



Report of the Justice Committee

Declaration of inconsistency: Voting age in the Electoral Act 1993 and the Local Electoral Act 2001

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Declaration of inconsistency: Voting age in the Electoral Act 1993 and the Local Electoral Act 2001

Recommendations

The Justice Committee has considered the declaration of inconsistency: voting age in the Electoral Act 1993 and the Local Electoral Act 2001, and makes the following recommendations, by majority, to the Government:

- That the Government amend the Local Electoral Act 2001, and any other necessary laws and regulations, to provide for a minimum voting age of 16 years in local elections.
- That the Government investigate lowering the minimum voting age in general elections to 16 years, taking into consideration the legal consequences of a change to the minimum voting age as set out in our report.

Introduction

On 21 November 2022, the Supreme Court issued a declaration stating that provisions of the Electoral Act 1993 and the Local Electoral Act 2001 are inconsistent with the New Zealand Bill of Rights Act 1990 (NZBORA), and that the inconsistency had not been justified.¹

The relevant provisions are those that provide for a minimum voting age of 18. The court found that these provisions are inconsistent with the right, provided for in NZBORA, to be free from discrimination.

On 12 December 2022, the Attorney-General notified the House of the declaration. The Clerk of the House of Representatives allocated the declaration to this committee for consideration.

This is the first time that a declaration of inconsistency has been referred to a select committee since the enactment of the New Zealand Bill of Rights (Declarations of Inconsistency) Amendment Act 2022. For this reason, we set out some background to provide context to the declaration.

¹ *Make it 16 Incorporated v Attorney-General* [2022] NZSC 134, 21 November 2022 (Supreme Court judgment).

About declarations of inconsistency

The Supreme Court's 2018 judgment in *Attorney-General v Taylor* confirmed that senior courts have the power to issue declarations that legislation is inconsistent with NZBORA.²

On 18 March 2020, the Government introduced the New Zealand Bill of Rights (Declarations of Inconsistency) Amendment Bill to "provide a mechanism for the Executive and the House of Representatives to consider, and, if they think fit, respond to, a declaration of inconsistency" by the courts. In September 2021, the bill was referred to the Privileges Committee for consideration.

In its report to the House, the Privileges Committee stated that select committees should be granted a broad mandate when allocated a declaration of inconsistency for consideration. The committee noted that the process adopted by each committee would likely depend on a range of factors, including "the nature of the declaration, the scope of the inconsistencies raised, the complexity of the relevant material, and the level of public interest".³

Parliament passed the New Zealand Bill of Rights (Declarations of Inconsistency) Amendment Bill and the Act came into effect on 30 August 2022. It created a statutory requirement for the Attorney-General to notify the House of a declaration of inconsistency. The Minister responsible for a law that has been found to be inconsistent is also required to report to the House on the Government's response to the declaration.⁴

On 23 August 2022 Parliament adopted a sessional order setting out the procedures that the House will follow when considering a declaration. They include referral to a select committee; and a debate in the House on the declaration, the select committee's report, and the Government's response to the declaration.⁵

Background to the declaration in *Make it 16 Incorporated v Attorney-General*

Make it 16 Incorporated is a group advocating for the minimum voting age to be changed to 16. In December 2019, the group brought a case to the High Court seeking a declaration that the provisions in the Electoral Act and the Local Electoral Act which set the minimum voting age at 18 are inconsistent with the right to freedom from discrimination provided for in NZBORA.

Section 19 of NZBORA provides for the right to freedom from discrimination on any of the grounds set out in the Human Rights Act 1993. Section 21 of the Human Rights Act lists age as a prohibited ground of discrimination from the age of 16 onwards.

² *Attorney-General v Taylor* [2018] NZSC 104, 9 November 2018, paras 65 and 74.

³ Privileges Committee, Commentary on the New Zealand Bill of Rights (Declarations of Inconsistency) Amendment Bill, pp 6–7.

⁴ Sections 7A and 7B of NZBORA.

