



Inquiry into the 2017 General Election and 2016 Local Elections

Report of the Justice Committee

(Including Petition of Kim Robinson for Deaf Action New Zealand and Petition 2014/60 of Andrew Mark Judd)

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Hon Meka Whaitiri
Chairperson

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Inquiry into the 2017 General Election and 2016 Local Elections

Petition of Kim Robinson for Deaf Action New Zealand

Petition 2014/60 of Andrew Mark Judd

Summary of recommendations

The Justice Committee has conducted an inquiry into the 2017 General Election and 2016 Local Elections. We have also considered the Petition of Kim Robinson for Deaf Action New Zealand and Petition 2014/60 of Andrew Mark Judd. We make the following recommendations to the Government:

2017 General Election

Advance voting

1. We recommend that the Government introduce an amendment to section 178(4) of the Electoral Act 1993 to allow a vote to be counted if the voter dies before or on election day.

Use of social media

2. We recommend that the Government ask the Electoral Commission, in its report on the 2020 General Election, specifically to address the issue of astroturfing and ways that New Zealand can deal with it.

Election advertising

3. We recommend that the Government introduce legislation to expand section 221A of the Electoral Act to require electoral advertisements in all mediums to state the names and addresses of their promoters.

Advertising on election day

4. We recommend that the Government introduce an amendment to the Electoral Act to require scrutineers to wear a label, provided by the Electoral Commission, saying that they are a scrutineer, but to also allow scrutineers to wear a rosette to identify their party, for clarity for voters.
5. We recommend that the Government introduce an amendment to section 197(2A) of the Electoral Act to make the election day advertising rules the same for web-based news media companies as for traditional news media companies.

Proof of citizenship

6. We recommend that the Government introduce an amendment to the Electoral Act to require candidates in general elections to provide satisfactory evidence of New Zealand citizenship if required by the Electoral Commission.

Availability of roll to parties

7. We recommend that the Government enable all political parties to access electronic master rolls during an election period for an electoral purpose.

Researchers' access to voting information

8. We recommend that the Government enable researchers to access electronic master rolls after elections for the purposes of improving information about why people vote and improving participation.

Accessibility

9. We recommend that the Government consider the matters raised by Blind Citizens NZ and Deaf Action New Zealand, including:
- adopting fully automated touchtone telephone voting services
 - making New Zealand Sign Language interpreters available in the lead-up to elections, for events such as Meet the Candidates evenings and television coverage of debates
 - funding for captioning candidates' and parties' online videos during election periods
 - secure video interpreter services at polling booths.

Broadcasting

10. We recommend that the Government introduce an amendment to the Broadcasting Act 1989 to allow parties and candidates to broadcast election programmes from the start of the regulated period, but note that extending the flexibility and timing of such advertisements should not be used as the basis for any increase in public expenditure.
11. We recommend that the Government, in consultation with all political parties, examine the electoral broadcasting allocation criteria and the current broadcasting regime to establish whether they are fit for purpose and what (if any) changes should be made to ensure the funds are distributed proportionate to public support.
12. We recommend that the Government introduce an amendment to section 80B(3) of the Broadcasting Act to expressly allow the Electoral Commission to pay the allocation to parties under certain circumstances, rather than direct to the advertising business, subject to appropriate checks to ensure that funds are spent as intended.

Enforcement of election laws

13. We recommend that the Government give the Electoral Commission investigatory, enforcement, and sanction powers commensurate with our proposed changes. We recommend providing the Electoral Commission with powers to:
- investigate electoral offences
 - obtain documents and other evidence
 - impose fines
 - impose other remedies for minor breaches of electoral law.

Major breaches of electoral law would remain with the Police.

Due diligence

14. We recommend that the Government:

- introduce a due diligence requirement for party secretaries and local and general election candidates and campaign managers so that, before accepting a donation over a certain amount, they must take all reasonable steps to verify the donation's source and ensure that it is permissible under the relevant Act
- require the Electoral Commission (or the electoral officer for local elections) to provide guidance for parties and candidates on what are "reasonable steps", which should include checking the electoral roll (or companies register, if corporate donations are permitted) to confirm eligibility to donate.

2016 Local Elections**Centralising the running of local and general elections**

15. We recommend that the Government consider giving responsibility for running all aspects of local elections to the Electoral Commission.
16. As part of centralising the management of local elections, we recommend that the Government consider encouraging or requiring the same voting system to be used in all local elections.

DHB elections

17. We recommend that the Government ensure that, where practicable, DHB boundaries align with local authority boundaries.

Voting method

18. We recommend that the Government investigate what is the best voting method (or combination of methods), as an enduring solution for increasing turnout at local elections.
19. We recommend that the Government consider the need to regulate for security protections when vote collection boxes are put in public areas.
20. We recommend that the Government support a trial of advance booth voting at the next local elections in 2022.
21. We recommend that the Government require the administrator of local elections to ensure that local election information is provided in accessible formats.
22. We recommend that the Government develop a funding support model, similar to that proposed in the Election Access Fund Bill, for local elections.
23. We recommend that the Government align local election overseas voting processes with general election overseas voting processes.

Improving information about voting and elections

24. We recommend that the Government, as part of expanding the Electoral Commission's role in local elections, make the Electoral Commission responsible for leading and co-ordinating triennial, nationwide campaigns to encourage and support people standing for and voting in local elections.

Improving information about local election issues

25. We recommend that the Government strengthen legislation so that, when a local election candidate wishes to state on their candidate nomination form that they represent a non-registered political organisation or group, the election administrator may require the candidate to produce evidence that the organisation or group exists, and must reject any claimed affiliation unless there is clear evidence to show that the organisation or group exists.

Advertising and campaigning

26. We recommend that the Government align local election advertising rules with general election advertising rules, including the following:

- include online electoral advertising in section 113 of the Local Electoral Act 2001
- align the definition of electoral advertising in the Local Electoral Act with that in the Electoral Act so that it covers all advertising that attempts to persuade people to vote or not to vote in a particular way
- ensure that spending limits in section 111 of the Local Electoral Act are indexed to change annually, in line with inflation
- introduce regulation of third party promoters in local elections for spending, registration, and declarations, based on similar principles to the framework in the Electoral Act
- align provisions requiring candidates to report political donations that they have received for an election (section 112A of the Local Electoral Act and section 209 of the Electoral Act), so as to align the timeframes and format of donations and campaign expenditure
- align local and general election provisions on anonymous, overseas, and corporate donations (see our recommendations in Chapter 3).

Disclosure regimes should be consistent

27. We recommend that the Government introduce requirements in legislation for elected members of local authorities to disclose financial and certain other interests that align with the requirements that apply to members of Parliament.

Local election timeframes

28. We recommend that the Government shift the local election polling day to avoid the school holidays.

Updating local election processes

29. We recommend that the Government introduce amendments to allow the electronic receipt of nomination forms and candidate statements and appropriate deadlines for them, consistent with our overall theme of wanting alignment between general and local elections.

30. We recommend that the Government introduce amendments to the Local Electoral Act to require candidates to provide satisfactory evidence of New Zealand citizenship if

required by the local electoral officer, and ensure that this requirement aligns with the Electoral Act.

31. We recommend that the Government make enrolment on the ratepayer electoral roll continuous, unless a ratepayer no longer wishes to remain enrolled or ceases to be eligible.
32. We recommend that the Government introduce amendments to the necessary legislation to give local authorities access to the supplementary roll and the deletions file held by the Electoral Commission.
33. We recommend that the Government introduce legislation to require that, when a non-mayoral vacancy occurs within 12 months after a triennial local body election, the position be filled by the next highest polling candidate (or STV equivalent) at that election.

Probity in the 2016 local elections

34. Consistent with our broader recommendations for alignment with general elections and a greater role for the Electoral Commission, we recommend that the Government introduce amendments to the Local Electoral Act to provide better mechanisms for the investigation and resolution of complaints related to the conduct of local elections.

Foreign interference in New Zealand elections

Risk of foreign interference in New Zealand elections

35. We recommend that the Government ensure that the intelligence agencies proactively provide advice to all parliamentary candidates and their parties which is politically neutral, cost effective, and proportionate to a person's risk of foreign interference.
36. We recommend that the Government resource the Government Communications Security Bureau (GCSB) and the New Zealand Security Intelligence Service (NZSIS) appropriately to allow them to provide advice proactively to local election candidates, local body elected members, and local body officials in a way that is politically neutral, cost effective, and proportionate to the risk of foreign interference in the circumstances.
37. We recommend that the Government encourage local authorities engaging with foreign governments to actively seek out advice about foreign interference from the intelligence agencies.

