cultural practices in the areas around voting places.</p> | <div>0</div> <p>Unlikely to significantly affect the Crown’s ability to meet its obligations under the Treaty / Te Tiriti, since it is a clarification of the current rules. However, there may be some positive effect if it is clear that cultural practices are allowed, which may be beneficial to Māori groups.</p> | <div>+</div> <p>Unlikely that manaakitanga will be captured by this option.</p> <p>Unlikely to negatively affect efforts to boost Māori voter turnout.</p> | <div>+</div> <p>It is unlikely that manaakitanga will be inappropriately captured by this option.</p> <p>Enabling and supporting cultural practices which seek to boost Māori voter turnout supports the Crown’s obligations under the Treaty / Te Tiriti.</p> |
| Overall assessment | 0 | <div>-</div> | <div>0</div> | <div>+</div> | <div>++</div> |

Key: ++ much better than the status quo; + better than the status quo; 0 about the same as the status quo; - worse than the status quo; -- much worse than the status quo

¹⁰ The act or behaviour which constitutes an offence.

Table 3: Marginal costs and benefits of preferred option in the Cabinet paper

| Affected groups | Comment | Impact | Evidence Certainty |
|---|---|------------|--------------------|
| Additional costs of the preferred option compared to taking no action | | | |
| Electoral Commission | The proposal in the Cabinet paper will require public communications about the change and updated messaging to political parties. Provision of food, drink, or entertainment will also need to be assessed and discussed with potential venues as part of the Commission's voting place assessment process. The change may result in additional complaints to the Commission and will require monitoring at voting places to ensure compliance with the rules. | Medium | High |
| New Zealand Police | There may be a marginal increase in referrals to the New Zealand Police for breaches of the new rules. These will require New Zealand Police resources. Although the exact number is not clear, it is not expected to be significant. | Low | Medium |
| Civil society (i.e., advocacy groups) | Civil society and other advocacy groups will need to adapt their strategies for encouraging voter turnout, since the new rules will prevent them from running free events outside voting places. Depending on the venue, groups may easily adapt their events which will mitigate this cost, but for other venues it may not be possible to run those events (depending on the size or layout of the venue, for example). | Low | Medium |
| Voters | The proposed change may decrease the number of events which entice voters to voting places and encourage them to vote. Such events will need to be positioned further away from the voting place, which may make the events and voting less effective at appealing to voters. It may make some venues unsuitable. | Low | Medium |
| Total monetised costs | | N/A | |
| Non-monetised costs | | <i>Low</i> | <i>Medium</i> |
| Additional benefits of the preferred option compared to taking no action | | | |
| Political parties and candidates | Provides some clarity around what is permitted at voting places, which creates an even playing field. | Low | Medium |
| Voters | The space immediately surrounding voting places will be clear of activities which may influence voters. | Low | High |

| | | | |
|---------------------------------|--|------------|-------------|
| Total monetised benefits | | N/A | |
| Non-monetised benefits | | <i>Low</i> | <i>High</i> |

Table 4: Marginal costs and benefits of the Ministry's preferred option

| Affected groups | Comment | Impact | Evidence Certainty |
|---|--|---------------|---------------------------|
| Additional costs of the preferred option compared to taking no action | | | |
| New Zealand Police | This option could create a small increase the number of referrals to the New Zealand Police, which will require resource. The exact number of referrals is unclear, although we note that there has been just one referral to the New Zealand Police for bribery over the last three election cycles. We do not expect this to increase significantly. | Low | Medium |
| Total monetised costs | | N/A | |
| Non-monetised costs | | <i>Low</i> | <i>Medium</i> |
| Additional benefits of the preferred option compared to taking no action | | | |
| Electoral Commission | If political parties, candidates, and the general public understand the rules better, then it is likely that there will be fewer queries and complaints for the Commission to manage. | Low | Medium |
| Political parties and candidates | Clearer rules will mean that parties and candidates have more certainty as they plan their campaigns, since they will have a better understanding of the boundaries of the rules. | Medium | Medium |
| Civil society (i.e., advocacy groups) | More certainty about the rules will help civil society know what events or initiatives they can run while following the rules. | Medium | Medium |
| Voters | The option targets the actual risk of improper influence over electors, so this will better protect voters. | Low | Medium |
| Total monetised benefits | | N/A | |
| Non-monetised benefits | | <i>Medium</i> | <i>Medium</i> |

Proposal 2 – enrolment offences

What options are being considered?

Option 1 – Status Quo

55. Under the current settings, the Electoral Act offences do not prohibit the use of inappropriate incentives to influence an elector's enrolment, unless this influences the person's vote. Depending on the incentive used, for example, the use or threat of violence, other legislation such as the Crimes Act 1961 may apply.

Option 2 – Amend the Electoral Act to prohibit improper influence over a person's enrolment

56. This option amends the bribery, treating, and undue influence offences in the Electoral Act to prohibit the use of incentives to influence electors not to enrol or to enrol on a specific electoral roll.
57. The expanded offences would not apply to activities which generally influence an elector to enrol, for example, the Commission undertaking its pre-election enrolment campaign. This approach mitigates the risk that legitimate campaigning and information activities which encourage enrolment could be unintentionally suppressed.
58. We have concerns with the existing offences and penalties regime in the Electoral Act so adding to that framework may carry the same issues (for example, the clarity issues with the treating offence discussed under Proposal 1).

What option is likely to best address the problem, meet the policy objectives, and deliver the highest net benefits?