⁵ Sessional orders of the 53rd Parliament, Declarations of inconsistency, 23 August 2022.

Section 5 of NZBORA states that the rights and freedoms set out in NZBORA “may be subject only to such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society”.

In August 2020, the High Court issued its judgment. The Court held that the age of 18 years is within a range of reasonable alternatives available to Parliament for setting a minimum voting age. It therefore found that it was a reasonable limit on the right to be free from age-related discrimination. The High Court declined to issue a declaration of inconsistency.⁶ The result was appealed.

In December 2021, the Court of Appeal issued its judgment. It disagreed with the High Court, finding that the Attorney-General had not discharged the burden of showing that the inconsistency with the right to be free from discrimination was justified. Despite its finding, the Court declined to make a declaration, noting the political nature of the issue.⁷ The result was again appealed.

In November 2022, the Supreme Court issued its judgment. It held that the Court of Appeal was correct in concluding that the limit on the right to be free from discrimination had not been justified. A majority of the Supreme Court also considered it appropriate to exercise its discretion and issue the declaration of inconsistency sought by Make it 16.⁸ The declaration was set out in the following terms:⁹

... the provisions of the Electoral Act 1993 and of the Local Electoral Act 2001 which provide for a minimum voting age of 18 years are inconsistent with the right in s 19 of the New Zealand Bill of Rights Act 1990 to be free from discrimination on the basis of age; these inconsistencies have not been justified in terms of s 5 of the New Zealand Bill of Rights Act.

We consider the specific nature of this declaration in further detail later in this report.

The Government’s response to the declaration to date

On 21 November 2022, the Government announced that it would introduce legislation to lower the minimum voting age in local and general elections to 16.¹⁰ However, on 13 March

⁶ *Make it 16 Incorporated v Attorney-General* [2020] NZHC 2630, 24 August 2020 (High Court judgment), paras. 117–118.

⁷ *Make it 16 Incorporated v Attorney-General* [2021] NZCA 681, 14 December 2021, para 62.

⁸ Justice Kós dissented in part. He did not consider that the relevant provisions of the Electoral Act are inconsistent with NZBORA. Rather, he considered that the specific right to vote in parliamentary elections at the age of 18, affirmed in section 12 of NZBORA, prevails over the generalised right to freedom from discrimination affirmed in section 19. However, he agreed with the majority that a declaration of inconsistency must be made by the court in relation to the provisions of the Local Electoral Act. See paras 74–75 of the Supreme Court judgment.

⁹ Supreme Court judgment, para 72.

¹⁰ Radio New Zealand, [Voting age 16 law to be drafted requiring three quarters of MPs to pass - Ardern](#), 21 November 2022.

2023, the Prime Minister stated that this legislation would no longer proceed. He acknowledged that the legislation was unlikely to receive the support necessary to pass in the House. As discussed later in this report, a change to the minimum voting age in general elections would require the support of 75 percent of the House or the support of a majority of voters in a referendum. The Prime Minister stated that the Government would instead introduce legislation in 2023 to lower the minimum voting age for local elections only.¹¹

Summary of submissions

We called for public submissions on 2 March 2023, with a closing date of 15 March 2023. The closing date for submissions fell two days after the Prime Minister's announcement that the planned legislation to lower the voting age for general elections would not proceed. Before the announcement, 208 submitters had already made submissions. We acknowledge that these submitters would not have factored this information into their submissions.

We received written submissions from 518 submitters, comprising 491 individuals and 27 organisations. Of the submitters who provided an opinion about whether the minimum voting age should be lowered, 260 supported a change and 214 were opposed.

We invited submitters who referenced the declaration of inconsistency or Supreme Court judgment to make oral submissions. We heard oral evidence from 23 submitters on 30 March and 6 April 2023.

The matters covered by the written and oral submissions can be grouped into six main themes, as follows:

- the impact of public policy on young people
- whether there is a justification in this instance for a limit on the right to be free from discrimination
- alignment with other legal ages
- civic participation
- civics education
- legislative process and referendums.

