

Electoral (Lowering Voting Age for Local Elections and Polls) Legislation Bill – Consistency with New Zealand Bill of Rights Act 1990

1. Given the high degree of public interest in developments relating to the voting age following the Supreme Court’s declaration in *Make It 16 Inc v Attorney-General*¹ in November 2022, I have decided to set out my view on whether the Electoral (Lowering Voting Age for Local Elections and Polls) Legislation Bill (**the Bill**) is consistent with the rights and freedoms contained in the New Zealand Bill of Rights Act 1990 (**BORA**).
2. I have concluded that the Bill is not inconsistent with BORA because any limits on the right to freedom from discrimination protected by s 19 BORA are demonstrably justified under s 5 of that Act.

SUMMARY

3. The Bill is an omnibus Bill amending the Local Electoral Act and various other Acts in order to implement a single broad policy: namely, to reduce the voting age in local elections and polls from 18 to 16 years of age. Amendments to the Local Electoral Act 2001 create a regime for persons aged 16 and 17 to register as ‘youth electors’ (as distinct from ‘parliamentary electors’) and participate in elections or polls held under that Act.
4. The Bill does not engage the electoral rights affirmed in s 12 BORA because those rights are expressly limited to general elections, and have no implications for local elections and polls. The Bill does, however, engage the right to be free from discrimination affirmed by s 19(1) BORA, in three respects:
 - 4.1 First, the Bill retains 18 years as the minimum age for participating as an elector in electoral processes governed by the Sale and Supply of Alcohol Act 2012. This includes voting to elect or appoint trustees of an alcohol licensing trust or community trust, and standing as a candidate to be elected or appointed to those roles.

¹ *Make It 16 Inc v Attorney-General* [2022] NZSC 134.

- 4.2 Secondly, the Bill disqualifies youth offenders serving sentences of imprisonment of three years or more from registering to vote in those elections or polls.
- 4.3 Thirdly, the Bill retains New Zealand citizenship as a criterion for qualifying as a candidate in local elections.
5. In my opinion, the Bill does not appear to be inconsistent with the rights and freedoms in BORA. To the extent that any of these provisions limit the rights in s 19 BORA, those limits are capable of justification under s 5 BORA.

OVERVIEW OF THE BILL

6. Clause 5 of the Bill establishes a new regime for ‘youth electors’ aged 16 or 17 years to participate in elections and polls conducted under the Local Electoral Act. It does this by introducing a new Part 1B into that Act (new ss 19ZJ to 19ZZL).
7. New s 19ZK aligns the criteria for qualification as a youth elector under the Local Electoral Act to the criteria for qualification as a general elector (except for age) under s 74 of the Electoral Act. It also incorporates those criteria for *disqualification* set out in s 80 of the Electoral Act that may be applicable to persons aged 16 or 17 years, with the effect that youth offenders serving sentences of imprisonment in a youth justice residence or prison for a term of 3 years or more are disqualified from registering as youth electors.²
8. In short, if a person aged 16 or 17 years would be qualified to register as an elector under the Electoral Act, were it not for their age, they will be qualified to register as a youth elector under the Local Electoral Act.
9. Registration as a youth elector qualifies a person aged 16 or 17 years to participate in elections and polls held under the Local Electoral Act as follows:

² See cl 5, new s 19ZK(2). Under the Electoral Act 1993, s 80(1)(d)(ii), persons serving sentences of preventive detention are also disqualified from registering as electors; this is not carried across into new s 19ZK(2) of the Local Electoral Act 2001 because persons aged 16 and 17 years are not eligible to be sentenced to preventive detention (Sentencing Act 2002, s 87(2)(b)).

- 9.1 Youth electors will qualify as residential electors or ratepayer electors under the Local Electoral Act if they meet the criteria in ss 23 and 24, as amended by cls 6 and 7 of the Bill, respectively. This means they will have the right to vote in elections and polls under the Act in accordance with s 20 of the Act (except for elections and polls under the Sale and Supply of Alcohol Act 2012, as amended by the Bill, which will retain a minimum age of 18 years).³
- 9.2 A youth elector who is a New Zealand citizen is qualified to be a candidate at elections held under the Local Electoral Act, with the following exceptions:⁴
- 9.2.1 They are not qualified to be elected as a member of a licensing trust that is held under that Act pursuant to s 313 of the Sale and Supply of Alcohol Act.
- 9.2.2 They are not qualified to be elected as a trustee of a community trust that is held under the Local Electoral Act pursuant to s 372 of the Sale and Supply of Alcohol Act.
- 9.3 Youth electors will also be eligible to participate in referenda under a number of enactments.⁵

