

Regulatory Impact Statement: Timing and frequency of the Māori Electoral Option

Purpose of Document	
Decision sought:	This analysis has been prepared for the purposes of supporting decisions to be taken by Cabinet regarding any change to the timing and frequency of the Māori Electoral Option.
Advising agencies:	<i>Ministry of Justice</i>
Proposing Ministers:	<i>Minister of Justice Hon Kris Faafoi</i>
Date finalised:	11 November 2021
Problem Definition	
The timing and frequency of the Māori Electoral Option is a barrier to Māori exercising electoral rights under the Electoral Act and Local Electoral Act. The current settings also present a risk of inconsistency with the Treaty of Waitangi.	
Executive Summary	
<p>The Māori Electoral Option is a four-month period within which Māori voters can elect to exercise their option to move between general or Māori electoral rolls¹. Under current law, the Māori Electoral Option occurs once every four to six years and is the only time that Māori voters can choose to move rolls, other than when they enrol for the first time. The Option informs the Representation Commission's review of the number and boundaries of electorates (the boundary review). The current timing ensures that both the census and Māori Electoral Option occur prior to each boundary review. Aside from when they first enrol, the Option period is the only time when Māori voters can change their roll choice.</p> <p>Cabinet agreed to consider changes to the timing and frequency of the Māori Electoral Option with a view to making changes prior to the 2023 General Election. Cabinet also agreed that the Ministry of Justice conduct targeted engagement with Māori individuals and organisations to inform their advice on what, if any, changes are needed. During the targeted engagement the Ministry put a number of questions to academics and focus groups including what they think of the status quo, what they think of shifting to a three yearly option and whether they had any alternative ideas for changing the timing and frequency.</p> <p>The Ministry of Justice's preferred option is to allow Māori voters to exercise their option at any time (the continuous option), with two restrictions. This is the option we recommend because it significantly reduces the barriers Māori face when engaging with the electoral system. This option would be the most consistent with the Treaty of Waitangi and the most consistent with the objective of maximising participation in the electoral system.</p>	

¹ During each Māori Electoral Option most Māori voters remain on their current roll (over 95% in 2018). In 1997, 2001 and 2006, of those that changed roll type, more Māori voters opted to move onto the Māori roll, than onto the general roll. In 2013 the number of Māori changing rolls was about the same. In 2018 more Māori voters opted to move onto the general roll.

The Māori stakeholders consulted during the targeted engagement period supported the preferred option. They said that this continuous option would remove current restrictions on Māori voters' electoral rights and allow Māori voters to make more informed and relevant electoral choices at both the local and general level.

Many also identified a continuous option as the best way for the Crown to fulfil its obligations under the Treaty of Waitangi, considering the status quo to be a breach of Articles 2 and 3 due to the restrictions and barriers it places on Māori electoral participation.

The Minister of Justice is presenting the preferred option to Cabinet.

Limitations and Constraints on Analysis

Timeframes

The last Māori Electoral Option was in 2018 and the next one is due to be in 2024. Cabinet considered it timely to consider whether changes to the timing and frequency are needed as Māori voters were last able to move rolls in 2018, two years before the 2020 General Election and, unless changes are made, will not have an opportunity to move before the 2023 General Election.

The changes need to be enacted by mid-2022 to allow a Māori Electoral Option period to be held before the 2023 General Election. Cabinet decisions will be needed in November 2021 to allow Parliamentary Counsel sufficient time to draft.

The tight timeframe resulted in the Ministry conducting a targeted engagement process, focussed primarily on hearing from Māori individuals, academics and organisations. Some feedback from engagement was that a wider engagement process or a wider scope would be preferable. However, overall feedback supported change, including in time for the 2023 General Election. While Māori stakeholders we engaged with supported a broader scope and more substantive engagement, they were also clear that a limited improvement before the next General Election was preferable to further delay.

Further, due to the tight timeframe and the time required for implementation, changes to the timing and frequency are unable to be made prior to the 2022 local elections.

Scope

The current timing works well administratively for the boundary review process, the Representation Commission's regular assessment and adjustment of electorate boundaries to ensure each electorate contains about the same number of people, and is underpinned by the principle of equality of representation, which ensure that the votes of all electors are broadly of equal value in determining the composition of the House of Representatives. The census is the "trigger" for the Māori Electoral Option, which is then followed by the boundary review. The timing avoids the boundary review commencing during an election year.

The scope of this project was limited to the timing and frequency of the Māori Electoral Option. The timing and frequency of the boundary review sits outside the scope. Therefore, any change made to the status quo would not impact on how often a boundary review is held or where the electorate boundaries should be located.

Another possible change that was raised during the targeted engagement period was creating separate electoral rolls for local and general elections. This would allow Māori voters to make separate choices for different types of election. This also falls outside the scope of this project and therefore was not considered as an option or part of an option for

change. However, the preferred option would give Māori voters the same level of flexibility to choose rolls for every election as a separation of the rolls.

