

Election Access Fund Bill

Member's Bill

As reported from the Governance and Administration Committee

Commentary

Recommendation

The Governance and Administration Committee has examined the Election Access Fund Bill and recommends that it be passed with the amendments shown.

Introduction

This bill seeks to establish a fund administered by the Electoral Commission that would facilitate the participation of disabled persons in political life. It aims to ensure that everyone has equal ability to be involved in politics.

In the bill as introduced, the fund could be used by any disabled candidate to cover the disability-related costs of standing in a general election. It could also be used by not-for-profit bodies to cover the cost of making election education events and materials accessible, and by registered political parties to support the access needs of any members.

The bill sets out the guidelines and conditions that the fund would operate under. In doing so, it would also amend the Electoral Act 1993.

Proposed amendments

This commentary covers the main amendments we recommend to the bill as introduced. We do not discuss minor or technical amendments.

Including by-elections in the bill's coverage

As introduced, the bill focuses on disabled persons standing as candidates in general elections. We consider that it should also cover by-elections, as the bill's high-level intent is to facilitate political participation by disabled persons. We recommend amending clauses 3, 4, and 6 to this effect.

Our amendments would include reference to a by-election in clauses 3 and 6, which state the purpose of the legislation and of the fund.

Our amendments to clause 4 would include a definition of “by-election” and make it clear that the definition of “candidate” would cover both general elections and by-elections.

Definitions of disabled persons

We recommend amending the wording used throughout the bill to refer to “disabled persons”, rather than “persons with disabilities”. We understand that this is the term used in the current New Zealand Disability Strategy.

However, we purposely do not propose including a definition of “disabled person” or “disability” in the bill, as we believe this would be overly prescriptive. It could also cause future conflict as definitions of disability evolve over time, as does the New Zealand Disability Strategy.

Payments from the fund

Eligibility for funding

We recommend amending clause 7(3) to remove the provision for political parties and not-for-profit entities to apply to the fund.

This amendment would narrow the scope of the fund so that only an individual disabled person would be eligible. We consider this appropriate in order to target the fund’s limited resources most effectively. Under the bill as introduced, the fund would be directed three ways, which could spread the available funding quite thinly, and limit its usefulness. There would also be difficult operational questions about how the funds were apportioned between the three groups. Removing these provisions would help by streamlining the fund and making it easier to implement.

We note that excluding political parties from applying to the fund could help to signal the fund’s neutrality, separate from any political affiliation. Although we propose that not-for-profit entities be excluded, we note that these services have been core providers of disability assistance, and the fund may help to alleviate the burden on them.

Payments would not be election expenses or donations

We also recommend amending clause 8 to make it clear that any payment from the fund should not be treated as an election expense or party donation. This is to ensure that the fund is apolitical, and to avoid giving State funding to a political party. It would also make clear that payments are not to be used for general campaigning costs; they are specifically for accessibility costs not faced by others.

Payments would be tax-exempt

We recommend adding new clause 8A to ensure that any payment from the fund would be exempt from income tax.

Future review of the fund and the legislation

As introduced, clause 9 of the bill provides for a one-off review of the legislation within 3 years, to consider the funding's impact and assess whether any changes are needed. We believe it would be worthwhile strengthening the provisions in the bill for the review of the fund.

Electoral Commission's review

We suggest including a further regular review by providing for the Electoral Commission to consider the funding provided under the Act in the regular report it prepares following a general election. To do this, we recommend inserting clause 12 to amend section 8 (1) of the Electoral Act 1993. This would add a requirement for the Election Access Fund Act to be considered in the Electoral Commission's standard report on a general election.

Review by the Minister

We propose some adjustments to the one-off review provided for in the bill as introduced. This review would be initiated by the responsible Minister and would review the effectiveness of the Act, and the performance of the fund after its first use. We recommend amending clause 9 to tighten the timeframe for the Minister to arrange this review, and to give further details on what the review should entail. We propose that this review be within 6 months after the release of the Electoral Commission's report.

We believe both of these reviews are necessary to test whether the fund is meeting its full potential. This would also give a clear pathway for reviewing and expanding the scope of the legislation in the future.

Whether the fund should cover local body elections

Many submitters suggested that local elections should also be covered by the fund. We acknowledge the importance of making all aspects of political participation accessible, but think that the first use of the fund should focus on general elections. We suggest that the possibility of extending its coverage be considered in the first review.

We hope and expect that local elections will be covered eventually, but this should be managed after the fund has been tested and reviewed.

Appendix

Committee process

The Election Access Fund Bill was referred to the committee on 16 May 2018. The closing date for submissions was 27 July 2018. We received and considered submissions from 90 interested groups and individuals. We heard oral evidence from 18 submitters at hearings in Wellington.

We received advice from the Electoral Commission and the Ministry of Justice.

Committee membership

Dr Jian Yang (Chairperson)

Ginny Andersen

Kanwaljit Singh Bakshi

Hon Jacqui Dean

Paul Eagle

Hon Peeni Henare

Brett Hudson (until 31 July 2019)

Raymond Huo (until 24 October 2018)

Jamie Strange (from 24 October 2018)

Lawrence Yule (from 31 July 2019)

Key to symbols used in reprinted bill

As reported from a select committee

text inserted unanimously

~~text deleted unanimously~~

Chlöe Swarbrick

Election Access Fund Bill

Member's Bill

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The Parliament of New Zealand enacts as follows:**1 Title**

This Act is the Election Access Fund Act **2018**.

2 Commencement

This Act comes into force ~~immediately after the expiry of the 6-month period~~ **5**
that starts on the date of Royal assent on **1 July 2021**.