The impact of public policy on young people

Of the 260 submitters that supported lowering the voting age, 187 advanced the argument that 16- and 17-year-olds should be able to vote because of the effect policy decisions will have on their future. The most common issue that these submitters highlighted was climate change and its long-term effects on the environment and economy. Submitters also cited the potential long-term effects on young people of policies affecting economic stability and the cost of housing.

¹¹ Reuters, [New Zealand govt reverses move to introduce bill to lower voting age](#), 13 March 2023.

Justification for a limit on the right to be free from discrimination

It was thought by 162 submitters that lowering the voting age would have a positive impact. Many commented that not lowering the voting age would be an unjustified limit on the rights of young people. Some submitters referred to the 1986 Report of the Royal Commission on the Electoral System. They cited the report's finding that, by the age of 15 or 16, "most young people have acquired a view of the social and political world that is not very different from the perceptions and understanding of mature adults."¹²

In contrast, 140 submitters considered that there was no inconsistency between a minimum voting age of 18 and the right to be free from discrimination, or viewed the discrimination as justified. One hundred and twelve submitters were of the view that those under the age of 18 lacked the required maturity to vote in local and general elections. Eighty submitters considered those under 18 to be too impressionable and were concerned that they could be taken advantage of.

Alignment with the minimum age for other activities

One hundred and forty-four submitters drew comparisons between the minimum age for voting and for other activities.

Of these submitters, 78 referred to other activities where the minimum age for participation is lower than 18, including consensual sex, owning a firearm, driving, and working full-time. The most common argument from these submitters was that the minimum age for voting should align with the minimum age for participation in these other activities since they also require a significant degree of maturity.

Conversely, 66 submitters referred to activities where the minimum age for participation is 18 years or older, such as purchasing alcohol and joining the armed forces. These submitters considered that the minimum voting age should stay at 18, to align with these age limits.

In addition to those making comparisons to other legal age limits, 29 submitters argued that the minimum voting age should be increased above 18. The main argument was that the human brain is not fully developed until the mid- to late-twenties. Seven submitters argued that the minimum voting age should be lowered below 16.

Civic participation

One hundred and twenty-five submitters considered that lowering the minimum voting age would have a positive effect on civic participation. One submitter stated that 16- and 17-year-olds are more likely to have knowledge of, and a connection to, their local community than 18–20-year-olds, who they considered are typically more transient as they have often recently left home.

¹² Royal Commission on the Electoral System, Towards a better democracy, December 1986, para 9.11.

Many submitted that if young people were eligible to vote at a younger age, they would be more likely to form a long-term habit of voting in elections. The Electoral Commission stated in its submission that:

Overseas evidence indicates that when 16-year-olds can vote, they turn out at higher levels than 18–21 year olds and have turnout levels similar to the turnout overall. 16 may be a better age for young people to be given the vote. Most 16-year-olds are by and large still at home and in full time education and not subject to as much change in their living arrangements as they may face at 18.

Forty-two submitters considered that lowering the minimum voting age could have a negative impact on civic participation. Many of these submitters suggested that young people do not have sufficient political awareness to vote. They suggested that disengagement from politics during their first years of eligibility may lead young people to develop long-term indifference to politics and voting.

Civics education

One hundred and nine submitters discussed the importance of civics education. The majority of these submissions considered that improved civics education should accompany any move to lower the minimum voting age. Eight submitters considered that New Zealand would need to improve its civics education before lowering the minimum voting age.

The submission from the Children's Commissioner noted a recommendation from the United Nations Committee on the Rights of the Child that New Zealand

... should take measures to ensure that if the voting age is lowered, this is supported by active citizenship, human rights education, and other measures ... to prevent undue influence.

One submitter who was against lowering the minimum voting age suggested that giving the right to vote to young people who are still at school might give teachers too much influence over the development of their political views.