Responsible Manager(s) (completed by relevant manager)

Hayley Denoual
Acting Manager
Electoral and Constitutional Policy Team
Ministry of Justice

Quality Assurance (completed by QA panel)

Reviewing Agency:	Ministry of Justice
Panel Assessment & Comment:	The Ministry of Justice RIA Panel has reviewed the Regulatory Impact Statement <i>Timing and frequency of the Māori Electoral Option</i> and considers that it meets the Quality Assurance Criteria. It clearly describes how the proposal will meet the intended objectives and mitigate potential risks. The RIS notes that timeframes for consultation meant broad public engagement was not possible but thorough targeted consultation was carried out with representatives of those impacted by the proposal and key academics. The Panel was satisfied that the targeted engagement was sufficient. Effective engagement with Māori by the Electoral Commission will be critical for successful implementation of the proposal. The RIS acknowledges this and sets out the proposed implementation plans and describes how both the implementation, and impact, of the proposal will be monitored and evaluated.

Section 1: Diagnosing the policy problem

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

What are the key features of the regulatory system(s) already in place?

1. Under current law, the Māori Electoral Option occurs once every four to six years and is the only time that Māori voters can choose to move rolls, other than when they enrol for the first time.
2. The relevant legislative provisions are in the Electoral Act 1993 (the Act). Under the Act, a Māori Electoral Option period must be held in every year that the census is held, or the year after, should the census year fall on an election year. Section 79 restricts the transfer between the General and Māori rolls except for when a Māori voter enrolls for the first time or during a Māori Electoral Option period.
3. Under section 28 of the Act, the Representation Commission is tasked with undertaking the Boundary Review. This process involves the periodic division and readjustment of New Zealand into General and Māori electoral districts. The process of how the

Representation Commission conducts the division is set out in section 35 of the Act. Together with the most recent census, data from the Māori Electoral Option informs the Representation Commission's review of the number of electorates and the location of boundaries. The current timing of the Māori Electoral Option period ensures that both the census and Māori Electoral Option occur just prior to each boundary review.

4. The provisions in the Electoral Act 1993 relate to Māori seats and the Māori Electoral Option are not entrenched. This was a deliberate decision. However, the Māori Electoral Option is referred to as part of the process of drawing the general electorate seats in a provision of the Electoral Act 1993 that is entrenched (section 35 – Division of New Zealand into General electoral districts).
5. Crown Law has advised that changes to the provisions governing the Māori Electoral Option would not impact on the entrenched provision, and so need to be passed only by a simple majority. The advice is qualified in that Crown Law cannot give a determinative opinion without seeing the precise amendments that would be made to the Electoral Act 1993.

What is the current state within which action is proposed?

New Zealand's electoral system and Māori electoral participation

6. An overarching principle of New Zealand's electoral system is that voting should be as easy and freely accessible as possible to ensure maximum enfranchisement. Voter participation is a vital part of a healthy democracy.
7. Māori voter turnout for the Māori roll has increased gradually in recent elections (67.6% in 2014, 71.1% in 2017, 72.89% in 2020). However, the Māori voter turnout rate is still significantly lower than the general voter turnout rate which was 81.54% in 2020.
8. At 30 June 2021, of the 532,801 electors of Māori descent enrolled to vote, 274,464 (51.5%) were on the Māori roll and 258,337 (48.5%) were on the general roll. During the 2018 Māori Electoral Option 10,163 Māori voters moved from the Māori roll to the General roll, while 7,956 moved from the General to the Māori roll. Over 95% of Māori voters remained on their current roll.
9. Many Māori voters attempt to exercise the Option (ie transfer rolls) outside of Māori Electoral Option periods. During a non-election year, approximately 6,000 people attempt to exercise the Option and are unable to do so. In election years, this increases significantly. For example, in 2020, the most recent General Election year, 24,000 people attempted to exercise the Option.

Electoral Act 1993

10. The Electoral Act 1993 (the Act) is the framework for the electoral system. It establishes the Electoral Commission which is the main vehicle for operationalising the Act. Section 4C of the Act states the objective of the Electoral Commission is to facilitate participation in parliamentary democracy, promote understanding of the electoral system, and maintain confidence in the administration of the electoral system.

Local government

11. The Māori Electoral Option also applies in local elections where a Māori ward or constituency has been established. Section 4 of the Local Electoral Act 2001 sets out the principles of that act which include implementing:
 - a. representative and substantial electoral participation in local elections and polls,
 - b. fair and effective representation for individuals and communities, and
 - c. public confidence in, and public understanding of, local electoral processes

Treaty of Waitangi

12. The timing and frequency of the Māori Electoral Option needs to be considered in light of the Crown's obligations under the Treaty of Waitangi.
13. As it assists in calculating the number of Māori seats, the Māori Electoral Option should be understood in the context of the importance of Māori seats to Māori. The 1986 Royal Commission report into New Zealand's Electoral System said:²

Although they were not set up for this purpose, the Māori seats have nevertheless come to be regarded by Māori as an important concession to, and the principal expression of, their constitutional position under the Treaty of Waitangi.