Hacking

38. We recommend that the Government encourage all candidates and parties in general and local elections to seek help to protect their online security.
39. We recommend that the Government adequately fund appropriate agencies to provide specialist advice and support against targeted cyber attacks that cannot be avoided by best practice online.
40. We recommend that the Government retain manual or paper-based voting systems in local and general elections for the foreseeable future because of security concerns.
41. We recommend that the Government consider amendments to existing legislation to incorporate an offence, similar to that in section 482 of the Canada Elections Act 2000,

that would prohibit hacking into computer systems owned by Parliament, local authorities, the Electoral Commission, election service providers, election officers, political parties, candidates, or members of Parliament with the aim of intending to affect the results of an election.

42. We recommend that the Government ensure that a contingency system is in place in case of a security breach of relevant computer systems that compromises the integrity of a local or general election.

Disinformation

43. We recommend that the Government consider the applicability of implementing recommendations relating to foreign interference via social media content from the UK House of Commons' Digital, Culture, Media and Sport Committee's report on *Disinformation and 'fake news'* and the Australian Joint Standing Committee on Electoral Matters' *Report on the conduct of the 2016 federal election and matters related thereto*. We recommend that the Government also consider the applicability to local government of the UK and Australian recommendations.

Foreign interference via election advertising

44. We recommend that the Government follow the Australian Government in prohibiting foreigners from advertising in social media to influence a New Zealand election outcome and that it provide appropriate constraints and legal obligations on social media platforms so that this can be enforced.
45. We recommend that the Government introduce amendments to the Electoral Act to require political party secretaries to be New Zealand residents.
46. We recommend that the Government introduce legislation to allow only persons or entities based in New Zealand to sponsor and promote electoral advertisements.
47. We recommend that the Government introduce legislation creating an offence for overseas persons placing election advertisements as well as organisations selling advertising space to knowingly accept impermissible foreign-funded election advertising.

Foreign donations

48. We recommend that the Government examine how to prevent transmission through loopholes, for example, shell companies or trusts. We recommend that these issues be further explored and that the Government consult with political parties about how best to approach the problem.
49. We recommend that the Government consider one over-arching anti-collusion mechanism, including penalties, to replace those in the Electoral Act.
50. We recommend that the Government:
- make it unlawful for third parties to use funds from a foreign entity for electoral activities
 - require registered third parties to declare where they get their donations from.

Lobbying transparency regimes

51. We recommend that the Government investigate whether the Australian Foreign Influence Transparency Scheme is applicable to New Zealand, taking into account the evidence of problems in this area relative to the costs of introducing such a regime.

Media use in diaspora communities

52. We recommend that the Government:

- engage with international social media platforms to encourage them to adhere to our laws and customs regarding free speech
- explore regulatory tools that would assert New Zealand's strong tradition of free speech.

53. We recommend that the Government consider requiring all media organisations to have a majority of board members who live in New Zealand.

54. We recommend that the Government prohibit foreign governments or foreign state entities from owning or investing in media organisations in New Zealand.

55. We recommend that, as part of its review of media content regulation, the Government consider requiring all media companies to belong to an industry self-regulating body.

Background

In July 2018, the Justice Committee initiated an inquiry into the 2017 General Election and 2016 Local Elections, with the following terms of reference:

To examine the law and administrative procedures for the conduct of parliamentary elections in light of the 2017 General Election, and local elections in light of the 2016 Local Government Elections, with particular reference to:

- the increasing number of New Zealanders choosing to cast an early vote prior to election day
- the increased importance and use of social media in campaigning, advertising, and expression of political opinions
- the statutory and regulatory implications of these changes
- the increased placement of polling booths in venues such as shopping malls and supermarkets.

We called for and received submissions on the terms of reference.

In March 2019, we called for further submissions on the specific issue of how New Zealand can protect its democracy from inappropriate foreign interference. Notably, we sought submissions on:

- the ability of foreign powers to hack the private emails of candidates or parties
- the risk that social-media-based political campaigns can be made to appear as though they are domestic but are in fact created or driven by external entities
- the risk that donations to political parties are made by foreign governments or entities.

Our report is divided into three chapters:

- Chapter 1: 2017 General Election
- Chapter 2: 2016 Local Elections
- Chapter 3: Foreign interference in New Zealand elections.

National Party view

National members have significant concerns about the conduct of this inquiry that has compromised its effectiveness.

This is a standard, regular inquiry that occurs after each general election and is used to build a cross-party consensus on any electoral law changes. This is important as New Zealand does not have a formal written constitution. Our electoral laws should not be able to be changed to advantage the governing parties. The inquiry started late (and a full year after the 2017 election). Its terms of reference were extended to include local elections and foreign interference thus resulting in a later conclusion.

The Government compromised the integrity of the inquiry by making Cabinet decisions and introducing Electoral Amendment Bills ahead of the inquiry's conclusion. All of the issues in the bills were matters subject to the inquiry and were subject to submission and discussion.

The process became a sham as neither the officials nor Labour members could reasonably come to any other conclusion than that predetermined by Cabinet. It was also unusual and irregular for there to have been no consultation with the Opposition over this Electoral Amendment Bill, as has been the practice for many years.

The committee's work on this inquiry was also compromised by having six different chairs over the last year. The report-writing was overseen by a chair who was not a member of the committee when submissions were heard. This is not a criticism of the final chair, Hon Meka Whaitiri, but of the process.

The original chair excluded himself after a disagreement over receiving evidence from Canterbury University academic Anne-Marie Brady. The agreed minutes of that meeting show the original chair and his colleagues disagreed with her submitting because initial submissions had closed and they believed the issues would be covered by the Government's intelligence agencies. National viewed the original chair's comments at that meeting about Professor Brady as disparaging and the reasons he did not wish her to be heard. National believes that the public statement by the original chair of Professor Brady's submission being late was incorrect as the terms of reference being extended into foreign interference was made after initial submissions closed.

The problem was compounded by the original chair misrepresenting publicly what occurred at the committee. In explaining why at the next meeting the decision on Professor Brady's submission was reversed, he stated the change was because the initial decision was just administrative and that the committee had no substantial discussion. This is contradicted by the original minutes. National has repeatedly sought to release these minutes in the House and select committee prior to the report back, but was blocked by Labour members. National believes the original chair acted inappropriately in initially blocking Professor Brady's submission and then in publicly misrepresenting why this occurred. We reject the accusation subsequently made in Parliament that our concerns about this were "racial profiling". National does not necessarily support all of Professor Brady's submission but believes her evidence was relevant, topical, and valuable to the inquiry.

National attempted, as best it could beyond these difficulties, to play a constructive role in using the inquiry to improve electoral law. We would hope future post-election select committee inquiries would learn from these errors.

Chapter 1: 2017 General Election

Features of the 2017 election

Higher turnout

Voter turnout in 2017, at 79.8 percent of enrolled voters (compared with 77.9 percent in 2014), was the highest since 2005 (80.9 percent). Turnout in the Māori electorates was 66.7 percent, also the highest since 2005. In 2017, 6.5 percent more young adults (18 to 24 year-olds) voted than in 2014.

Table 1, below, compares data from the 2017 and 2014 elections. It shows that, in 2017, an estimated 73.7 percent of the eligible population voted, compared with 72.1 percent in 2014. Also in 2017, 92.4 percent of the eligible population was enrolled to vote. This compares with 92.6 in 2014.

| | 2017 general election | 2014 general election |
|--|-----------------------|-----------------------|
| ENROLMENT | | |
| Enrolled electors | 3,298,009 | 3,140,417 |
| Estimated eligible population | 3,569,830 | 3,391,100 |
| Percentage of eligible electors enrolled | 92.4% | 92.6% |
| TURNOUT | | |
| Turnout as % of enrolled electors | 79.8% | 77.9% |
| Turnout as % of eligible population | 73.7% | 72.1% |

Table 1: Election turnout in the 2017 and 2014 general elections

More advance voting

One feature of the 2017 election was the increase in advance voting. Voters had the option of voting up to 12 days in advance of election day. Almost half chose to do so. Of the 2.63 million votes, 47 percent were cast in advance of election day. This was up from 29 percent in 2014 and 15 percent in 2011. Advance voting was provided at 485 advance voting places.

The Electoral Commission predicts that the proportion of advance votes will grow to 60 percent in 2020.¹ It hopes to provide about 700 advance voting places for the 2020 election.²

Advance voting started 12 days before election day. In 2014, it started 17 days before. Although the period was shorter in 2017, advance voting was available for longer hours, including late nights and on the Sunday before election day. Many people voted in advance

¹ Electoral Commission, Report on the 2017 General Election, p 36.

² Justice Committee, 2017/18 Annual review of the Electoral Commission, p 4.

at lunchtime and after work. Advance voting peaked in the three days before election day, during which almost half (46 percent) of advance votes were cast.