Legislative process and referendums

Eighteen submitters emphasised the need for broad public support or a clear electoral mandate if there is to be any change to the minimum voting age. One argument was that a referendum should be held because lowering the minimum voting age would disproportionately benefit some political parties.

One hundred and seventeen submitters opposed putting the minimum voting age to a referendum. One submitter argued that the democratic principle that "everyone should participate in decisions that affect them ... falls apart when those that can participate get to decide whether others can too". Some submitters noted that previous changes to the minimum voting age were made by Parliament without first holding a referendum.

Other issues and advice that we considered

The main issues that we considered in relation to this declaration of inconsistency are summarised in this section.

The nature of the declaration in *Make it 16 Incorporated v Attorney-General*

We note that the nature of the declaration made by the Supreme Court in *Make it 16 Incorporated v Attorney-General* may prove atypical as the jurisprudence in this area develops.

The Court of Appeal and the Supreme Court made it clear in their decisions that the burden was on the Attorney-General to demonstrably justify the inconsistency between the minimum voting age and the right to be free from discrimination. *Make it 16* put forward evidence to support its argument that 16- and 17-years-olds are sufficiently mature and competent to participate in voting.

The Attorney-General argued that the minimum voting age was a matter for Parliament. Crown Law told us that, in representing the Attorney-General in this matter, it “took no position on the merits of arguments for and against lowering the voting age, and did not put forward evidence to support or contradict any particular minimum age”.¹³ In this regard, the Supreme Court noted that it “appreciate[d] that there may be reasons for not doing so”.¹⁴

Both the Court of Appeal and the Supreme Court found that the Attorney-General had not discharged his burden. However, in reaching its decision, the Court of Appeal stated:¹⁵

The decision rests not on a positive finding that discrimination on grounds of age cannot be justified but on what we have held to be a failure to attempt to justify the existing age limit.

Similarly, in its judgment, the Supreme Court stated:¹⁶

We should say now, as the form of the declaration will make clear, that we leave open the possibility that the limit could later be held to be justified. ... the position here is that evidence that might have rebutted the alternative view was not before the Court.

The Supreme Court further stated that it would not be appropriate to formulate a declaration in terms that would “pre-empt the ability of Parliament to reach a view that an age other than 16 or 17 was a justified limit on the protected right”.¹⁷ It recognised that “there may be other matters Parliament will take into account in ensuring that the position ultimately adopted has the necessary democratic legitimacy”.¹⁸

¹³ See also para 100 of the High Court judgment.

¹⁴ Supreme Court judgment, para 45.

¹⁵ Court of Appeal judgment, para 62.

¹⁶ Supreme Court judgment, para 57.

¹⁷ *Ibid*, para 70.

¹⁸ *Ibid*, para 68.

In reaching their decisions, both the Court of Appeal and the Supreme Court were careful to emphasise that their finding was that the inconsistency *had not* been demonstrably justified based on the evidence in the proceedings before them. They left open the possibility that it *could* be justified based on the consideration of further evidence or other factors. We consider it important to note this distinction as parliamentary and public debate continues as to whether there should be a change to the minimum voting age.

The minimum voting age provisions in the Electoral Act are reserved

The provisions establishing the minimum voting age for general elections are sections 60 and 74 of the Electoral Act 1993, together with the definition of “adult” in section 3(1).

Under section 268 of the Electoral Act, these provisions have a special status. They cannot be amended or repealed by a simple majority of Parliament. Instead, a change to these provisions requires the support of 75 percent of all members of the House of Representatives, or the support of 50 percent of voters in a public referendum. The provisions are therefore referred to in the Electoral Act as “reserved”.

The minimum voting age is among six specific aspects of New Zealand’s electoral law which were first reserved by the Electoral Act 1956. At the conclusion of the parliamentary debate on this legislation in 1956, Hon J R Marshall, the then Attorney-General, said:¹⁹

What we are doing has a moral sanction rather than a legal one, but to the extent that these provisions are unanimously supported by both sides of the House, and to the extent that they will be universally accepted by the people, they acquire a force which subsequent Parliaments will, I believe, respect, and which subsequent Parliaments will attempt to repeal or amend at their peril against the will of the people.