14. This view was later affirmed by the Waitangi Tribunal in its 1994 report into the Māori Electoral Option. In its report, the Tribunal explained the ongoing constitutional significance of the Māori seats in relation to the Treaty, noting that "[the Māori Seats] have been seen by Māori as an exercise, be it a limited one, of their tino rangatiratanga guaranteed to them under the Treaty of Waitangi".³
15. The Māori Electoral Option is also relevant to the Crown's obligations under article three of the Treaty. In its 1994 report considering the funding for the first Māori Electoral Option, the Tribunal found that the Crown is under a Treaty obligation to actively protect Māori citizenship rights and in particular existing Māori rights to political representation through Article 3. The Tribunal discussed the importance of the Māori Electoral Option itself with regard to the Treaty, stating that⁴

It is difficult to imagine a more important or fundamental right of a citizen in a democratic state than that of political representation. This right is clearly included in the protection extended by the Crown to Māori under article 3.

16. The 2019 report *He Aha I Pērā Ai? The Māori Prisoners' Voting Report* also noted the significance of voting and the right of Māori to equitably partake in elections. In its report the Tribunal finds that, in addition to engaging Article 3 citizenship rights, voting is an exercise of Article 2 Treaty rights, as it is an expression of individual and collective tino rangatiratanga to appoint their political representatives.

How is the status quo expected to develop if no further action is taken?

² Report of the Royal Commission on the Electoral System 1986, Chapter 3: Māori Representation.

³ Māori Electoral Option Report, Waitangi Tribunal, 1994. Pg 11

⁴ As above, pg 12

17. The last Māori Electoral Option was in 2018 and the next one is due to be in 2024. If the status quo remains and no action is taken Māori voters will be unable to make a choice regarding which roll they would like to be on for two General Elections (2020 and 2023). This pattern of Māori voters potentially being unable to change rolls for multiple elections will subsequently continue if the status quo of a Māori Electoral Option period occurring every 4-6 years is retained.
18. The Māori Electoral Option is also increasingly relevant to local elections. Following changes made to the Local Electoral Act 2001 earlier this year, the number of councils with Māori wards or constituencies will increase from three to 35 for the 2022 local elections. Voters on the Māori roll will vote in Māori wards or constituencies where these exist.

Are there any previous government decisions that are relevant to this problem?

19. The timing and frequency of the Māori Electoral Option is a topic that has been regularly raised in reports regarding recent General Elections. The Justice Committee's Inquiry into the 2017 General Election and 2016 Local Elections and the Justice and Electoral Committee's Inquiry into the 2014 General Election recommended that the Māori Electoral Option period occur every three years.
20. The Electoral Commission, in their report on the 2020 General Election, recommended a review of the current provisions limiting the exercise of the Māori Electoral Option. The Commission noted that any change to the Māori Electoral Option should be future proofed to enable electors to be communicated with and exercise the Māori Electoral Option using digital channels.
21. Cabinet agreed to consider changes to the timing and frequency of the Māori Electoral Option with a view to making changes prior to the 2023 General Election. Cabinet also agreed that the Ministry of Justice conduct targeted engagement with Māori individuals and organisations to inform their advice on what, if any, changes are needed.
22. Cabinet has also agreed to a review of the Electoral Act being undertaken by an Independent Panel. The aim of this review will be to look at all aspects of how New Zealand's electoral rules and system currently work. This review is likely to cover a range of issues that are related to the Māori Electoral Option but fall outside the scope of this project. The review may also be an opportunity to revisit and evaluate any changes made to the status quo.

What is the policy problem or opportunity?

23. The current timing and frequency of the Māori Electoral Option (the status quo) restricts Māori voters' ability to exercise their electoral rights. The Māori Electoral Option represents an important choice for Māori with multiple consequences. The status quo limits Māori voters' ability to exercise this choice.
24. The status quo locks Māori into one choice for up to six years and two general elections. Much will change within that time and key information, such as the candidates, is not readily available during the Option period. This is at odds with many other aspects of electoral participation, which are now much more flexible (for example, advance voting and election day enrolment).

25. The status quo applies a single choice for general and local elections – people we engaged with said that reasons for choosing a roll may differ for central and local government. As we get closer to the 2022 local elections, many voters will realise that they are unable to choose whether they can vote in a new Māori ward, as that choice was determined by the 2018 Māori Electoral Option.
26. The status quo is confusing and difficult to understand. Many Māori voters attempt to exercise the Option outside of Māori Electoral Option periods particularly in elections years (see paragraph 9).
27. As Māori voters are the only voters able to exercise the Option and switch rolls, Māori voters are primarily affected by the current restrictions regarding the timing and frequency of the option. Therefore, the Ministry of Justice’s engagement focussed on talking to various Māori individuals, and Māori advocacy, legal and representative groups and academics with an interest in this area to hear their views on issues related to the timing and frequency of the Māori Electoral Option.
28. The targeted engagement found that the common position amongst stakeholders and experts is that the current settings are a structural barrier to engaging with the electoral system. In their submission, academics Dr Maria Bargh and Professor Tahu Kukutai concluded that lower participation rates for Māori suggests “that greater flexibility is needed to better facilitate choices and voting”.