The Bill also lowers to 16 years the minimum age for appointment as a scrutineer under the Local Electoral Act,⁶ and contains consequential amendments to various other enactments to provide that youth electors are eligible to stand as candidates in local elections under those enactments.⁷ It amends the Electoral Act to provide a

³ See Part 2, Subpart 11 of the Bill. The Bill expressly provides that only those residential and ratepayer electors that are of or over the age of 18 years are qualified to vote in elections under the Sale and Supply of Alcohol Act.

⁴ Clause 10 of the Bill, amending s 25 of the Local Electoral Act. See also Part 2, Subpart 11 of the Bill.

⁵ See cls 40 (amending Gore District Council (Otama Rural Water Supply) Act 2019, s 7), 52 (amending Local Government Act 2002, s 132), 73 (amending South Taranaki District Council (Cold Creek Rural Water Supply) Act 2014, s 7).

⁶ See cl 15.

⁷ See cls 18 (amending Bay of Plenty Regional Council (Māori Constituency Empowering) Act 2001, s 10), 23 (amending Christchurch District Drainage Act 1951, s 8), 43 (amending Greytown District Trust Lands Act 1970, s 4A), 50 (amending Land Drainage Act 1908, s 9), 55 (amending Masterton Trust Lands Act 2003, s 24), 70 (amending Soil Conservation and Rivers Control Act 1941, s 53).

process for youth electors to be registered as electors under that Act once they turn 18, automatically and without them having to apply for registration.⁸

ANALYSIS

10. The Bill does not engage the electoral rights affirmed in s 12 BORA, because s 12 only applies to elections of members of the House of Representatives.⁹ This Bill is concerned only with participation in local elections and polls and does not have any effect on the eligibility criteria for participation in general elections.
11. I have considered whether the Bill engages s 19 BORA. Section 19 provides:

Everyone has the right to freedom from discrimination on the grounds of discrimination in the Human Rights Act 1993.
12. Discrimination involves treating persons or groups in comparable or analogous situations differently on the basis of one of the prohibited grounds in the Human Rights Act, in circumstances where this differential treatment gives rise to a 'material disadvantage'.¹⁰
13. The amendments in the Bill that lower the minimum age for participating in local elections, polls and referenda from 18 years to 16 years are consistent with s 19 BORA. Where the Bill treats all persons aged 16 years and older in the same way, there is no discrimination on grounds of age, because s 21(1)(i)(iii) of the Human Rights Act defines 'age' in this context as 'any age commencing with the age of 16 years'. That is, persons under the age of 16 years do not have a right to be free from discrimination on grounds of age that is recognised in BORA or the Human Rights Act.
14. However, as noted above, the Bill potentially engages s 19 by retaining the minimum age of 18 years for voting and standing as a candidate in Sale and Supply of Alcohol Act elections, by disqualifying some youth offenders from registering as youth

⁸ See cl 31.

⁹ Section 12 BORA provides: "Every New Zealand citizen who is of or over the age of 18 years— (a) has the right to vote in genuine periodic elections of members of the House of Representatives, which elections shall be by equal suffrage and by secret ballot; and (b) is qualified for membership of the House of Representatives."

¹⁰ *Ministry of Health v Atkinson* [2012] NZCA 184, [2012] 3 NZLR 456.

electors, and by retaining New Zealand citizenship as a criterion for candidacy in local elections.

15. In each case I have concluded that there is no unjustified limitation on BORA rights. I explain my rationale briefly below.

Minimum age of 18 years for elections under the Sale and Supply of Alcohol Act

16. The key voting decisions under the Sale and Supply of Alcohol Act are for the election of members of a licensing trust under s 312, and members of a community trust under s 371. There are other decisions under the Act that qualified electors may influence, for example by participating in polls on competition proposals¹¹ or on whether a licensing trust should be converted to a community trust,¹² and requesting the Minister to recommend that a licensing trust be established in their residential area.¹³
17. The functions of a licensing trust are primarily to sell and supply alcohol, and to establish and operate premises for the sale and supply of alcohol, the provision of accommodation to travellers, and the sale and supply of food and refreshments.¹⁴ Licensing trusts are to spend their profits on philanthropic purposes.¹⁵ (By contrast, community trusts may (but are not required to) hold one or more licences under the Act and carry on the business of selling or supplying (or selling and supplying) alcohol,¹⁶ and may retain part of their net profits for the purposes of their activities.¹⁷)

¹¹ Sale and Supply of Alcohol Act 2012, s 349.