Part 1**Preliminary provisions****3 Purpose**

The purpose of this Act is to establish a fund designed to remove or reduce bar- 10
riers to standing as a candidate in a general election or a by-election ~~or other-~~
~~wise participating in a general election~~ faced by individuals as a consequence
of their disability and which non-disabled individuals do not face.

4 Interpretation

In this Act, unless the context otherwise requires,— 15

by-election has the same meaning as in section 3(1) of the Electoral Act 1993

candidate has the same meaning as in section 3(1) of the Electoral Act 1993

candidate—

(a) means a constituency candidate or a list candidate within the meaning of 20
those terms in section 3(1) of the Electoral Act 1993; and

(b) includes a person who has declared their intention of becoming a constit-
uency candidate or a list candidate

donation has the same meaning as in section 207(1) of the Electoral Act 1993

~~**election education event** means an event held in relation to a general election~~ 25
~~which has the purpose of engaging and educating voters and which does not~~
~~seek or discourage support for the election of a particular person, party, or~~
~~people~~

Electoral Commission has the same meaning as in section 3(1) of the Elect-
oral Act 1993

~~**entity** has the same meaning as in section 4(1) of the Charities Act 2005~~ 30

Ffund means the Ffund established under **section 6** of this Act

general election has the same meaning as in section 3(1) of the Electoral Act
1993

Minister means the Minister of the Crown who, under the authority of any warrant or with the authority of the Prime Minister, is for the time being responsible for the administration of this Act.

party has the same meaning as in section 3(1) of the Electoral Act 1993.

- 5 Act binds the Crown** 5
This Act binds the Crown.

Part 2 Election Access Fund

- 6 Election Access Fund established**
- (1) The Electoral Commission must establish a fund to facilitate the participation of ~~persons with disabilities in general elections~~ disabled persons standing as candidates in, or seeking selection as candidates in, general elections or by-elections. 10
- (2) In each year, out of ~~money appropriated~~ an appropriation by Parliament for the purpose, the fund must be paid a general grant. 15
- (3) The amount of the grant must be determined by the Minister, taking into account the ~~amount of funding required to ensure that persons with disabilities have access to sufficient support to overcome disability-related barriers to participation in general elections~~ purpose of this Act set out in **section 3**.
- 7 Eligibility for funding for election access** 20
- (1) The Electoral Commission must, by notice in the *Gazette*, set out the basis on which a person listed in **subsection (3)** may be eligible for a payment out of the Fund.
- (2) The Electoral Commission must not issue a notice under **subsection (1)** without first consulting persons and organisations that the Commission considers appropriate, having regard to the purpose of the Fund. 25
- (3) A person may be eligible for a payment out of the Fund if they are—
- (a) ~~a person with a disability who is standing as a candidate in, or seeking selection as a candidate in, a general election;~~
- (b) ~~a not-for-profit entity that is organising an election education event;~~ 30
- (c) ~~a party.~~
- (3) A person may be eligible for a payment out of the fund if the person is a disabled person who is standing as a candidate in, or seeking selection as a candidate in, a general election or a by-election.

- 8 ~~Payment from Fund not a candidate or party donation~~**
~~Any payment made from the Fund to a candidate or a party is not to be treated as a donation for the purposes of the Electoral Act 1993.~~
- 8 Payment from fund not election expense or donation**
Any payment made from the fund to a candidate is not to be treated as— 5
- (a) an election expense for the purposes of subpart 1 or 2 of Part 6A of the Electoral Act 1993; or
- (b) a candidate donation or a party donation for the purposes of subpart 3 of Part 6A of that Act.
- 8A Payment from fund is exempt income** 10
Any payment from the fund to a candidate is exempt income of the candidate for the purposes of section CW 64 of the Income Tax Act 2007 (which provides for exemptions from income tax under other Acts).
- 9 ~~Evaluation~~**
~~The Minister must, no later than 3 years after the commencement of this Act, review, or arrange for the review of, its operation and—~~ 15
- (a) ~~consider the impacts of funding on the participation of persons with disabilities in general elections; and~~
- (b) ~~assess whether any changes are needed, including any amendments to this Act, to improve the effectiveness of funding to increase the participation of persons with disabilities in general elections; and~~ 20
- (c) ~~report the findings of the review to the House of Representatives as soon as practicable after the review is completed.~~
- 9 Review of Act**
- (1) The Minister must, no later than 6 months after the date on which the Electoral Commission provides its first report on this Act under **section 8(1)** of the Electoral Act 1993 after the commencement of this Act,— 25
- (a) review, or arrange for a review of, the operation and effectiveness of this Act; and
- (b) prepare a report on that review. 30
- (2) The review must—
- (a) consider the operation, purpose, and scope of the fund; and
- (b) assess whether any amendments to this Act are necessary or desirable.
- (3) The Minister must present the report to the House of Representatives as soon as practicable after it has been completed. 35

*Amendments to Electoral Act 1993***10 Amendment to Electoral Act 1993**

(1) This section amends the Electoral Act 1993.

(2) After section 5(e), insert:

(ea) ~~administer the fund established by **section 6** of the Election Access Fund Act **2018**.~~ 5

10 Amendments to Electoral Act 1993**Sections 11 and 12** amend the Electoral Act 1993.**11 Section 5 amended (Functions)**

After section 5(c), insert:

(ca) ~~administer the fund established by **section 6** of the Election Access Fund Act **2018**.~~ 10

12 Section 8 amended (Electoral Commission must report on general election)

After section 8(1)(d), insert:

(da) ~~the funding provided under the Election Access Fund Act **2018** to disabled persons standing as candidates, or seeking selection as candidates, to facilitate their participation in the election; and~~ 15

Legislative history

22 February 2018
16 May 2018

Introduction (Bill 27–1)
First reading and referral to Governance and Administration
Committee