The status quo may be inconsistent with the Crown’s Treaty obligations

29. Māori individuals and academics also noted that the status quo presents a risk of inconsistency with the Treaty of Waitangi. We also consider that the status quo presents a risk of inconsistency with Treaty principles, such as the principle of active protection. As other aspects of electoral participation have become more flexible, and in light of lower rates of Māori participation, they could also risk inconsistency with the principle of equity.
30. The Māori Electoral Option is relevant to Article Two of the Treaty because of its importance in terms of determining the number of Māori seats in Parliament. It is also relevant to the Crown’s obligations under Article Three of the Treaty to actively protect Māori rights to political representation, of which the Māori Electoral Option is a part. Most people we engaged with considered the Māori Electoral Option, under current settings, to fall short of what is required from the Crown to meet its obligations under the Treaty.

Section 2: Deciding upon an option to address the policy problem

What objectives are sought in relation to the policy problem?

31. The purpose of electoral policy is to develop policy that upholds and promotes the legitimacy and integrity of New Zealand’s democratic electoral system.
32. Using the Ministry’s Electoral Policy Framework, four key objectives have been identified for this work. These objectives reflect the ways in which the electoral policy purpose can be served through this policy issues.

33. To analyse whether the options set out in this paper regarding the timing and frequency of the Māori Electoral Option will meet the key objectives we have developed five criteria for evaluation.
34. With the objectives and criteria in place, this establishes an analytical framework against which the status quo and options for change can be assessed.

Objective	Criteria	Description of criteria in this context
Te Tiriti o Waitangi The system enables Māori perspectives to be represented in Parliament	Gives effect to the Crown's Treaty of Waitangi obligations	The option chosen should recognise the importance of the Māori seats as an exercise by Māori of tino rangatiratanga and the Crown's duty to actively protect Māori electoral rights.
Encourage electoral participation Voter turnout, and other forms of participation, is improved	Accessible and understandable for Māori	The option chosen should result in a system that can be readily understood without expert knowledge of electoral issues, and processes that are simple for Māori to engage with and use.
	Supports the exercise by Māori of their electoral rights	Citizens should not face unreasonable barriers to exercising their rights under the Electoral Act and Local Electoral Act.
Fair Electoral laws and procedures provide, and are perceived to provide, a level playing field for all electoral participants	Equality of representation at electorate level	In timing the census and Māori Electoral Option immediately prior to each boundary review, the current system prioritises equality of representation. It reduces variation in electoral populations between boundary reviews.
Practicable and Enduring The law reflects current practical realities and can accommodate future changes/developments	Cost	The costs of administering the Māori Electoral Option and elections should be reasonable.

What scope will options be considered within?

35. The scope of this project is limited to the timing and frequency of the Māori Electoral Option. This is to allow for a change to be considered and implemented prior to the 2023 General Election.
36. Due to the tight timeframes for engagement, the policy and legislative processes and implementation, several options and mechanisms which affect or are affected by the Māori Electoral Option were considered to fall out of scope.
37. The first is the timing and frequency of the Representation Commission's boundary review. Changes to the boundary review do not fall within scope as they would have significant impacts on other parts of the system, also they would require amending an entrenched provision.
38. Another possible change that was raised during the targeted engagement period was creating separate electoral rolls for local and general elections. This would allow Māori voters to make separate choices for different types of election. This also falls outside the

scope of this project and therefore was not considered as an option or part of an option for change.

39. The targeted engagement raised a number of other related issues or concerns regarding electoral policy that fall outside the scope of this project. However, many of these will be considered as part of wider electoral review or the Future for Local Government Review. The independent review of electoral law will also be an opportunity to consider the boundary review, the role of the Representation Commission and to revisit any changes made to the timing and frequency of the Māori Electoral Option prior to the 2023 General Election.

What options are being considered?

Option 1 – Status Quo

40. Currently the Māori Electoral Option is a four-month period which occurs every four to six years and informs the Representation Commission's review of the number and boundaries of electorates along with the results of the census. Aside from when they first enrol, it is the only time when Māori voters are able to exercise the option. The last Māori Electoral Option was in 2018 and the next one is due to be in 2024.