¹² Sale and Supply of Alcohol Act 2012, s 356.

¹³ Sale and Supply of Alcohol Act 2012, s 301.

¹⁴ Sale and Supply of Alcohol Act 2012, s 305(1).

¹⁵ Sale and Supply of Alcohol Act 2012, s 307.

¹⁶ Sale and Supply of Alcohol Act 2012, s 364.

¹⁷ Sale and Supply of Alcohol Act 2012, s 365.

18. Provisions in the Bill that set a minimum age of 18 years for qualifying as an 'elector'¹⁸ and for participating in elections and other processes under the Sale and Supply of Alcohol Act¹⁹ do not amend the existing law, but rather, retain the status quo.
19. Nonetheless, these provisions of the Bill engage the right to be free from discrimination on grounds of age under s 19 BORA and s 21(1)(i)(iii) of the Human Rights Act because they create an age-based distinction for eligibility to participate in certain electoral processes.
20. On the first limb of the test from *Atkinson* referenced at [12] above, there is differential treatment on the basis of age, because 16- and 17-year-olds are excluded from voting or standing as candidates in licensing trust and community trust elections, and from participating in other processes involving 'electors' under the Sale and Supply of Alcohol Act, whereas persons aged 18 or over are not so restricted.
21. Persons over the age of 18 years are legally permitted to purchase alcohol under the Sale and Supply of Alcohol Act, however, whereas persons aged 16 and 17 years are considered 'minors' and below the purchase age when it comes to the sale and supply of alcohol.²⁰ That differential treatment on grounds of age has been justified by the objective of protecting young persons from alcohol-related harm.²¹ There is empirical evidence that younger persons are physically and mentally liable to be more impaired by alcohol and are more likely to engage in harmful use of alcohol than older people.²²
22. Simply put, the two age groups are not in comparable positions in respect of the regulation of alcohol, and the outcomes of electoral processes under the Act will affect them in different ways. As such I do not consider the Bill imposes differential treatment that falls within the scope of the first limb of the discrimination test.

¹⁸ Clause 59, amending s 5(1) of the Sale and Supply of Alcohol Act 2012.

¹⁹ Clauses 60, 61, 63, 64, 65, and 67.

²⁰ Sale and Supply of Alcohol Act 2012, s 5(1) defines a minor as a person under the age of 18 years, and defines the purchase age, in relation to the sale or purchase of alcohol on licensed premises, as the age of 18 years..

²¹ Report of the Attorney-General under s 7 of the New Zealand Bill of Rights Act 1990 on the Alcohol Reform Bill, 8 November 2010, available at [BORA-Alcohol-Reform-Bill.pdf \(justice.govt.nz\)](#), at [48]-[50].

²² *Ibid*, at [48].

23. Even if there is differential treatment between groups in comparable situations here, I do not consider this differential treatment gives rise to material disadvantage, so as to render those provisions of the Bill inconsistent with BORA.
24. I acknowledge that on an individual level, some 16- and 17-year-olds might see their continued inability to participate in Sale and Supply of Alcohol Act elections as a disadvantage, but I do not consider any such disadvantage is material when viewed in the context of overall electoral participation.
25. If the Bill is passed, persons aged 18 years and over (who otherwise qualify) will maintain eligibility to participate in all local elections and polls covered by the Bill, whereas persons aged 16 and 17 years (who otherwise qualify) will be able to participate in all local elections and polls covered by the Bill except for the electoral processes noted at [16] that are governed by the Sale and Supply of Alcohol Act. In my view, any disadvantage that 16- and 17-year-olds might experience as a result of that limited exclusion from participation in local elections is minimal.
26. As I have concluded there is no differential treatment giving rise to material disadvantage, there is no inconsistency with s 19 BORA in the provisions of the Bill that retain the existing age of 18 years for Sale and Supply of Alcohol Act elections.
27. In any event, given the legal age for purchase of alcohol is 18 years, and that is not inconsistent with BORA, I believe an age of eligibility of 18 years for licensing trust elections is justifiable and not inconsistent with BORA.