Our reason for noting that the voting age provisions of the Electoral Act are reserved is not to suggest that they cannot or should not be amended by Parliament—as discussed below, the minimum voting age has been amended twice since the provisions were first reserved. Rather, the fact that the provisions are reserved is a practical consideration that we have kept in mind while considering this declaration of inconsistency and how to respond, including what recommendations to make.

The minimum voting age provisions are not reserved in the Local Electoral Act

The minimum voting age for elections conducted under the Local Electoral Act 2001 is currently tied to the minimum voting age in general elections. This is because the Local Electoral Act currently defines those eligible to vote in local elections by reference to

¹⁹ See para 84 of the Supreme Court judgment.

parliamentary electors.²⁰ These eligibility provisions are not reserved, which means that they can be amended by a simple majority of Parliament.

We asked for advice on why the voting eligibility provisions in the Local Electoral Act are not reserved in the same way as the voting age provisions of the Electoral Act. We heard that this may be because only a very small subset of legal provisions have been reserved in New Zealand, and these relate to the conduct of general elections, which in turn determine the legitimacy of Parliament. Although councils are elected, their powers are conferred by Parliament.²¹

Rationale for previous changes to the minimum voting age

Since the minimum voting age was reserved in 1956, it has been lowered twice with cross-party support—from 21 to 20 in 1969, and from 20 to 18 in 1974. We asked about the rationale for changing the voting age from 20 to 18 in 1974.

We were advised that public pressure to lower the minimum voting age grew in the 1960s. Factors thought to have contributed to this public sentiment included an increase in the number of young people as a result of the post-World War II “baby boom” and the expansion of education. New Zealand’s involvement in the Vietnam War also led to an argument from some that, if people were able to serve in the military, they should also be able to vote. Other countries like the United Kingdom, Japan, Norway, and Sweden were also lowering the minimum voting age around this time.

In August 1969, the Electoral Amendment Act 1969 was passed to lower the voting age from 21 to 20. The Opposition argued at the time that the minimum voting age should be lowered further, to 18, but still voted in favour of the legislation.

In 1974, legislation was introduced to further lower the voting age. The debate in Parliament referenced the findings of a 1967 report by the Committee on the Age of Majority that 18-year-olds were ready for increased rights and responsibilities. The reduction in the minimum voting age was seen as aligning voting rights with the economic and social responsibilities that 18- and 19-year-olds had assumed. In September 1974, the Electoral Amendment Act 1974 was passed, lowering the minimum voting age to 18.²²

Psychological development of young people

We requested advice on the psychological development of young people. Officials noted that the Children’s Commissioner prepared a report, dated 24 August 2020, to assist the High Court in its consideration of the application from Make it 16. The report discussed a 2019 study of 5,000 people aged between 10 and 30 across 11 countries. The Children’s

²⁰ See sections 20, 23, and 24 of the Local Electoral Act.

²¹ Ministry of Justice and Department of Internal Affairs, Summary of submissions, page 11.

²² Ministry of Justice and Department of Internal Affairs, Summary of submissions, pp 16–17.

Commissioner stated that the study, which was published in the journal *Law and Human Behaviour*,

... identified that when situations call for deliberation in the absence of high levels of emotion (cold cognition), such as voting, granting consent for research participation, and making autonomous medical decisions, the ability of an individual to reason and consider alternative courses of action reaches adult levels during the mid-teen years. When situations that involve emotionally-charged situations where time for deliberation and self-restraint is unlikely or difficult (hot cognition), such as driving, consuming alcohol, and criminal behaviour, impulse choices are more likely and mental processes are slower to develop, reaching adult levels into adulthood.

The ... study advocates for two different legal age boundaries. One for decisions typically made with deliberation, with a suggested designation at 16 years of age, and a second for decisions made in emotionally-charged situations in which psychosocial immaturity may compromise judgement, with a suggested designation at 18 years or older.