Option 2A - More Regular Māori Electoral Option Periods - Every Three Years Option

41. This option would retain a Māori Electoral Option period, but it would occur every three years in the lead-up to a General Election. This is when Māori stakeholders have told us they find most relevant for the Māori Electoral Option choice, with clear line of sight to the General Election that will be influenced by their decision. Its timing means that people will keep the same roll choice for any by-election and boundary review as they made in the General Election. They would also keep it for any local elections that fall before the next general election.
42. Under this option, changing roll types would be permitted up to and including on polling day. The Electoral Commission considers it is operationally feasible to allow Māori voters to change rolls in the advance voting period and on polling day for general elections. People who change rolls would need to fill in an extra form and cast a special vote. However, it would be consistent with the general trend to prioritise flexibility and enfranchisement, even if it means more special votes (e.g. election day enrolment). At this stage, the Electoral Commission does not anticipate that the increase in special votes would have a significant operational or financial impact.
43. Most of the people we spoke to thought that this option would be an improvement but not the best option. In terms of advantages, people thought that making the Māori Electoral Option more frequent should make it easier to educate people about it. People also considered the Electoral Commission's data on the number of people who attempt to change rolls in an election year show this is when its most relevant.
44. A small number of people we spoke to did not see this as a significant improvement, but rather retaining many of the barriers to exercising the Option in the current system, and continuing discrimination against Māori. They did not consider there was any justification for retaining restrictions such as limiting when Māori can choose between rolls.
45. In terms of the Crown's Treaty obligations, the three-year option would be an improvement on the current settings because Māori voters will be able to consider their roll choice more often and when voting is more top of mind for many. However, some key problems with the current settings would be retained: Māori voters could only change rolls in a set period (albeit every three years rather than five), and it would not provide for changing of choice between local and general elections.
46. Initial estimates from the Electoral Commission are that this option would cost the same to run as the status quo (approx. \$8-9 million), however as the Māori Electoral Option period would be more frequent this cost would be incurred more frequently.

47. The Ministry of Justice does not consider this to be the preferred option.

Option 2B - More Regular Māori Electoral Option Periods - Twice Every Three Years Option

48. This option is a variation on Option 2A. However, a Māori Electoral Option period would occur twice every three years: the first in the lead-up to a General Election and the second in the lead up to local elections.
49. This option is a possible balance between allowing choice to voters at significant periods during electoral cycles and avoiding potential issues that may arise if a continuous option (discussed below) is implemented.
50. In terms of the Crown's Treaty obligations, as above, this option would be an improvement on the current settings because Māori voters will be able to consider their roll choice more often and when voting is more top of mind for many, however it still features a certain level of restriction by only allowing change in two set periods.
51. While we do not currently have estimates from the Electoral Commission on the cost of this option, we anticipate that this option would have a similar cost to Option 3A due to the increased frequency of option periods.
52. The Ministry of Justice does not consider this to be the preferred option because of the restrictions discussed in para 50.

Option 3A - Continuous Māori Electoral Option choice with two possible restrictions (Minister Preferred)

53. This option allows Māori voters to change a Māori Electoral Option choice at any time. This is the option we recommend because it significantly reduces the barriers Māori face when engaging with the electoral system. The vast majority of Māori we engaged with considered the Māori Electoral Option should be available as often as administratively possible, and the three-year option was not frequent enough.
54. We consider this option has the potential to be accessible and understandable for Māori voters due to its ongoing nature and the removal of restrictions that has led to significant numbers of voters being unable to switch rolls when they try every year. We acknowledge that this is contingent upon a consistent and targeted education and engagement campaign from the Electoral Commission.
55. The flexibility and accessibility of the continuous option also supports the Crown in meeting its Treaty obligations to actively protect the electoral rights of Māori voters and best recognises the importance of the Māori seats as an expression of tino rangatiratanga within our current democratic system.
56. As with the three-year option, under this option changing roll types would be permitted up to and including on polling day.
57. As discussed below, costings from the Electoral Commission estimate that this option would cost just over \$10 million for the first electoral cycle with the majority of that cost falling in 2022-23 due to the communication, education and engagement that will be

required as a part of implementation. Following the electoral cycle, the Commission estimates an ongoing cost of \$1-1.8 million for the next three years. While short term costs are slightly higher than the status quo, ongoing costs are likely to be significantly lower due to the nature of the option.

58. The continuous option involves some (marginal) risks to equality of representation at electoral level which relate to the ability to tactically switch rolls at certain times. This may lead to Māori voters having a disproportionate influence on by-elections and the boundary review in ways non-Māori voters cannot. However, these can be largely mitigated with the following two adjustments that don't restrict Maori voters' choices significantly.

By-election restriction

59. Allowing continuous change between rolls would allow a Māori voter living within the electorate boundary to change roll type to vote in a by-election, regardless of the roll type they chose when the General Election occurred. This could be considered an electoral advantage and be perceived as unfair. To mitigate this risk, we are proposing that a person not be able to change roll type and vote in a by-election after a vacancy has been gazetted. The restriction would only affect Māori voters whose roll change would result in them joining the electorate the by-election will occur in, and only until the by-election is concluded.
60. In the very unlikely event that a by-election actually takes place at the same time as a local election, Māori electors living in a local electoral district that has Māori wards or constituents, will continue to be able to change rolls so they can exercise their roll-choice for the local election. In practice, we consider that a clash in timing between a by-election and local election is very unlikely to occur. Since the 2011 general election New Zealand has held six by-elections and none of these have ever coincided with a local election. While this would theoretically allow some Māori voters to change rolls into a by-election, we consider the potential restriction of Māori voters ability to choose in local elections on balance to be a greater risk to the objectives set out above.