Disqualification of youth offenders

28. The prohibited grounds of discrimination that may be implicated by the provisions in the Bill disqualifying youth offenders serving custodial sentences of three years or more from registering as youth electors are age (being any age commencing with the age of 16 years),²³ race,²⁴ and disability.²⁵

²³ Human Rights Act 1993, s 21(1)(i)(iii).

²⁴ Human Rights Act 1993, s 21(1)(f).

²⁵ Human Rights Act 1993, s 21(1)(h).

Is there differential treatment giving rise to material disadvantage...?

... on grounds of age?

29. The disqualification of youth offenders in clause 5 of the Bill (new s 19ZK(2)(b) of the Local Electoral Act) aligns with the existing disqualification in s 80(1)(d) of the Electoral Act of persons who are detained in prison, serving terms of imprisonment of three years or more. Those prisoners are not eligible to enrol to vote under the Electoral Act²⁶ or the Local Electoral Act.²⁷
30. If the Bill is enacted, all persons aged 16 years and over who are serving custodial sentences of three years or more will be treated the same way with respect to their participation in elections and polls under the Local Electoral Act. Consequently, the disqualification of youth offenders does not raise any question of age discrimination. There is no differential treatment and no material disadvantage on grounds of age.

... on grounds of race?

31. On its face the Bill makes no distinctions on the basis of race: all youth offenders serving the requisite sentences are disqualified. Nonetheless, I have considered whether disqualifying youth offenders as a group has the effect of indirectly discriminating against Māori on the grounds of race, which is prohibited by s 21(1)(f).
32. The Crown Law Office addressed very similar considerations in its vetting advice on the Electoral (Registration of Sentenced Prisoners) Amendment Bill (22565/5.0) dated 14 February 2020. That Bill removed the blanket ban on prisoner voting that was introduced in 2010, and restored the pre-2010 position in which only those prisoners serving sentences of imprisonment of three or more years, or sentences of preventive detention, are disqualified. In short:

32.1 In *Ngaronoa v Attorney-General*²⁸ the Court of Appeal found that the blanket disqualification of all sentenced prisoners from electoral registration did not give rise to indirect racial discrimination, because the law applied

²⁶ Electoral Act 1993, s 80(1)(d).

²⁷ See Local Electoral Act, ss 23 and 24 which link qualification as a residential or ratepayer elector for the purposes of that Act to qualification as a parliamentary elector under the Electoral Act.

²⁸ *Ngaronoa v Attorney-General* [2017] NZCA 351, [2017] 3 NZLR 643.

equally to prisoners of all races, and affected Māori and non-Māori prisoners in the same way. The fact that Māori prisoners lost the right to enrol and vote in a Māori electoral district did not mean that they suffered any greater material disadvantage than non-Māori prisoners.²⁹ Applying that approach to this Bill leads to the same answer: there is no differential treatment giving rise to material disadvantage because all youth offenders serving the requisite sentences are disqualified from voting, regardless of race.

32.2 The analysis looks a little different if a different comparator group is chosen.³⁰ If the comparison is between the Māori population as a group on the one hand, and the non-Māori population as a group on the other, it is arguable the Bill would have a proportionally greater impact on the wider Māori potential voting pool than on the non-Māori voting pool.

32.3 While the importance of Māori political participation cannot be disputed, the absolute numbers of Māori youth offenders affected by the disqualification in the Bill are likely to be very small. This is because general sentencing principles, their application to persons who are under the age of 18 years at the time of their offending, and the youth justice system generally should operate to minimise the total numbers of youth offenders serving sentences of imprisonment of three years or more at any given time.³¹

32.3.1 In the year prior to May 2022, for instance, there were no more than five children or young persons serving sentences of imprisonment in youth justice residences under s 34A of the Corrections Act 2004.³²

²⁹ *Ngaronoa v Attorney-General*, above n 28, at [143]-[146].

³⁰ *McAlister v Air New Zealand* [2009] NZSC 78; *Ngaronoa v Attorney General*, above n 28, at [147].

³¹ See e.g. Sentencing Act 2002, ss 8(g), 8(h), 9(2), 10A, 15, 16, 18; Oranga Tamariki Act 1989, ss 272, 283, 284, 285, 289; Criminal Procedure Act 2011, s 6.

³² See Oranga Tamariki Options Paper, *Children and young people sentenced to imprisonment in the adult jurisdiction and detained in Oranga Tamariki residences*, available at [Options-summary-Adult-Criminal-Jurisdiction.pdf \(orangatamariki.govt.nz\)](https://www.orangatamariki.govt.nz/assets/Uploads/Options-summary-Adult-Criminal-Jurisdiction.pdf), at page 2.