The 2017 general election was the first election in which advance voters could both enrol and vote in the same visit.³

More special votes

Special votes are made by people who:

- cannot visit a polling place in their own electorate (including people overseas)
- are not on the printed roll
- are not enrolled by writ day (a month before election day).

Special votes increased from 331,000 in 2014 to 446,000 in 2017. They accounted for 17 percent of the total vote, up from 13.5 percent in 2014.⁴

Social media

Another important feature was the increasing role of the internet in every sphere of life, including elections. The dominance of the internet in the 2017 election included the use of social media by voters, candidates, parties, and others.

In 2017, the Electoral Commission received 52 complaints about the use of social media on election day to interfere with, or influence, voters. This was down from 96 complaints in 2014.⁵

We note also that social media and the internet make us vulnerable to manipulation by foreign parties. We discuss foreign interference in Chapter 3 of this report.

Recent legislation introduced

We note the overlap between the Electoral Amendment Bill and some of the issues we considered.

National Party view

The Electoral Amendment Bill was introduced on 29 July 2019 and referred to the Justice Committee on 6 August 2019. It seeks to amend the process for enrolment and voting to allow anyone to vote and enrol on election day, and to enable this to be managed by the Electoral Commission, and extend the timeframe for the return of the writ from 50 to 60 days. It would also remove the prohibition on premises used for the sale of liquor to be voting places, allow the preliminary count of ballot papers to be in a designated place away from the voting place, enable an ordinary vote to be cast as long as the voter is on the electronic roll, and enable a special vote declaration to also be used for enrolling or updating an elector's vote details. The bill would also make changes to the processes of managing a

³ As discussed later, people cannot currently enrol and vote on election day.

⁴ Electoral Commission, [Report on the 2017 General Election](#), p 17.

⁵ Electoral Commission, [Report on the 2017 General Election](#), p 30.

disruption of an election. All these issues had been canvassed but not concluded at the time the bill was introduced.

The first that National members knew of the Cabinet decisions on the bill was at the hearing of 2019/20 Estimates. National members believe the Minister's press release that day was misleading. It made no mention of the Government's decision to extend the return of the writ day by 10 days to accommodate same-day enrolment and voting but included much more minor changes. National believes this was materially important as the Electoral Commission had, in the inquiry hearings, opposed the introduction of same-day enrolment and voting for the 2020 election.

National believes it was disadvantaged in the public debate on this electoral bill as we were only told half the story. A trade-off had been made between allowing same-day enrolment and voting for approximately 19,000 votes but at the expense of extending the timeframe for declaration of the election result by 10 days. National believes this highlights the poor process of not complying with the long-established practice of Governments consulting Opposition parties on electoral bills. We believe it was deliberate and sneaky in that, by not mentioning the 10-day delay in the public getting an election result, it would bias the debate to the outcome the Government was seeking.

National's greatest concern about the Electoral Amendment Bill is that it trumped a long-established process and made the submissions and work of the committee on these topics irrelevant. Justice officials must comply with Cabinet decisions and so any discussion on alternate approaches was pointless. National believes that Labour members could not reasonably be expected to come to a different analysis to these particular issues from Cabinet. National believes this bill undermined and made a mockery of the inquiry and long-established cross-party process.

Advance voting

We consider it timely to review potential ways the rules might need to change to accommodate the large increase in advance voting. Where it makes sense to do so, we believe that the rules should be consistent from the time that advance voting begins until polls close at the end of election day.

Publishing false statements to influence voters

Section 199A of the Electoral Act 1993 (publishing false statements to influence voters) provides that a person is guilty of a corrupt practice if they deliberately publish a false statement with the intention of influencing an elector, on election day or the two days prior. Government members believe that this rule should also apply during advance voting.

Government members of the committee recommend extending the offence in section 199A so that it applies from two days before advance voting begins until the close of polling on election day.

National Party view

National members strongly oppose Labour's proposal to extend section 199A from applying to just the two days prior to election day, to two days prior to the beginning of advance voting. This effectively extends the period this provision applies from two days to 23 days.

This radical extension has major implications for New Zealand Bill of Rights Act 1990 issues in respect of section 14 on freedom of expression and section 12, the right to parliamentary candidacy. These Bill of Rights issues are particularly important at the time of parliamentary elections.

The purpose of the tight and tough constraints in section 199A that apply just to the two days prior to the election is because of the reduced opportunity for scrutiny or rebuttal so close to an election. They were introduced to stop scandalous claims being made in the last moments before an election. They come with a very high penalty. A person being declared guilty of a corrupt practice is liable to imprisonment of 2 years, a fine of up to \$100,000, and inclusion on the Corrupt Practice List, removing their right to vote or hold elected office.

The key legal test in section 199A is that the person has published a false statement. The issue is "what is" and "who determines" what a false statement is that becomes subject to the penalty of a "corrupt practice". There will be different views from Election 2017 on whether National's claims of a \$12 billion fiscal hole or Labour's of 100,000 Kiwibuild homes are false statements, but these are best contested in the context of freedom of expression and not being shut down by this draconian "corrupt practice" provision.

The proposed amendment to section 199A is hugely significant and poses major risks for the free expression of views in the three weeks prior to a general election. National views this proposal as a further worrying erosion of free speech by the current Government that will compromise free and fair elections.

Section 199A was amended in 2017 with broad cross-party agreement. This was in response to a High Court judgment (CIV 2015 485-222) involving Rt Hon Winston Peters and the Electoral Commission. Mr Peters wanted section 199A to apply to statements originally made before the two-day period but still published on the internet in the two days prior to election day. The amendments to section 199A made in 2017 made explicit that it did not apply to statements made before the two-day period but still available during these two days.

National disagrees with Labour that the growth in advance voting justifies the major extension of this provision. We note that Labour supported the 2017 amendment many years after the legislative change that has allowed growth in advance voting.

Death of an advance voter

Currently, if a person votes in advance but dies before election day, their vote must not be counted. If a voter dies on election day, their vote is counted.

We believe that this is undemocratic. A person who makes the effort to go to a voting place in advance of the election should have their vote counted.

Recommendation 1

We recommend that the Government introduce an amendment to section 178(4) of the Electoral Act 1993 to allow a vote to be counted if the voter dies before or on election day.

Enrolling and making a special vote declaration on one form

People who wish to vote must be enrolled and their details must be up to date. Advance voters who need to enrol or update their details before voting must complete both an enrolment form and a special vote declaration form before receiving a ballot paper. These forms request similar information. About 85,000 voters had to fill out both forms in 2017. The votes of those who do not fill out the enrolment form correctly do not get counted.

It would require a law change to streamline the process so that one combined form could be used for enrolment and declaring a special vote. Also, because of the way the Electoral Commission processes special votes and enrolment applications, a lot of work would be involved to implement such a change.

We are aware that this issue is covered in the Electoral Amendment Bill.

Use of social media

We have already mentioned the increased use of social media by voters, candidates, parties, and others. We discuss the issue of disinformation in social media later, in our chapter on foreign interference.

Social media campaigns appearing to have grass-roots support

One issue of concern in relation to both New Zealanders and foreigners is that of “astroturfing”: the spreading of disinformation by robot accounts and paid participants, to give the appearance that a campaign has grass-roots support. Instigators of this sort of campaign should have to comply with Electoral Act rules about advertising.

We did not receive any evidence of astroturfing in the 2017 election. The intelligence agencies told us:

To date, New Zealand has not been the direct target of widespread statebacked disinformation or mal-information campaigns.

But members of the New Zealand public are highly likely to encounter them, such is the international nature of online content.

Recommendation 2

We recommend that the Government ask the Electoral Commission, in its report on the 2020 General Election, specifically to address the issue of astroturfing and ways that New Zealand can deal with it.

Election advertising

We considered several issues about electoral advertising. Some are set out here and some are in our chapter on foreign interference.

Register of political advertisements on social media platforms

Online advertising can be targeted at certain audiences and can be disseminated without being visible to the media or other campaigners.

Since 2016, some social media companies have changed their way of dealing with election advertising material. For example, Facebook has implemented a new process in a number of countries that includes:

- labelling an electoral advertisement “political ad” and displaying who paid for it
- setting up a searchable database of political advertisements, publicly showing the advertisements a campaigner has taken out, how much was spent, and the target audience (number, age, location, and gender)
- verifying that certain advertisers are inside the country by requiring them to submit government-issued identification and have a physical mailing address.

We were advised that Facebook initiated these changes voluntarily in most places. In Canada, however, legislation required it to set up an advertisements database. Canadian law requires the database to be available for two years online and for a further five years after the public two-year period. The Canadian law applies to internet sites or applications whose owners or operators sell advertising space. Size is also part of the definition. For English-language platforms it is at least 3 million visits per month, for French-language platforms it is at least 1 million visits per month, and for other sites it is at least 100,000 visits per month.