Boundary review restriction

61. Under this option, we are proposing that people's roll type in the last General Election is the one that should be used to determine the electoral populations for general elections in the boundary review. This would mean that, as now, people make one choice that determines both the electorate that they vote in and how they will be counted in the next boundary review process. It will better support people to choose different roll types for general and local elections, without having unintended consequences for the general election boundary review. The Electoral Commission has confirmed that it is able to extract roll information from the close of polling day and add to that any new first-time enrolments who have been added to the rolls since the election for this purpose. While the Ministry of Justice considers this restriction to be preferable, the Ministry considers this option would still be workable without this restriction in place.

Option 3B – Continuous Māori Electoral Option choice that allows Māori voters to change rolls any time but only once per electoral cycle restriction

62. Under this option Māori voters could change rolls at a time that suited them but once they did, they would be locked into that choice for three years. This would address concern that some people may have, that Māori voters could, in theory, obtain an electoral advantage by changing rolls to participate in a by-election or ahead of a boundary review.
63. We do not recommend this option – it would be a significant restriction on Māori voters exercising their rights under the Electoral Act and erode the main benefits of a continuous option. It is also complex for voters to understand and raises significant operational challenges. For example, Electoral Commission staff would not be able to advise Māori voters on their ability to change rolls without consulting the voter's electoral history.

How do the options compare to the status quo/counterfactual?

	Option 1 – <i>Status Quo</i>	Option 2A – More Regular MEO -Three Year option	Option 2B – More Regular MEO - Twice Every Three Years Option	Option 3A – Continuous Option	Option 3B – Continuous Option (once each electoral cycle)
Gives effect to the Crown’s Treaty of Waitangi obligations	0	+ Less restrictive on Maori allowing slightly more expression of individual and collective tino rangatiratanga through voting and better active protection of the rights of Māori as citizens	++ Less restrictive on Maori allowing slightly more expression of individual and collective tino rangatiratanga through voting and better active protection of the rights of Māori as citizens	+++ Flexibility and accessibility of the continuous option supports the Crown in meeting its Treaty obligations	+ Less restrictive on Maori allowing slightly more expression of individual and collective tino rangatiratanga through voting
Accessible and understandable for Māori	0	+ More frequent and aligned with the period in the electoral cycle where voters are traditionally the most engaged.	++ More frequent and aligned with the period in the electoral cycle where voters are traditionally the most engaged	++ Accessible and understandable due to its ongoing nature and the removal of restrictions that have caused voters confusion as per the data	+ More frequent and less restrictive. Likely to cause some confusion.
Supports the exercise by Māori of their electoral rights	0	+ Less restrictive than the status quo	++ Less restrictive than the status quo	+++ Much less restrictive than the status quo, would allow	+ Less restrictive than the status quo

	Option 1 – Status Quo	Option 2A – More Regular MEO -Three Year option	Option 2B – More Regular MEO - Twice Every Three Years Option	Option 3A – Continuous Option	Option 3B – Continuous Option (once each electoral cycle)
				voters to switch between general and local elections	
Equality of representation at electorate level	0	- Decoupling the MEO and boundary review creates risks of electorate constructions becoming less representative over time	0 Decoupling the MEO and boundary review creates risks of electorate constructions becoming less representative over time, however data will be more current than the other options	- Some issues around tactical roll shifting	- Decoupling the MEO and boundary review creates risks of electorate constructions becoming less representative over time
Cost	0	- The cost of running the MEO will be more frequent	- - The cost of running the MEO will be more frequent	- - - There are costs associated with switching to a continuous system	- - There are costs associated with switching to a continuous system
Overall assessment	0	+	++	+++	+

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

64. This continuous option is preferable to the three-year option and is therefore the model recommended for the future Māori Electoral Option.
65. The key features of the continuous choice model are:
 - a. allow Māori to exercise their Māori Electoral Option choice at any time, and as often as desired (up to and including polling day); but
 - b. for the purposes of the Boundary Review, and determining the number of Māori seats, the roll choice of a Māori on polling day of the last election, will be used
 - c. it will not be possible to change between Māori and general rolls during a by-election – from when a vacancy is gazetted until the by-election has concluded, it will not be possible to change between rolls if that change would place the voter in the electorate a by-election is occurring.
66. The features make it possible to gain almost all of the improvements of a pure continuous model, but avoid or mitigate most of the risks. They do this by:
 - a. ensuring a voter's roll choice for a general election is also used for the purposes of supplying data for a Boundary review (which is also used to help determine the number of Māori seats). This has the significant advantage of allowing people to change rolls ahead of the local election without impacting on the boundary review for general elections.
 - b. providing choice at any time of which roll to vote in, but providing a single point in time when every voter's roll choice is counted for Boundary reviews
 - c. allowing choice to be made of where to vote in local elections, separately to general elections, but utilising the same roll data for boundaries of local elections as for general elections
 - d. disallowing change of rolls into a by-election, but retaining the ability for those on either roll to shift electorate by shifting residence (just as all other voters can).
67. The flexibility and accessibility of the continuous option supports the Crown in meeting its Treaty obligations to actively protect the electoral rights of Māori voters and best recognises the importance of the Māori seats as an expression of tino rangatiratanga within our current democratic system.
68. Enabling Māori voters to consider their roll choice at both local and general elections is a major advantage as it supports active choices and engagement with electoral representation at both local and central government levels.