59. Table 5, below, sets out our summary assessment of this option against the criteria discussed at paragraph 27.
60. The Minister's preferred option is Option 2, which amends the Electoral Act to prohibit acts of treating, bribery, and undue influence to induce electors not to enrol or enrol in a particular way.
61. As noted earlier, there is little evidence that electors are being unduly influenced in their roll choice, and so it is not clear to the Ministry that it is necessary to expand the offences. However, if the offences are to be amended, we consider that Option 2 is the best approach. It may provide a small improvement on the status quo because the electoral legislation would explicitly address the theoretical risk that electors' enrolment choices are being improperly influenced and provides some protection to electors, particularly Māori electors. Thus, if such improper behaviour was to occur, enforcement and potential prosecutorial action could follow.

Table 5: Assessment of options compared to the status quo/counterfactual

| | Option 1 – Status Quo | Option 2 – Amend the Electoral Act to prohibit improper influence over a person’s enrolment |
|------------------------------|-----------------------|--|
| Clarity | 0 | - The option builds on existing offences, which means that any existing clarity issues will continue under this option. As discussed under Proposal 1, the treating offence is difficult to understand, so this part of the enrolment offence may also be unclear. |
| Impartiality | 0 | 0 Voters are free from improper influence over their enrolment, particularly Māori electors who can decide which roll to register on. If the offences are not well understood (see discussion above under Clarity criterion), then there is a potential chilling effect on campaigns which seek to inform Māori electors about registering for the Māori electoral roll. Given the severe penalties for corrupt practice offences, political parties, candidates, and civil society may take a cautious approach, which could disadvantage Māori electors by limiting the information they receive about their enrolment options. |
| Risk minimisation | 0 | + Addresses the theoretical risk of electors being improperly influenced not to enrol or enrol in a particular way. The offences regime in the Electoral Act is made stronger by addressing the gap in the law. |
| Effect on campaigning | 0 | 0 The rules will need to be clearly communicated in order to ensure there is no negative effect on campaigning. |
| Te Tiriti o Waitangi | 0 | 0 Addresses the potential risk to Māori electors as they exercise their choice of electoral roll. In this way, the option protects Māori electors from improper influence, which meets the Crown's obligations under Te Tiriti o Waitangi by supporting Māori electors to participate in elections. However, as noted under the Impartiality criterion, there is a risk that political parties, candidates, and civil society will take a cautious approach to their information campaigns. This could suppress the information Māori electors receive about the MEO, which could prevent Māori electors from participating in elections. |
| Overall assessment | 0 | 0 |

Key: ++ much better than the status quo; + better than the status quo; 0 about the same as the status quo; - worse than the status quo; -- much worse than the status quo

Table 6: Marginal costs and benefits of the preferred option in the Cabinet paper

| Affected groups | Comment | Impact | Evidence Certainty |
|---|---|---------------|--------------------|
| Additional costs of the preferred option compared to taking no action | | | |
| Electoral Commission | Expanding the offences raises the possibility of more complaints and breaches for the Commission to examine and refer to the New Zealand Police. This may require more resources. Although it is not known how many additional complaints and breaches are likely to be received, it is unlikely to be significant. The Commission will also need to provide public communications and guidance to political parties and candidates to ensure the new rules are well understood. | Low | Low |
| New Zealand Police | As above, expanding the offences can increase the number of breaches referred to the New Zealand Police. It is not known how many additional referrals are likely to be received; however, it is unlikely to be significant. | Low | Low |
| Voters | If the offences are not well understood, then there is a risk that information campaigns which raise awareness about enrolment and the Māori electoral option may be deterred by the offence. This would be at the expense of voters, who would miss out on receiving that information. This risk could be partially mitigated by good public communications. | High | Low |
| Total monetised costs | | | |
| Non-monetised costs | | <i>Medium</i> | <i>Low</i> |
| Additional benefits of the preferred option compared to taking no action | | | |
| Voters | This option protects voters from potential improper influence over their enrolment and provides recourse under the Electoral Act if this were to occur. | Low | Low |
| Total monetised benefits | | | |
| Non-monetised benefits | | <i>Low</i> | <i>Low</i> |

Section 3: Delivering an option

How will the proposal be implemented?

62. These proposals will be progressed through the Electoral Matters Legislation Amendment Bill and will take effect ahead of the 2026 General Election.
63. The Commission will be responsible for monitoring behaviour at voting places and receiving complaints for alleged breaches of the rules. Any changes to the rules will become part of the Commission's voting place assessment process when assessing potential venues. Proposal 1 will require additional monitoring at voting places, particularly as electoral participants adapt to the new rules. This may be challenging for election staff at some voting places since the entire controlled area may not be visible from the entrance of the voting place, so the Commission may need to adapt its processes at some voting places. The new enrolment offence may result in additional complaints to the Commission, but it is not clear how many will be received. The Commission will not require additional funding to implement these proposals.
64. The New Zealand Police will be responsible for receiving referrals from the Commission. They will be responsible for investigating and, where appropriate, prosecuting. The New Zealand Police have been consulted S6(c)

the New Zealand Police may refer the matter to the Serious Fraud Office.

65. We have worked with the Commission to develop these proposals to ensure we have presented operationally feasible and practical options for consideration. The Commission will need to include messaging about the new rules in its public communications and its guidance for political parties and voting place venues.

How will the proposal be monitored, evaluated, and reviewed?

66. The Commission already collects relevant data each election, for example, the number of complaints regarding alleged offending, and the number of referrals made to the New Zealand Police. This data will capture the impact of these change and therefore new data will not need to be collected. The Commission will monitor the impact this change has on the data, for example, to see if there is a change in the number of complaints during the election period.
67. Aspects of the electoral system are regularly reviewed. The Commission and the Committee both complete a triennial review after each general election. The public and other stakeholders have an opportunity to submit to the Committee review. The Government's response to the Committee's recommendations is tabled in the House. Amendments to the Electoral Act are regularly used to improve and strengthen aspects of the administration of the system between elections.