The Supreme Court referred to this study, and other evidence supporting it, in its judgment.²³ We acknowledge that the study cited is only one piece of evidence in a complex field, and that countervailing evidence was not put forward by the Attorney-General during the *Make it 16* litigation, as discussed above.

Legal consequences of a change to voting age in the Electoral Act

Officials drew our attention to the fact that the minimum voting age for general elections is linked to several other rights and duties under New Zealand law. For example:

- Section 47 of the Electoral Act states that, subject to a few exceptions, any person who is registered as an elector of an electoral district is also eligible to stand as a candidate and to be elected as a Member of Parliament.²⁴
- Section 82 of the Electoral Act provides for compulsory registration of eligible voters. It is an offence not to apply for registration as an elector within one month of becoming qualified to do so. Those who do not do so may be convicted and fined \$100 for a first conviction.
- Section 25 of the Local Electoral Act states that every New Zealand citizen who is a parliamentary elector is qualified to stand as a candidate in a local election.
- Section 6 of the Juries Act 1991 provides that anyone registered as an elector in accordance with the Electoral Act is “qualified and liable” to serve as a juror.

²³ See paras 52–53 of the Supreme Court judgment.

²⁴ We note that in proceedings before the courts, *Make it 16* did not advocate for this link to be maintained if Parliament decides to lower the minimum voting age for general elections. See para 55 of the Supreme Court judgment.

- Section 5 of the Sale and Supply of Alcohol Act 2012 links the definition of an elector for alcohol licensing trust elections to the Local Electoral Act, which in turn derives the minimum voting age for local elections from the Electoral Act.

A majority of us consider that the issues identified above could be adequately addressed following careful consideration and appropriate amendments to relevant legislation. For example, Parliament could consider amending the Electoral Act to provide additional time to register for those who would become newly eligible to vote.

Practical consequences of only changing the voting age for local elections

The Electoral Commission is responsible for maintaining the electoral roll—a list of eligible voters who have registered to vote in each electoral district. The information from this roll is used for both general and local elections.²⁵ This includes a list of people who have enrolled to vote in a Māori electoral district. The Commission also maintains a dormant roll, which is a list of people who have been removed from the electoral roll for any of the reasons outlined in the Electoral Act.²⁶

We were advised that if the minimum voting age were lowered for local elections but not general elections, a separate youth electoral roll would need to be established. The Department of Internal Affairs identified the following considerations that would need to be taken into account:

- A youth electoral roll would need to be supported by the same security and integrity measures that apply to the general electoral roll.
- There may need to be a separate Māori electoral roll and dormant roll for those under 18.
- There would need to be a mechanism to transfer young people enrolled to vote in local elections to the general electoral roll once they turn 18.

The Department of Internal Affairs described the necessary work required to enact these changes as “procedurally and legislatively complex”.²⁷

Other work on electoral law

Work is currently in progress to review both New Zealand’s election laws and its local government arrangements.

²⁵ The procedure for obtaining details from the electoral roll for use in local elections can be found in section 38(4) of the Local Electoral Act and section 113 of the Electoral Act.

²⁶ See section 109 of the Electoral Act.

²⁷ Ministry of Justice and Department of Internal Affairs, Summary of submissions, page 12.

The independent Future for Local Government review was announced in April 2021.²⁸ The overall purpose of the review is to identify how New Zealand’s “system of local democracy and governance needs to evolve over the next 30 years, to improve the wellbeing of New Zealand communities and the environment, and actively embody the Treaty [of Waitangi] partnership.”²⁹ In a draft report released in 2022, the independent review panel stated that the voting age for local elections was a significant point raised by the public during consultation. It acknowledged that views differ on the issue but stated in the draft report that it “strongly supports” lowering the minimum voting age for local elections to 16.³⁰ A final report is due by June 2023.