Risks

69. The current timing of the Māori Electoral Option works well administratively for the boundary review process – the Māori Electoral Option immediately precedes a boundary review, in which the number of general and Māori electorates and their boundaries are updated. Allowing people to change roll type more often could lead to greater variation in the population size of electorates between boundary reviews. The changed system (on either option) could be perceived as less responsive or fair because, although people can change roll type more often, those changes do not lead to boundary changes until there is a boundary review. However, we note a similar risk already exists in regards to people moving to a new electorate after a review after a boundary review and before an election.
70. In terms of the Māori-Crown relationship, a significant risk would be if there was a perception that Māori were underrepresented at an election. This could happen if the

proportion of Māori voters on the Māori roll were to increase to the point that, were there a boundary review before an election, it would have resulted in an additional Māori seat. However, this risk also exists in the current system. If this scenario arose, it would more likely be due to population change (e.g. increased Māori population), than due to Māori changing roll type through the Māori Electoral Option.

71. We consider that some variation in the population size of electorates between boundary reviews is expected, acceptable, and preferable to restricting Māori rights under the Electoral Act.
72. We consider that our options provide few incentives for a voter to “game” the system (for instance to vote on the general roll but change to the Māori roll only for the boundary review). Under both options Māori voters would still make one choice that both determines the electorate they will vote in and is used in the boundary review to set the number of Māori seats.

Agency Feedback

73. The Department of Internal Affairs who oversees local government policy strongly agrees with the Ministry’s recommendation that the continuous option is most likely meet the policy objectives and fit the criteria set out above. During its recent consultation on Māori ward processes, DIA heard from several local authorities that changes to the Māori Electoral Option should be considered so that it is easier for electors to make sure they are on the right roll for them at local elections. DIA has stated that the continuous option achieves the objective of allowing Māori electors to choose to be on a different roll, and be represented differently at each of the local and central government levels.
74. DIA consider that the continuous option (Option 3A) will be much easier for Māori electors and other members of the public to understand than the status quo and the three year option (Option 2A). DIA also noted the risk of people not understanding the MEO process and the risk that they miss out on making the choice available to them as a result and consider this risk applies just as much, and probably more, to local electors given that the connections between local elections and the MEO are quite low profile.
75. Ultimately DIA consider that the continuous option (Option 3A) would be a significant improvement on the status quo and is likely to be supported by electoral officers and local authority staff responsible for administering local elections. This is consistent with the submissions DIA received from the local government sector.
76. Te Arawhiti have noted the continuous option would substantially mitigate the issues associated with the timing of the current option and that it is likely this change would improve Māori representation in Parliament. They also noted the functionality would align with any changes to the length of the electoral cycle, should these occur.
77. Te Arawhiti also highlighted potential issues that may require further consideration including the possibility of creating a perception that the ‘by-election restriction’ is unfair or exclusive, and potential unintended consequences for Māori at a local level of tying boundary reviews to enrolment at the previous general election.
78. Te Arawhiti also echoed a common sentiment heard throughout the engagement process that any changes to the status quo will require a significant educational and effort from the Crown which may require additional resourcing.

What are the marginal costs and benefits of the option?

Affected groups <i>(identify)</i>	Comment <i>nature of cost or benefit (eg, ongoing, one-off), evidence and assumption (eg, compliance rates), risks.</i>	Impact <i>\$m present value where appropriate, for monetised impacts; high, medium or low for non-monetised impacts.</i>	Evidence Certainty <i>High, medium, or low, and explain reasoning in comment column.</i>
Additional costs of the preferred option compared to taking no action			
Electoral Commission	<p>Short term cost of to change to the continuous option in the current electoral cycle. Ongoing annual costs to cover ongoing education, implementation, communication and enrolment.</p> <p>If no action is taken there is an estimated \$8-9 million cost in 2023-24 when the next Option period is scheduled. Therefore, the majority of the cost above is not additional.</p>	<p>Electoral Commission estimated cost broken down by financial year:</p> <p>2021-22: \$337,000 2022-23: \$8,040,625 2023-24: \$1,810,000 2024-25: \$875,000 2025-26 & Out years: \$1,725,000</p>	High – based on Electoral Commission estimates
Total monetised costs		2021 – 2026: \$12,787,625	
Non-monetised costs			
Additional benefits of the preferred option compared to taking no action			
Māori voters	Enabling Māori voters to consider their roll choice at both local and general elections is a major advantage as it supports active choices and engagement with electoral representation at both local and central government levels.	The preferred option is designed to achieve increased Maori electoral participation through raising levels of awareness and understanding regarding the Option. These will be monitored alongside the statistical reporting on the exercise of the Option and enrolment data	Medium
Regulators			

Others (eg, wider govt, consumers, etc.)			
Total monetised benefits			
Non-monetised benefits		High	

Section 3: Delivering an option

How will the new arrangements be implemented?