National Party members believe that advertising during elections in different formats should not have different rules. Advertising like direct mail, pamphlets, newspaper advertisements, radio, and television does not require a public, searchable register. The one difference of social media that could justify additional regulation is in the two-day period prior to the close of polling where it is important that the freedom of expression is balanced by the right of reply. A real-time disclosure regime in the last two days would help ensure that last-minute social media ads are not used to unfairly influence an election.

Government members of the committee recommend that the Government require online platforms to keep a public, searchable register of published general and local election advertisements targeting New Zealanders. What constitutes a political advertisement should be consistent with that as defined in the Electoral Act.

Government members of the committee recommend that the Government require online platforms to identify political advertisements as such.

Promoter statements should be required on all advertisements

The Electoral Act provides for two types of election advertising, distinguished by whether or not the advertiser is encouraging people to vote a certain way:

- Section 3A defines election advertisements as those that encourage voters to vote or not vote for a particular candidate or party. The advertising covered by section 3A includes online advertising.

- Section 221A applies to election advertisements in a wider sense, even those that do not try to influence voters about who to vote for. However, section 221A does not cover online advertisements. Advertisements covered by section 221A would include ones that urge their audiences to vote or not vote. We are aware of campaigns in other countries that have convinced people not to vote.

All advertisements under both sections must include a promoter statement showing the name and address of the person who has authorised the advertisement. This is often the party secretary (although it could be anyone putting out election-related information).

Aligning the rules around the two types of advertising would mean that all electoral advertising would include a promoter statement. This would increase transparency. Voters would know the source of all electoral advertisements, including the wider type of online advertisements.

We note that this issue is addressed by clause 17 of the Electoral Amendment Bill (No 2), which passed its third reading under urgency on Tuesday 3 December 2019. It amends section 221A of the Act to include advertisements published in any medium.

Recommendation 3

We recommend that the Government introduce legislation to expand section 221A of the Electoral Act to require electoral advertisements in all mediums to state the names and addresses of their promoters.

Some social media posts require promoter statements

All political candidates should be aware of the application of election advertising rules to their online content. If material meets the test of reasonably encouraging or persuading voters to vote or not vote for a party or a candidate under section 3A of the Electoral Act, it is an election advertisement and requires a promoter statement. Where content has been paid to be promoted or boosted online so that it appears unsolicited on another person's page, and it meets the election advertising test, it needs a promoter statement on the post itself. It is not enough that the post links to another page which contains a promoter statement.

We emphasise the importance of compliance with electoral law and encourage all political candidates to familiarise themselves with the election advertising rules and how they apply to social media content.

Privacy in relation to promoter statements

All promoter statements show the name and physical address of the person who has instigated the advertisement. The address is typically the party's head office. We are aware that this requirement could affect the privacy of small parties that do not have an address separate from the promoter's home address. On balance, we consider that the need for transparency outweighs the privacy issue in election advertising. We recommend no change to this aspect of the electoral advertising rules.

Advertising on election day

Section 197 deals with the offence of interfering with or influencing voters. It prohibits any activities on election day before 7pm, including the publication of election advertising, which may “interfere with or influence voters”. Section 198 empowers the Electoral Commission to remove statements, names, emblems, slogans, or logos from public places on polling day.

The rules against influencing voters on election day were enacted before the internet and social media became a regular part of daily life.

Government members’ view

Government members agree with submitters who said that the ban on election day advertising should be removed. This would make the rules about voter interference consistent between election day and the advance voting period.

One option could be to remove the ban on election day advertising except in a buffer zone around voting places. This would be similar to the current rules for advance voting under section 197A. The buffer zone is defined as an area within 10 metres of any entrance to a polling place, or a smaller area if specified by the Electoral Commission.

Government members of the committee recommend that sections 197 and 198 of the Electoral Act be amended to remove the ban on election day advertising except in a buffer zone around voting places.

National Party view

National Party members of the committee oppose the allowing of advertising on election day. We value the New Zealand tradition that, after voters have been pounded with electoral advertising for the weeks up to election day, election day should be free of advertising and of political content. It sets the right tone for a major decision, not dissimilar to the rules that require silence in Parliament during a vote, or the quiet and private deliberations of the jury in a court.

If election advertising is allowed on election day, National members consider that it would significantly change the tone of that day. Political parties and candidates would understandably maximise expenditure on that day. It would become a day of every possible advertising vehicle being dominated by political messages.

National members also note that, in jurisdictions that allow advertising on election day, hoardings are left around for weeks. We prefer the New Zealand approach of them all being removed by midnight the day before.

National members do not agree that the increase in advance voting changes things sufficiently to justify changing the culture of election day. Even though close to 50 percent of votes may be cast prior to election day, the actual number of votes on election day is more than ten times greater than any other day.

Wearing rosettes at polling places

Section 198(2) of the Electoral Act allows any person to wear a ribbon, streamer, rosette, or party lapel badge on election day. It is the practice for party scrutineers in polling places to wear rosettes showing their party name and logo. This is so that voters can tell the difference between election officials and political party representatives.

The Electoral Commission reported that the wearing of rosettes in voting places attracts many complaints. Complainants feel that the voting place should be free from perceived political interference.

We agree that it is beneficial to enable voters to identify party scrutineers so that they can distinguish between officials who are neutral and those who support candidates. To avoid doubt, we do not wish to preclude scrutineers from wearing rosettes.

Recommendation 4

We recommend that the Government introduce an amendment to the Electoral Act to require scrutineers to wear a label, provided by the Electoral Commission, saying that they are a scrutineer, but to also allow scrutineers to wear a rosette to identify their party, for clarity for voters.

Election day advertising by news media companies

As mentioned above, section 197 of the Electoral Act prohibits certain activities on election day if they may “interfere with or influence voters”. Under section 197(2A), as inserted in 2002, web-based companies do not have to remove influential statements from their websites on election day if:

- the statements were placed on the website before polling day
- they are only available to people who voluntarily access the website
- the website itself is not advertised on election day.

We heard that this third requirement—that the website must not be advertised until after 7pm on election day—is unfair because it effectively bans the promotion of web-based news sites from midnight to 7pm on election day. In comparison, non-web-based news companies, such as television and radio broadcasters, may advertise their election programmes freely all day.

We agree with submitters on this issue.

Recommendation 5

We recommend that the Government introduce an amendment to section 197(2A) of the Electoral Act to make the election day advertising rules the same for web-based news media companies as for traditional news media companies.

Proof of citizenship

In Chapter 2, we recommend requiring local election candidates to provide satisfactory evidence of New Zealand citizenship if required to do so by the local electoral officer. We make a similar recommendation here to help align local and general election rules.

Recommendation 6

We recommend that the Government introduce an amendment to the Electoral Act to require candidates in general elections to provide satisfactory evidence of New Zealand citizenship if required by the Electoral Commission.

Election day voting at shopping malls and supermarkets

In preparing for the 2017 election, the Electoral Commission set up advance voting places in venues with high visibility and high traffic, such as shopping malls and supermarkets. There were 485 places to cast an advance vote, compared with 295 in 2014. On election day, there were 2,378 voting places, compared with 2,568 in 2014.⁶ A few advance voting places could not be used on election day because they did not have a secure area for counting votes.

Secure vote-counting

Section 174 of the Electoral Act requires the manager of every polling place to arrange for a preliminary count of the votes as soon as practicable after the close of the poll. Advance voting venues that lack an appropriate vote-counting area are not suitable for the conduct of the preliminary count and may not be used as voting places on election day.

We note that this issue is covered in the Electoral Amendment Bill.

Licensed premises

Under section 155(3) of the Act, premises licensed to sell alcohol cannot be used as voting places if, at any time on polling day, they are open for the sale, supply, or consumption of alcohol.

We note that this issue is covered in the Electoral Amendment Bill.

Election day enrolment

Currently, people can enrol until midnight on the day before the election. People cannot enrol to vote on election day. About 19,000 people who cast a vote on election day did not have their vote counted because they were not enrolled.⁷

We note that allowing people to enrol on election day would lead to an increase in the number of special votes received. We understand that the additional time taken to process such votes could increase the time needed to complete the official count and declare the election results.

We note that this issue is covered in the Electoral Amendment Bill.

National Party view

National Party members note the Electoral Commission did not support the introduction of same-day enrolment and voting for 2020 in its submission to the inquiry. National believes

⁶ Electoral Commission, [Report on the 2017 General Election](#), p 10.

⁷ Electoral Commission, [Report on the 2017 General Election](#), p 39.