32.3.2 The precise number of 16- and 17-year-olds serving sentences in prison is unknown but does not exceed 100 individuals at present, and could well be much lower, because that figure covers all sentenced and remand prisoners under the age of 20.³³

32.3.3 Even if every one of those 100 imprisoned individuals was a 16- or 17-year-old serving a sentence of three years or more, statistically we might expect 52 of them to be Māori.³⁴

32.4 Applying the analysis in Crown Law's 2020 advice, it seems very unlikely that any indirect differential treatment arising from this aspect of the Bill would give rise to any material disadvantage to Māori as a whole, if material disadvantage in this context is understood as meaning significant, potential electoral impact.

33. On balance, I conclude that the disqualification of youth offenders from registering to vote in local elections does not amount to indirect discrimination against Māori on grounds of race, because any disproportionate impact on the Māori voting population at large will likely fall short of material disadvantage.

... on grounds of disability?

34. I have also considered whether the disqualification of youth offenders from registering to vote as youth electors, if they are serving sentences of imprisonment of three years or more, amounts to indirect discrimination on grounds of disability. The question arises because it is known that persons with disabilities, in particular neuro-developmental disorders, are overrepresented in the youth justice system as

³³ As at 31 March 2023, there were a total of 8,736 people in prison in New Zealand (with around half of those being sentenced prisoners), of which 1.2% or around 104 individuals were under 20 years of age. Precise figures for prisoners aged 16 or 17 years serving sentences of imprisonment, or the lengths of those sentences, are not given. See *Prison facts and statistics - March 2023*, available at [Prison facts and statistics - March 2023 | Department of Corrections](#).

³⁴ See *Prison facts and statistics - March 2023*, available at [Prison facts and statistics - March 2023 | Department of Corrections](#).

compared to the general population.³⁵ The United Nations Committee on the Rights of Persons with Disabilities has noted this as a concern for New Zealand.³⁶

35. In my view, the same considerations just addressed in the context of racial discrimination lead to the conclusion that there is no discrimination here:

35.1 The Bill does not make any distinction on its face between youth offenders with disabilities and those without; all youth offenders whose sentences meet the requisite criteria are disqualified.

35.2 If there is differential treatment between persons with disabilities covered by the prohibited ground of discrimination in s 21(1)(h) of the Human Rights Act, on the one hand, and persons without such disabilities on the other, it arises indirectly as a result of the statistical overrepresentation of persons with disabilities among the youth offender cohort.

35.3 Any such differential treatment is unlikely to give rise to material disadvantage against persons with disabilities as an electoral group, if such a group is the appropriate 'victim' of discrimination, because the numbers involved will again be very small. As noted above, I do not have access to data on the absolute numbers of youth offenders aged 16 or 17 years who are currently serving sentences of three or more years of imprisonment, or what proportion of those offenders might have neuro-developmental disorders or other disabilities, but the total number of persons under 20 years of age currently in prison is only around 100 individuals.

36. I conclude that the disqualification of youth offenders serving custodial sentences of three years or more from registering as youth electors does not cause material disadvantage to persons with disabilities.

³⁵ See the discussion in "The Youth Courts of New Zealand in Ten Years Time: Crystal Ball Gazing or Some Realistic Goals for the Future?", Paper delivered by His Honour Judge Andrew Becroft, Principal Youth Court Judge, at the National Youth Advocates/Lay Advocates Conference, Auckland, 13-14 July 2015, available at [Youth-Court-The-Youth-Courts-of-New-Zealand-in-10-years.pdf \(youthcourt.govt.nz\)](https://youthcourt.govt.nz/youth-court-the-youth-courts-of-new-zealand-in-10-years.pdf).

³⁶ Committee on the Rights of Persons with Disabilities, Concluding observations on the combined second and third periodic reports of New Zealand, CRPD/C/NZL/CO/2-3, 5 September 2022, available [here](#).

Conclusion

37. As I have concluded there is no differential treatment that imposes a material disadvantage on any group, I consider those provisions of the Bill that disqualify some youth offenders from voting are not inconsistent with BORA.