79. Any change to the frequency and timing of the Māori Electoral Option will require legislative change to the Act. An Electoral Amendment Bill will be required.
80. As discussed above, any new arrangement will need to be enacted by July/August 2022 to enable the Electoral Commission to implement the changes so that Māori voters can exercise the option before the 2023 General Election.
81. Costings from the Electoral Commission estimate that preferred option would cost just over \$10 million for the first electoral cycle with the majority of that cost falling in 2022-23 for the communication, education and engagement programme that will be required as a part of implementation. The Commission estimates an ongoing cost of \$1-1.3 million for the next two years which includes additional activity as part of the local election campaign. This option has not been costed beyond 2025-26 but there is an expectation the ongoing cost per term will remain consistent.
82. As discussed above, any new arrangement, will need to be implemented alongside a new communications strategy and campaign delivered by the Electoral Commission. We consider the Electoral Commission, in line with their ongoing commitment to improve the quality of engagement with Māori, should explore options for co-design of their communication strategy and campaign alongside any other significant aspects related to implementation and ongoing education.
83. We consider exploring a co-design approach will result in the active encouragement of Māori and make it easier for Māori to participate in the Option. Central to this is awareness and understanding amongst Māori communities of changes to the Option, and the impacts of this. The Commission expects co-design to occur in the community engagement on the Option and has built this into their costings.
84. Implementation will need to raise awareness of the change, ensure people understand its impacts and know how to go about exercising the Option. The Commission has said there will be several components to the campaign, including a mailout to all enrolled electors of Māori descent, advertising, media and community engagement.
85. Additionally, the Commission have discussed an extensive nationwide kanohi ki te kanohi (face-to-face) community and stakeholder engagement programme. This could be an integral part of the engagement strategy with an emphasis on kōrero with Māori by Māori. The Electoral Commission will involve in house enrolment teams, community organisations, specialist community engagement advisers, and develop a community events programme.
86. A communications and engagement strategy will need to be developed in concert with Māori that details the objectives and approaches for the public information, education and engagement campaign. The Commission have stated the overarching objectives of a strategy like this could include:
 - a. to raise awareness of changes to the Māori Electoral Option amongst Māori and their descendants and
 - b. to ensure voters of Māori descent are informed about the choice between the Māori roll and the general roll, the steps needed to make that choice and the

impacts of their choice on the electorate and local ward they will vote in and on the number of Māori seats.

87. The Commission have indicated the campaign will be informed by Māori focus groups as part of the Commission's research programme, and developed with Māori communications specialists, cultural advisors and media partners.

How will the new arrangements be monitored, evaluated, and reviewed?

88. The Commission will track levels of awareness and understanding of the option among Māori on an ongoing basis and regularly report on its findings. The Commission will subsequently report its findings. The Commission also produces detailed statistical information on enrolment and will be able to report on the number of electors exercising the Māori Electoral Option.
89. The Commission's reporting on levels of awareness and understanding combined with the statistical reporting on the exercise of the Option and enrolment data will provide an indication of whether the change is achieving the objectives are being achieved. These objectives are improving understandability and removing barriers for Māori accessing the Option, and whether this has a flow on effect on Māori electoral participation.
90. The Commission has informed us that a pre-campaign benchmark survey will establish a baseline measure of awareness and engagement and an in-period campaign measurement survey will monitor the impact of the campaign while it is in progress to allow for refinement if required. An evaluation survey will assess the final impact of the option in reaching its campaign objectives.
91. Monitoring will also include the evaluation of potential effects to the electoral system resulting from the change, including the decoupling of the the Māori Electoral Option and the boundary review and how this affects the Māori and general electorate seat construction, also the effect of any possible instances of the by-election restriction being triggered. Data supplied by the Electoral Commission will help determine any unidentified or unanticipated impacts on broader electoral issues.
92. Considering the significance of the Māori seats and the Māori Electoral to Article 2 and 3 of the Treaty, the new status quo will also need to be evaluated and monitored to ensure that procedurally it is helping ensure the active protection of the Māori electoral rights and encouraging tino rangatiratanga. This should occur both through the design and implementation of the engagement and delivery of the change and the effects the change has on Māori.
93. Aspects of the electoral system are regularly reviewed. The Electoral Commission and the Justice Committee both complete a triennial review after each general election. The public and other stakeholders have an opportunity to submit to the Justice Committee review. The Government's Response to the Justice Committee's recommendations is tabled in the House. Electoral Amendment Bills are regularly used to improve and modernise aspects of the administration of the system between elections.
94. The independent review of electoral law will also be an opportunity to evaluate the short-term effects of any changes made to the timing and frequency of the Māori Electoral Option.