Labour has ignored this advice because it sees an electoral advantage in 2020 from allowing it.

The first problem with allowing same-day enrolment and voting is that it requires the return of the writ to be delayed by 10 days. It means over 2.6 million New Zealanders having a delay in the final election result for the 19,000, or less than 1 percent, of voters who did not enrol prior to election day. National Party members consider that the 10-day delay is significant because negotiations cannot be concluded and a Government formed until these final and complete results are known.

National is also concerned that if people know they can enrol and vote on the same day, there is no incentive to separately enrol. This will, over time, see more and more people not bothering to enrol. We also see merit in the argument that voters have a right to know who the candidates are in advance of the vote, and equally candidates need to know in advance who the voters are so they can communicate their values and policies.

Māori Electoral Option

There are currently seven Māori electorates. All but Tāmaki Makaurau (Auckland) had a higher turnout in 2017 than in the 2014 election.

Voters of Māori descent can choose to enrol on either the general or the Māori roll. They can only change from one roll to the other during a four-month period, called the Māori Electoral Option, which occurs every five or six years, after the census. The last Māori Electoral Option ran from 3 April to 2 August 2018 and about 18,000 Māori changed the roll they were on.⁸

In the lead-up to the 2017 election, 19,000 people applied to change their roll type but were told they could not do so.

The Justice and Electoral Committee of the 51st Parliament recommended that the Māori Electoral Option period occur every three years, allowing Māori to change roll once each electoral cycle.⁹ The previous Government said that it would investigate including this change for the 2020 election.

The Electoral Commission has also recommended that Māori be able to change roll type at any time, once per voter per election cycle.¹⁰

Government members of the committee agree with the call to make the Māori Electoral Option more frequent. Government members recommend amending the Electoral Act to allow Māori to change rolls once every three years.

National Party members do not agree; National members consider that the Māori Electoral Option should remain aligned with the frequency of the Representation Commission work that follows every census (also at five-year intervals). The quota for electorates and electoral boundaries are dependent on the calculation of the number of Māori people opting for the

⁸ [Results and Statistics of the 2018 Māori Electoral Option](#).

⁹ Justice and Electoral Committee, [Inquiry into the 2014 general election](#), p 29.

¹⁰ Electoral Commission, [Report on the 2017 General Election](#), p 38.

Māori or general roll, and that is why the option has been tied to the five-yearly census. National is concerned that allowing people to move freely between the Māori and general rolls would leave elections open to manipulation. If there is a by-election in an electorate (Māori or general), political parties will have an incentive to organise supporters to change from one roll to the other, affecting the outcome. This could also occur in a general election where a particular seat is highly marginal or significant to the overall election outcome. This sort of manipulation undermines confidence in the overall electoral system.

Overseas voting

The number of overseas votes increased from 40,000 in 2014 to 61,500 in 2017. Most came from Australia, the UK, China, and Germany.

We learnt that it is difficult for overseas voters to update their enrolment details online and that the Electoral Commission is developing a way to make it easier. We look forward to hearing more about this.

The most popular overseas voting method was to download a voting paper, print it, fill it in, then upload it to the elections website. This method accounted for 67 percent of overseas votes. This download/upload option becomes available from the date that advance voting opens for overseas voters. Only correctly enrolled voters can download voting papers.

Thirty percent of overseas votes were returned via embassies, high commissions, consulates-general, New Zealand Trade and Enterprise offices, and Australian Electoral Commission offices.¹¹ Only 2 percent of overseas votes were returned by post.

The Government has recently announced changes to the Electoral Regulations that would:

- allow the Electoral Commission to specify a deadline by which overseas postal vote applications must be made, to ensure there is sufficient time for papers to be posted out and received by the voter
- allow for overseas votes, dictation votes, and New Zealand postal votes to be processed and counted centrally by the Electoral Commission
- extend the current deadline for the return of overseas postal votes from four days after election day to nine days.

It is expected that the change will enable the Electoral Commission to centrally process and count overseas votes rather than sending them out to each electorate. It will reduce double-handling and the risks of delays to the official count. The small extension of the deadline for overseas postal votes is proposed because central processing will allow voters more time. Nonetheless, the Commission will encourage voters to use secure upload (rather than post) wherever possible to ensure their vote is received in time.

¹¹ Electoral Commission, Report on the 2017 General Election, p 17.

Reducing the number of special votes

Special votes are made by people who cannot visit a polling place in their own electorate, are not on the printed roll, or are not enrolled by writ day (usually a month before election day). Special votes accounted for 17 percent of the total vote in 2017, up from 13.5 percent in 2014. The Electoral Commission expects the number of special votes to continue to grow at each election. It predicts that, in 2020, special votes will make up 21 percent of votes (between 550,000 and 650,000), and 22 percent in 2023 (between 625,000 and 725,000).¹²

The Commission reported that special votes take at least 10 times more time and effort to issue and process than ordinary votes. They are also more difficult for voters. It predicted that, by 2023, if there are not major changes to the way special votes are handled, it will not be able to declare the final result within two weeks of the election.¹³

Marking electors off an electronic roll rather than a printed roll would significantly reduce the number of special votes. Implementing this change would need significant funding, system development, and testing.

We note that this issue is covered in the Electoral Amendment Bill.

Automatic enrolment via data-matching

Despite enrolment being compulsory, only 92 percent of eligible voters were enrolled for the 2017 election.

Some submitters said that people on certain government databases such as Inland Revenue and the Ministry of Social Development should automatically be enrolled as electors. This could be achieved by matching data from different agencies. Such a change would require legislation.

We note that the Electoral Commission undertakes data-matching with the Ministry of Social Development, driver licences, vehicle registrations, and passport information. Information from these sources is used to identify people who need to be enrolled as voters. They are contacted and encouraged to register or update their information, but there is no automatic registration or update.

Issues that would need to be worked through include:

- whether a person should be automatically enrolled on the general or Māori roll
- any concerns about data-sharing between government agencies
- the accuracy of the roll
- any effects on public engagement with the electoral process.

Government members of the committee recommend that the Government investigate automatic enrolment via the matching of government databases, provided there is sufficient

¹² Electoral Commission, Report on the 2017 General Election, p 33.

¹³ Electoral Commission, Report on the 2017 General Election, p 33.

cross-matching to ensure the accuracy of enrolment information, in consultation with the Privacy Commissioner.

National Party members do not agree with automatic enrolment because other government databases will not necessarily have checked whether a person meets the citizenship or residency requirements of being a voter. We support the Electoral Commission having access to other government databases for encouraging enrolment.

Dormant roll

Under sections 89G and 109 of the Electoral Act, electors whose addresses are not known are moved to the dormant roll for three years. People on the dormant roll are still eligible to vote. They are moved back to the main roll if they re-register. At an election, people on the dormant roll use a special vote. They are also encouraged to fill in an enrolment form to get back onto their electorate roll.

A submitter said that the dormant roll processes should be improved and simplified as they are confusing and create queues. We consider that voters should be encouraged to update their details so that they do not remain on the dormant roll.

Availability of roll to parties

The marked roll shows who has voted. Only scrutineers may make and send out marked rolls during the hours of polling. The Electoral Act does not provide for parties or candidates to see marked rolls in any other way. It was submitted that the marked roll should be given to candidates at the end of advance voting.

From the 2005 to 2014 elections, the Electoral Commission allowed parties to view marked rolls on the Friday night before election day. This was stopped in 2017 because of the large increase in advance voting and the fact that scrutineers were now at advance voting places. There were also concerns about a lack of legislative basis for the activity and the security risks of having many people at electorate headquarters with live ballot papers and rolls.

The Electoral Commission recommended that we consider whether or not electronic master roll information should be available to political parties during or after an election. Providing this information during the election period would require a move from manually to electronically marking off voters—a technology change which the Commission estimates could be trialled by 2023.

Information about whether or not a person has voted involves privacy issues, and the Electoral Commission recommended consulting the Privacy Commissioner. We view the importance of maximising participation in elections as a high priority and believe that political parties play a constructive role in getting people out to vote.

Recommendation 7

We recommend that the Government enable all political parties to access electronic master rolls during an election period for an electoral purpose.

Researchers' access to voting information

One submitter suggested that New Zealand should review the uses of computerised electoral rolls for social science research. Marked roll data is valuable because it corrects misreporting by respondents of whether they voted or not. Currently, marked rolls are recorded digitally but may not be shared with researchers. It was suggested that the marked roll data be merged with the Integrated Data Infrastructure, making it anonymous and controlled by Statistics New Zealand.

We note that this issue is also of interest in regards to local elections.

Recommendation 8

We recommend that the Government enable researchers to access electronic master rolls after elections for the purposes of improving information about why people vote and improving participation.