Citizenship as a criterion for qualifying as a candidate

38. The Bill retains the existing requirement in s 25 of the Local Electoral Act that candidates for elections under that Act must be New Zealand citizens.³⁷ Amendments to other Acts lowering the age for candidacy under those Acts otherwise retain the same or similar requirements they currently contain, including citizenship.³⁸
39. The amendments to candidacy provisions are necessary to incorporate references to youth electors and, in two cases, to update references to repealed legislation.³⁹ It is arguable that the references to citizenship in these provisions are incidental in nature, and do not warrant BORA scrutiny, given they continue the status quo and fall outside of the policy intent of the Bill, which is to lower the voting age for local elections. For completeness, however, I address them briefly here because the provisions in question make express reference to citizenship as a qualifying criterion.
40. On their face, then, those provisions of the Bill appear to be inconsistent with the right to be free from discrimination on grounds of citizenship, which is prohibited under s 19 BORA and s 21(1)(g) of the Human Rights Act. New Zealand citizens may stand for election while citizens of other countries may not. In *Atkinson* terms, this differential treatment gives rise to a material disadvantage by excluding the latter group from serving in those representative roles for all local elections and polls covered by the Local Electoral Act.

³⁷ Clause 10 (new s 25(1)).

³⁸ See cls 23 and 24 (amending the Christchurch District Drainage Act 1951, s 8(1C) and 8A(a)); cls 43 and 45 (amending the Greytown District Trust Lands Act 1979, ss 4A and 8(a)); cl 55 (amending the Masterton Trust Lands Act 2003, s 24); and cl 70 (amending the Soil Conservation and Rivers Control Act 1941, s 53).

³⁹ See cls 24 and 45, which remove references to the repealed Local Elections and Polls Act 1976 in the Christchurch District Drainage Act 1951 and Greytown District Trust Lands Act 1979 respectively.

41. The question is whether or not this limitation on rights can be justified in terms of s 5 BORA. I am comfortable that this restriction is demonstrably justified in a free and democratic society.
42. The citizenship requirement for candidates in local elections is consistent with the requirement that candidates in general elections must be New Zealand citizens (Electoral Act, s 47(3)).
43. It is clear from the human rights framework in New Zealand and internationally that it is generally accepted as legitimate to limit electoral rights by reference to citizenship.⁴⁰ Other rights may be limited in this way, too: for example, only New Zealand citizens have the right to enter New Zealand (BORA, s 18(2)).⁴¹
44. The right to be free from discrimination in s 19 is not one of the rights limited by reference to citizenship; s 19 provides that “everyone” has the right to be free from discrimination on the prohibited grounds in the Human Rights Act. The latter Act itself, however, carves out a significant exception from the discrimination regime in respect of differential treatment as between New Zealand citizens and others. Section 153(3)(b) provides:
- Nothing in this Act shall affect any enactment or rule of law, or any policy or administrative practice of the Government of New Zealand, that ... distinguishes between New Zealand citizens and other persons, or between British subjects or Commonwealth citizens and aliens.
45. The effect of s 153(3)(b) is that none of the Human Rights Act procedures and remedies for breach of the discrimination provisions in the Act (including mediation, and proceedings brought in the Human Rights Review Tribunal) are available in respect of an enactment or policy that distinguishes between New Zealand citizens and others.

⁴⁰ See BORA, s 12; International Covenant on Civil and Political Rights 1966, Article 25 (Every citizen shall have the right and the opportunity, without any of the distinctions mentioned in article 2 and without unreasonable restrictions: (a) To take part in the conduct of public affairs, directly or through freely chosen representatives; (b) To vote and to be elected at genuine periodic elections which shall be by universal and equal suffrage and shall be held by secret ballot, guaranteeing the free expression of the will of the electors; (c) To have access, on general terms of equality, to public service in his country).

⁴¹ The corresponding provision in the ICCPR, Article 12(4), provides “No one shall be arbitrarily deprived of the right to enter his own country.”

46. Whether the effect of s 153(3)(b) on the Human Rights Act carries over into the interpretation of s 19 BORA or whether it goes to justification under s 5 BORA, it contributes to the argument that distinguishing between citizens and non-citizens – especially in the electoral context – can be reasonably justified in a free and democratic society. It is certainly the case that this sort of distinction is intrinsic to immigration status.
47. I conclude that the provisions of the Bill that require candidates for local elections to be New Zealand citizens are not inconsistent with s 19 BORA because any limitation on the right to be free from discrimination on grounds of citizenship can be justified by reference to domestic and international human rights law.

Conclusion

48. I have concluded that the Bill does not appear to be inconsistent with BORA.



Hon David Parker
Attorney-General

5/8/2023