In October 2021, the Government announced an independent review of New Zealand’s election laws. The terms of reference include consideration of the voting age.³¹ The independent panel carrying out the review is due to provide a final report by November 2023.

Our response to the declaration

We agree with the Privileges Committee that it is vital that the legislative and executive branches of government consider declarations of inconsistency properly. We have sought to do so, including by hearing evidence from a broad range of submitters, and receiving advice from Crown Law, the Ministry of Justice, and the Department of Internal Affairs. Having considered this evidence and advice, members of our committee have reached differing views about how we think the Government should respond. We set out these views below.

Majority view on minimum voting age for local elections

Q. A majority of us find the evidence cited by the Children’s Commissioner in their report to the High Court (see page 12 above) to be persuasive. This evidence shows that cognitive abilities reach adult levels at different ages for different types of decision-making. In this regard, we find the distinction drawn between cold and hot cognition useful. Voting is cited as an example of a decision-making process that utilises cold cognition, because there is time for deliberation. A majority of us consider that the evidence shows that, when it comes to voting, 16- and 17-year-olds are capable of deliberating, reasoning, and considering options at adult levels. A majority of us view this as a crucial consideration.

Q. A majority of us also agree with the submission that 16- and 17-year-olds are likely to be better connected to their communities than 18-, 19- and 20-year-olds, who often leave home for work or study opportunities. We note the overseas evidence referred to by the Electoral Commission indicating that when 16-year-olds can vote, they turn out at higher levels than 18–21-year-olds. Taking this into account, a majority of us agree with the suggestion made

²⁸ Hon Nanaia Mahuta, [Independent review to explore future for local government](#), 23 April 2021.

²⁹ [Terms of Reference](#), Review into the Future for Local Government.

³⁰ Review into the Future for Local Government, [He mata whāriki, he matawhānui: Draft report](#), October 2022, pp 171–172.

³¹ Hon Kris Faafoi, [Government to review electoral law](#), 5 October 2021.

by some submitters that those who begin voting as soon as they are eligible are more likely to maintain a life-long habit of voting. We consider that ingraining such habits at a young age would be good for local democracy, given low voter turnout at recent local elections.

While we acknowledge that there will be some practical and legislative issues to work through if the voting age in local elections is changed, a majority of us do not believe that these issues are insurmountable.

There is a legal right in New Zealand to be free from discrimination on the basis of age from 16 onwards. If this right is to be limited or constrained, the law requires that there is good justification for doing so. A majority of us have not been convinced that there is a good reason to maintain the minimum voting age for local elections at 18 years rather than lowering it to 16 years. We therefore recommend, by majority, that the Government amend the Local Electoral Act, and any other necessary laws and regulations, to provide for a minimum voting age of 16 in local elections.

Majority view on minimum voting age for general elections

We also recommend, by majority, that the Government investigate lowering the minimum voting age in general elections to 16 years, taking into consideration the legal consequences of a change to the minimum voting age, as set out in our report. A majority of us are of the view that there is an argument in favour of amending the Electoral Act in this way for the reasons outlined in the previous subsection on local elections. However, we acknowledge that there are additional considerations that must be taken into account before doing so.

First, we have highlighted several rights and duties that are linked to the minimum voting age for general elections. As stated above, a majority of us believe that these issues can be adequately addressed following careful consideration and appropriate amendments to relevant legislation. However, we consider that these issues should be the subject of further Parliamentary and public debate.

Second, as noted above, the minimum voting age for general elections is reserved in the Electoral Act, and therefore has a special constitutional status. We acknowledge that in the current Parliament, there may not be sufficient support to pass legislation to lower the minimum voting age for general elections. A majority of us agree with the submitters who said that it would be inappropriate to put the minimum voting age to a public referendum. We believe that Parliament is the correct forum to decide this issue, informed by the views of voters and wider public debate.

Finally, as noted above, an independent panel is currently reviewing electoral law, including the minimum voting age. We recognise that this work may raise further issues that the Government may wish to take into account.