Enrolment information

The voter enrolment form asks for four things: a voter's name, age, occupation, and address.

Government members of the committee believe that it would be worthwhile to collect information about the ethnicity of voters on the enrolment form. The information could be collected either on an optional or mandatory basis. It would help inform where to target education campaigns. The information could also be made available to parties and candidates.

Government members of the committee recommend that the Government consider making ethnicity an optional piece of information on the enrolment form.

National Party members of the committee consider that ethnicity data should not be requested on enrolment forms. It would be an invasion of privacy and could create divisiveness.

National members are concerned that asking for information on ethnicity when voters enrol creates an impression that it affects electoral rights. It raises the sorry history in some countries where people have been excluded from voting because of their ethnicity. It also raises questions for many people who are of mixed ethnicity. National members believe that enrolment is for the purposes of voting when we should be emphasising the equal rights of New Zealanders and not ethnicity.

Voter satisfaction at polling booths

Overall, voter satisfaction was high. In 2017, 94 percent of people at voting places were satisfied or very satisfied, up from 92 percent in 2014.

Māori satisfaction

The Electoral Commission received approximately 40 complaints from Māori about voting services. Complaints included needing to cast a special vote, not being able to change roll type before voting, errors in vote issuing, and poor pronunciation of names or words. The

Commission intends to increase the number of staff who are familiar with te reo Māori and increase the diversity of its workforce. It will also engage with Māori about improving services and participation. We are pleased with these proposed changes.

Government members of the committee recommend that the Government encourage the Electoral Commission to:

- develop and implement a comprehensive “Get Māori Voting” strategy, recognising the unique place of Māori as the tāngata whenua, that could include but not be limited to increasing the number of staff at voting places with basic pronunciation skills of te reo, including name pronunciation and spelling
- investigate increasing voting places and hours of operation in high-density Māori populations.

This recommendation is particularly important because voting rates are lower for Māori than for non-Māori.¹⁴

National Party members view the participation by people of all ethnicities as important and note that some have lower levels of participation than Māori. We believe that the recommendation above is self-serving for the Government, which holds all of the Māori seats. We believe any campaigns for improving participation need to apply equally to all ethnicities and not favour any particular political party.

Accessibility

In 2017, voting services for disabled people included a dictation service and work to provide information in accessible formats. Several submissions advocated improving the accessibility of elections for people with disabilities.

Submission by Blind Citizens NZ

Blind Citizens NZ suggested that New Zealand adopt fully automated touchtone telephone voting services. This would require legislative change, funding, and the development of an electronic voting system.

Petition of Kim Robinson for Deaf Action New Zealand

We were referred the petition of Kim Robinson for Deaf Action New Zealand: Remove official language barriers towards political participation in New Zealand by 2020. The petition requests:

That the House of Representatives note that 356 people have signed an online petition requesting the House guarantee the right of Deaf or Hard of Hearing voters and candidates to barrier-free elections by 2020 by updating the Electoral Act 1993 and any relevant legislation, including making available NZSL Interpreters for electioneering; making available funding for captioning on multimedia platforms; making available access to new technology (video interpreter services) at polling booths; making available funding for NZSL

¹⁴ Electoral Commission, Report on the 2017 General Election, p 26.

Interpreters and communication supports for Deaf or Hard of Hearing members to fully participate in their choice of party or group annually.

The petitioner's submission included the following requests:

- making New Zealand Sign Language interpreters available in the lead-up to elections, for events such as Meet the Candidates evenings and television coverage of debates
- funding for captioning candidates' and parties' online videos during election periods
- secure video interpreter services at polling booths.

We were told that the Commission will continue to provide guidance to parties and candidates about how to make their resources accessible for all voters.

We were pleased to hear that the Commission is considering how a video interpretation service for deaf, hearing-impaired, and speech-disabled voters could help at polling places during the 2020 election.

We note that the Election Access Fund Bill, a Member's bill in the name of Chlöe Swarbrick, has recently been considered by the Governance and Administration Committee. The bill proposes to establish a fund to reduce barriers to people with disabilities participating or standing in general elections by establishing a fund to cover disability-related costs. If successful, the bill could address some of the disability issues raised by submitters. The Governance and Administration Committee supported the bill and recommended some improvements to it. We note that the bill is now being debated in the House.

We consider that all the issues raised about accessibility have merit and warrant further consideration.

Recommendation 9

We recommend that the Government consider the matters raised by Blind Citizens NZ and Deaf Action New Zealand, including:

- adopting fully automated touchtone telephone voting services
- making New Zealand Sign Language interpreters available in the lead-up to elections, for events such as Meet the Candidates evenings and television coverage of debates
- funding for captioning candidates' and parties' online videos during election periods
- secure video interpreter services at polling booths.

National Party members believe that points 2 and 3 above are captured in the Election Access Fund Bill.

We have also made recommendations in Chapter 2 to improve the accessibility of local elections.

Prisoner voting

Since 2010, section 80(1)(d) of the Electoral Act has provided that only prisoners on remand may enrol and vote. Other prisoners may not vote. Before 2010, those serving a custodial sentence of three years or less were allowed to vote. The Supreme Court in 2018 confirmed

a High Court declaration that the ban on prisoner voting is inconsistent with the New Zealand Bill of Rights Act. Also, the Waitangi Tribunal has recently recommended the repeal of the ban.

Government members of the committee are pleased with the recent Government announcement that it plans to reinstate voting for prisoners who are serving less than a three-year sentence, as part of a range of measures around rehabilitation and reintegration into society.

National members disagree with both the policy and the processes. It was inappropriate for the Minister to publicly announce the changes prior to the select committee concluding its inquiry. Prison is by definition about the loss of liberties as a consequence of offending that includes the loss of voting rights. We also note that persons found guilty of a corrupt practice are also barred from voting. We note that people are only sent to prison for serious offending or as a last resort. The existing law is consistent with most jurisdictions internationally. There are also real, practical problems around prisoners voting in that they are not free to receive and communicate information. We are open to reform as to how we better ensure prisoners are efficiently returned onto the roll after being released. This should be automatic and part of their rehabilitation, having served their time. We further note that the Government's announcement does not remove the inconsistency identified by the Supreme Court with the New Zealand Bill of Rights Act that requires all prisoners to be able to vote.

Broadcasting

Part 6 of the Broadcasting Act 1989 restricts electoral broadcasting by political parties and candidates. Election programmes by candidates or parties may only be broadcast from writ day (a month before the election) to the end of the day before the election. In comparison, third parties may broadcast any election programmes on radio and television at any time. Writ day is only two weeks before the start of advance voting and overseas voting, and we think that more time should be allowed.

We agree with the Electoral Commission, which recommended that parties and candidates be allowed to broadcast election programmes from the start of the “regulated period”, that is, from three months before election day.

Recommendation 10

We recommend that the Government introduce an amendment to the Broadcasting Act 1989 to allow parties and candidates to broadcast election programmes from the start of the regulated period, but note that extending the flexibility and timing of such advertisements should not be used as the basis for any increase in public expenditure.

Section 78(2) of the Broadcasting Act sets out the criteria the Electoral Commission must use to determine the broadcasting allocation. Criteria include:

- each party's number of members of Parliament
- opinion polling results
- election results

- fairness.

Recommendation 11

We recommend that the Government, in consultation with all political parties, examine the electoral broadcasting allocation criteria and the current broadcasting regime to establish whether they are fit for purpose and what (if any) changes should be made to ensure the funds are distributed proportionate to public support.

Funding for broadcasts

Parliament appropriates a sum of money for political parties to use during general elections. In 2017 the sum was \$4,145,750 including GST.¹⁵ Under section 80B(3) of the Broadcasting Act, the Commission pays on invoice. However, internet advertisements must usually be paid by credit card and not on invoice. Political parties find that the Act creates practical difficulties in obtaining reimbursement.

Recommendation 12

We recommend that the Government introduce an amendment to section 80B(3) of the Broadcasting Act to expressly allow the Electoral Commission to pay the allocation to parties under certain circumstances, rather than direct to the advertising business, subject to appropriate checks to ensure that funds are spent as intended.

MMP electoral system

Some submitters suggested that we consider all the recommendations in the Electoral Commission's 2012 review of the MMP (mixed member proportional) voting system. The recommendations were as follows:

- The one electorate seat threshold for the allocation of list seats should be abolished.
- The party vote threshold should be lowered from 5 percent to 4 percent.
- There should be a statutory requirement for the Electoral Commission to review the operation of the 4 percent party vote threshold and report to the Minister of Justice for presentation to Parliament after three general elections.
- If the one electorate seat threshold is abolished, the provision for overhang seats should be abolished.
- Consideration should be given to fixing the ratio of electorate seats to list seats at 60:40 to help maintain the diversity of representation and proportionality in Parliament obtained through the list seats.
- Political parties should continue to have responsibility for the selection and ranking of candidates on their party lists.
- Political parties should be required to give a public assurance by statutory declaration that they have complied with their rules in selecting and ranking their list candidates.

¹⁵ Electoral Commission, Report on the 2017 General Election, p 51.

- In any dispute relating to the selection of candidates for election as members of Parliament, the version of the party's rules that should be applied is that supplied to the Commission under section 71B as at the time the dispute arose.
- Candidates should continue to be able both to stand for an electorate seat and to be on a party list at a general election.
- List members should continue to be able to contest by-elections.¹⁶

We note these submissions and that the Government has the option of considering them as part of its ongoing work on electoral reform.

Enforcement of election laws

The Electoral Commission does not initiate criminal prosecutions, nor does it have the power to impose civil sanctions.¹⁷ If appropriate, it refers a matter to the Police.

To go with the changes that we are proposing in this report, appropriate investigatory, enforcement, and sanction powers are needed.

We note that a number of countries have independent agencies to monitor compliance with electoral law. Enforcement by these agencies is typically restricted to bringing civil actions in court, enforcing conciliation agreements, or imposing infringement fines, rather than criminal prosecutions. Several countries (including Australia, Canada, and the UK) empower the Chief Electoral Officer or Electoral Commissioner to require a person to provide documents and other evidence, in writing or orally, in a specified manner and at a specified place and time.

We believe it would be useful to enable the Electoral Commission to investigate potential electoral offences that are straightforward, and to impose fines and impose alternative remedies. These alternative remedies could include compliance and restoration notices, stop notices, and enforcement undertakings. For example, the Electoral Commission could investigate incidents where a promoter statement has been omitted from advertisements but the offender did not intend to mislead. When appropriate, the Commission could hand the matter to the Police.

We note that the Electoral Commission already has the ability to refer matters that it considers serious to the Police. Those matters should be resolved by the Police and the Commission should be informed of the resolution.

We also considered whether the Electoral Commission should be able to require documents and other written evidence from people. This would enhance compliance during an investigation and would mean that the Commission would not have to rely on voluntary cooperation from those whose behaviour it is inquiring into. We note that a major issue

¹⁶ Report of the Electoral Commission on the Review of the MMP Voting System, p 5.

¹⁷ Although foreign and anonymous donations over \$1,500 must be either given to the Electoral Commission or returned to the donor.

overseas has been obtaining evidence from online platforms to ensure that their advertisements comply with electoral advertising rules.

Recommendation 13

We recommend that the Government give the Electoral Commission investigatory, enforcement, and sanction powers commensurate with our proposed changes. We recommend providing the Electoral Commission with powers to:

- investigate electoral offences
- obtain documents and other evidence
- impose fines
- impose other remedies for minor breaches of electoral law.

Major breaches of electoral law would remain with the Police.

In line with our overall recommendation to transfer local electoral administration functions to the Electoral Commission, we note that this recommendation also applies to local government elections.

Due diligence

It is important that candidates, political parties, and third parties comply with electoral law. The Electoral Act requires candidates and parties to keep records of, and submit returns about, the donations received. They must also take all reasonable steps to ensure that all records, documents, and accounts that support their returns are retained for a certain period of time after the election. It is an offence for a candidate or secretary to file a return that is false in any material particular. Similar provisions apply to local election candidates under the Local Electoral Act.

However, in the 2017 general election and the 2016 local elections, there were no explicit requirements for candidates or party secretaries to ascertain that donations were legal. We believe that recipients of electoral donations should have to ascertain that donations are legal.

We discuss below, in our chapter on foreign interference, how other countries deal with donation laws. In the UK, parties must take all reasonable steps to verify that a donor is a “permissible donor”. We agree with the concept of requiring due diligence from donation recipients.

We note that this issue is partly addressed by clause 8 of the Electoral Amendment Bill (No 2), passed under urgency on Tuesday 3 December 2019, which will insert new section 207JA into the Act. The new section will impose a duty on candidates and party secretaries to take all reasonable steps in the circumstances to ascertain whether donations over \$50 are made, or contributed to, by overseas persons. Under clause 9 of the bill, overseas donations over \$50 must be returned to the donor or given to the Electoral Commission.

National members are concerned that this provision is deficient compared with that in the UK that imposes the due diligence requirement on all donations and not just those that are from

an overseas person. This deficiency could have been addressed if the Electoral Amendment Bill (No 2) had gone through a proper select committee process.

Recommendation 14

We recommend that the Government:

- introduce a due diligence requirement for party secretaries and local and general election candidates and campaign managers so that, before accepting a donation over a certain amount, they must take all reasonable steps to verify the donation's source and ensure that it is permissible under the relevant Act
- require the Electoral Commission (or the electoral officer for local elections) to provide guidance for parties and candidates on what are "reasonable steps", which should include checking the electoral roll (or companies register, if corporate donations are permitted) to confirm eligibility to donate.

National Party view

National notes that a significant historic aspect of Election 2017 was that, for the first time under MMP, the largest party in Parliament and the party with the most votes did not get to form the Government. This decision was made by Rt Hon Winston Peters and NZ First opting to form a coalition Government with Labour and the Confidence and Supply Agreement with the Greens. Given the significance of this decision, the transparency of NZ First's financial backers in Election 2017 is important.

New Zealand First was the only party at Election 2017 to not declare any donations. National is concerned about two aspects of NZ First's financial returns. The first is a declaration of a \$73,000 loan from the NZ First Foundation. It was the only party to declare a loan and the public has no transparency over the source of this funding. It is publicly alleged that over \$500,000 was received by the foundation in corporate donations.

This is inconsistent with the intention of the electoral law that all funding over \$15,000 is publicly disclosed. It has subsequently been disclosed that the trustees of the NZ First Foundation are former NZ First and current political lobbyist Doug Woolerton and Mr Peters' lawyer Brian Henry. Both have publicly refused to answer any public queries on the Foundation's loan. The secretary of the NZ First party denied any such loans existed in a RNZ report of 13 November 2019 despite returns by her saying the opposite.

The committee also received reports from the Ministry of Justice and the Electoral Commission on the volume of anonymous donations. NZ First reported \$342,199.27 in anonymous donations in Election 2017. The total for other parties combined was \$59,290.60 with National receiving \$28,270.69 and Labour \$26,385.86. A motion was moved by National on 1 October 2019 for officials to further inquire and report on the scale of NZ First anonymous donations. Labour members voted against this resolution, and the committee was not able to acquire any additional information.

National also believes it is noteworthy that the president of NZ First resigned on 3 October 2019 citing his refusal to sign off financial reports for "moral reasons". He said he was kept in the dark over party donations. The party president, Lester Gray, and Colin Forster, former

New Zealand First treasurer, wrote to the committee on 26 November 2019 seeking to be heard on these issues. They noted they faced substantial legal and personal threats should they make public statements on these issues, and said the inquiry provided a safe place for them to disclose their knowledge of what had taken place. National Party members are disappointed that their request was refused and the public denied the opportunity to hear their evidence on matters crucial to the outcome of Election 2017. National's motion was that this occur before the end of 2019 and would not have compromised the completion of the inquiry in a timely way. National views Labour members as compromised because they are only in Government as a consequence of these goings on.

National members also sought reports from the Electoral Commission and the Ministry of Justice over the use of foundations to avoid disclosure of political donations and the use of loans from another entity to avoid the intent of the disclosure requirements. This request included advice on what reforms could be advanced to strengthen the political donations disclosure regime. National was disappointed that this resolution from Chris Penk was voted down by Labour members and Jami-Lee Ross.

National does not believe New Zealand First has met the spirit or intent of disclosure for the 2017 election. We are frustrated that the committee was blocked by Labour members from being able to properly inquire into these issues.

It is difficult to recommend appropriate reforms in this area when Labour members blocked further inquiries. It is not acceptable New Zealanders have no transparency on who funded the party that became pivotal to the 2017 election result.

New Zealand cannot pretend its electoral laws provide for a high standard of transparency when a party, through such significant sums from loans and anonymous donations, can avoid the disclosure requirements.

Lowering the voting age

It was submitted that lowering the voting age would help to improve the participation of young people in elections while they are still at school.

While this argument may have some merit, we are aware that such a change would require 75 percent of the votes in Parliament. We note that some members of the Justice and Electoral Committee of the 51st Parliament considered that the idea needs further debate and consideration. We hope that the issue will continue to be discussed in the public arena.

National Party view

National members do not support lowering the voting age. The age at which people are entitled to vote is inevitably arbitrary and there is varied maturity amongst young people. The 18 age is reasonably aligned to when most young people become independent, leave school, and go on to university or employment.