ACT New Zealand differing view

The ACT party thanks all submitters to this declaration and notes the wide range of views that were expressed both for and against lowering the voting age to sixteen years.

We acknowledge and thank the 518 submitters that shared their views with the select committee during the hearings.

ACT advises that we do not support the lowering of the voting age from 18 years to 16 years in either the local or general elections.

We support the determination of the Supreme Court's Justice Kós, who has said that he does not find an inconsistency with the Electoral Act against NZBORA. Justice Kós goes on to explain that section 12 of NZBORA, which specifically states that citizens aged 18 years or over have the right to vote, prevails against section 19 of NZBORA, which relates to freedom from discrimination on the grounds of discrimination identified in the Human Rights Act. The ACT Party agrees with Justice Kós' sentiment that section 12 of NZBORA should prevail over the Human Rights Act in this instance.

Further to this, our select committee report refers to consequential considerations needed to other legislation should a change in voting age eligibility occur, such as:

- those eligible to vote at the age of 16 years will be eligible to stand as candidates in general elections
- there are offences with fines and convictions if not enrolled within a month of being eligible
- being able to serve as a 16-year-old juror.

Other questions should also be raised in relation to criminal liability and consequential adult punishments for those aged 16–18 years, along with whether parental responsibility and liability should end at the age of 16 years.

On this basis, ACT does not support the lowering of the voting age in either local or general elections to the age of 16 years.

New Zealand National Party differing view

The National Party does not agree with the recommendations of the majority of this committee and instead recommends that the House take note of the Supreme Court's declaration.

We thank all the submitters on this report and note the wide variety of views on the subject.

We note that during the case *Make it 16 v Attorney General* the Crown did not attempt to justify the status quo—voting at 18—instead relying largely on the argument that it is for Parliament to decide the voting age.

We are confident that an 18-year-old voting age can be justified and secondly agree with the Crown that the appropriate voting age is a judgement for democratically accountable MPs to make.

Arguments can be made for 16 and for 18 as appropriate ages for voting. The Bill of Rights Act sets out 18 as the age for Parliamentary elections; the Human Rights Act grants a range of rights to those 16 and over. The age of 18 is set for many activities, rights, and responsibilities; the age of 16 is set for some others. The justice system generally treats 16- and 17-year-olds very differently to the way it treats those 18 and over.

Ultimately, we assert the decision on the voting age, either for general elections or local elections, is one for Parliament to make and not one for the courts to determine.

We regard 18 as an appropriate age for voting and do not see any logic in treating general elections and local elections differently, as regards the age of voters.

Finally, we note, with regard to the interaction between electoral law and the Human Rights Act, a far more pressing matter than the age of voting is the shift away from the principle of equal voting rights that has occurred with the Canterbury Regional Council (Ngāi Tahu Representation) Act 2022.

Appendix

Committee procedure

We met between 15 December 2022 and 18 May 2023 to consider the declaration of inconsistency. We received submissions from 518 submitters and heard oral evidence from 23 submitters. We received advice from Crown Law, the Ministry of Justice, and the Department of Internal Affairs.

Committee members

Vanushi Walters (Chairperson from 13 February 2023)
Hon Ginny Andersen (Chairperson until 1 February 2023, member until 8 February 2023)
Hon Paul Goldsmith
Dr Emily Henderson
Anahila Kanongata'a (from 8 February 2023)
Marja Lubeck (from 8 February 2023)
Nicole McKee
Hon Mark Mitchell
Simon O'Connor
Hon Willow-Jean Prime (until 8 February 2023)
Arena Williams

Advice received

We received the following documents as advice. They are available on the Parliament website.

- Crown Law, Background note for the Justice Committee, 27 March 2023
- Crown Law, Follow up note for the Justice Committee, 4 April 2023
- Crown Law, Second follow up note for the Justice Committee, 17 April 2023
- Ministry of Justice and Department of Internal Affairs, Summary of submissions, 18 April 2023.