We also note that Parliament has recently increased the age where young people face full legal responsibility and appear before the adult courts. There is a case for consistency between the age when young people are legally responsible for their actions and when they are able to vote.

Chapter 2: 2016 Local Elections

This chapter sets out the issues that we considered in relation to the 2016 local elections.

A theme in this report is in our recommendations for aligning the regimes for local and general elections. We consider that consistency between the two regimes would be beneficial in many areas including advertising, donations, and overseas voting methods.

Overview of the 2016 local elections

The Local Electoral Act 2001 provides that local elections must be held every three years on the second Saturday in October. Since 1992, all local elections have used postal voting although booth voting remains a legal option. Included in the elections are 78 local authorities and approximately 40 other entities. Voters also elect 20 district health boards (DHBs) during the local authority elections. Up for election are:

- mayors and councillors on city and district councils
- regional councillors
- local and community board members
- licensing trust members and members of a small number of other entities such as land trusts
- DHB members.

The Local Electoral Act sets out the desired outcomes, the principles, and the expectations of the local electoral system. The Local Electoral Regulations 2001 deal with detailed matters including procedures for enrolment, vote counting, and voting methods. The Code of Good Practice for the Management of Local Authority Elections and Polls, prepared by the Society of Local Government Managers, also forms part of the local electoral framework.

Local authorities choose which voting system to use.¹⁸ In 2016, most councils used the first-past-the-post (FPP) voting system. FPP requires voters to choose candidates up to the number of vacancies to be filled; an example of FPP instructions is “place a tick beside up to five candidates”. Eight councils and all DHBs used the single transferable vote (STV) system.¹⁹ This requires voters to rank candidates in order of preference.

Most councils contract private organisations to run their elections.

There was no election in 2016 for the Southern DHB, which was under statutory management. There was an election for some members of the Canterbury Regional Council,

¹⁸ Although, under section 29, if 5 percent or more of voters demand a poll to determine which voting system will be used, such a poll must be held.

¹⁹ They were four city councils (Dunedin, Palmerston North, Porirua, and Wellington), three district councils (Kaipara, Kapiti Coast, and Marlborough), and Wellington Regional Council. We note that, in 2019, 11 councils used the STV system.

known as Environment Canterbury, under the Environment Canterbury (Transitional Governance Arrangements) Act 2016.

The biggest issue in local elections was low voter turnout. This has been an issue for decades and was in our minds as we considered most other issues regarding local elections.

Voter participation in local elections is too low

Voter turnout is the proportion of voting papers issued that are returned (including blank and informal (invalid) votes). We heard that overall turnout in 2016 was slightly higher than in 2013, driven largely by increases in Auckland and Wellington. Despite this, we heard that local election turnout generally has been declining since 1989.

Turnout in 2016 was 43 percent of enrolled voters. By type of election, turnout was:

- 47 percent for district council mayor and councillor elections
- 40 percent for city council mayor and councillor elections
- 44 percent for regional council elections
- 41 percent for DHB elections
- 42 percent for city and district councils using FPP elections
- 46 percent for city and district councils using STV elections.²⁰

People choosing not to vote ranged from 53 percent (district council elections) to 60 percent (city council elections). Of the voting papers returned, blank votes ranged from 0.76 percent (city council mayoral elections) to 4.51 percent (DHB elections) and informal votes ranged from 0.07 percent (district council mayoral elections) to 1.63 percent (DHB elections).

Since 2001, select committee inquiries into local elections have focused on low turnout and low public engagement. Information on why people do not vote at local elections is not reliable.

We are concerned about this lack of civic engagement. Low participation rates in local elections compromise the legitimacy of the elections and of the councils themselves.

We note that a range of factors can affect voter turnout, including media attention, the competitiveness of a local election, the amount spent campaigning, holding elections concurrently, and ease of access to voting. For example, more people vote in all elections where there is a high-profile mayoral race. Turnout is lower if the mayoral seat is not contested. We also note that small and rural councils had better turnouts than large and urban councils.

Centralising the running of local and general elections

One way to improve voter turnout is to simplify and align local and general election processes where it makes sense to do so. This would help reduce voter confusion. We

²⁰ Because only seven territorial authorities and one regional authority used STV, firm conclusions of causality cannot be drawn from this data.

believe that the national management of local elections would increase consistency and make it easier for voters to participate.

The Electoral Commission is the obvious organisation to take on the role of nationally co-ordinating the publicity and administration of local elections. It is experienced in managing general elections and would have the expertise to expand to local elections.

Recommendation 15

We recommend that the Government consider giving responsibility for running all aspects of local elections to the Electoral Commission.

A centralised model would need to make clear what responsibilities should be centralised and how to keep a significant local presence. We wish to keep the flexibility to have decisions made locally where this is likely to enhance the achievement of desired outcomes and principles, including local engagement. We also wish to standardise approaches in order to achieve increased participation, effective representation, and public confidence. Also needing consideration is how to engage with Māori to ensure that Treaty of Waitangi obligations are met under any new arrangements.

Electoral system

Under the Local Electoral Act, each local authority chooses whether to use FPP or STV. All DHB elections use STV. Some submitters suggested that the mixture of voting systems affects participation by confusing voters. Some suggested that all local elections should use the same system; the more popular system suggested was STV.

We agree that it would improve voter turnout to simplify and standardise the voting system.

The need to reduce voter confusion is very important. Although there are advantages to allowing each locality to decide what system to use, we believe that uniformity in local elections could reduce confusion and increase participation.

Recommendation 16

As part of centralising the management of local elections, we recommend that the Government consider encouraging or requiring the same voting system to be used in all local elections.

We note separate but related processes that could stay with local councils. One is the representation review that local councils must undertake at least every six years. The review determines such issues as the number of members to be elected, how they will be elected (for example, whether they will be “at large” or in wards), and ward boundaries. Another is the establishment of Māori wards and constituencies.

Māori wards and constituencies

Petition 2014/60 of Andrew Mark Judd was presented to the House on 2 May 2016. The petition requests:

That the House of Representatives consider a law change to make the establishment of Māori wards on district councils follow the same legal framework as establishing other wards on district councils.

We resolved to consider the petition as part of our inquiry.

Mr Judd is frustrated that the current process allows a poll of electors in a local body area to override a council decision to establish separate Māori wards.

Māori wards allow for separate Māori electoral representation on local bodies. The process for establishing (or disestablishing) Māori wards is very similar to the way councils decide between FPP and STV elections. They may establish a Māori ward by council resolution, which may be subject to a poll of electors. The latter may be initiated by council resolution or by a petition signed by 5 percent of electors.

This process came into force in 2002. Since then, most Māori representation proposals where a petition has triggered a poll have resulted in the resolution being overturned. Sixteen polls have been held, and only one was in favour of creating separate Māori representation. One proposal to create local Māori constituencies was not the subject of a petition, so no poll was held.²¹

We received 27 submissions that supported the petition and five that were opposed to the concept of Māori representation on local councils. The petitioner and others argued that the process for establishing separate Māori electoral representation is unfair or inappropriate, especially the provision for a poll of all electors to overturn a council resolution to establish such arrangements.

They suggested that the process be aligned with the process for establishing all other wards and constituencies, through the representation review that councils are required to undertake at least every six years. The approach in the Act to representation generally is that it is subject to statutory criteria of fair representation of individuals and effective representation of communities of interest. Council decisions can be appealed to and determined by the Local Government Commission.

Issues we considered relevant to Mr Judd's petition included:

- the current low level of Māori representation in local government (which is about 10 percent, compared with a Māori population of 15 percent)
- the effectiveness of current mechanisms for Māori participation and representation
- whether having separate processes for the establishment of Māori wards is inconsistent with the Crown's obligations under the Treaty of Waitangi
- whether having a poll for Māori wards is discriminatory
- the rights of a majority to make decisions about minority representation
- the consistency of the "one person, one vote" principle of democracy with the giving of rights to one group

²¹ That was the Waikato Regional Council's decision in 2011.

- whether additional representation is necessary
- whether having separate Māori representation is divisive.

National Party members of the committee do not consider that any change is needed in this area. We consider that it is appropriate to continue to treat the creation of separate Māori wards as a matter of community choice.

Government members of the committee recommend that the Government consider aligning the process of establishing Māori wards with all wards through representation review.

Councils' responsibility to facilitate participation

We note that the Local Government Act was amended in 2019 to include a responsibility of local authority chief executives to facilitate and foster representative and substantial elector participation in local elections and polls.

DHB elections

We received submissions that DHB elections should be held separately from local body elections. These submitters consider that holding too many elections at the same time is time-consuming, complex, confusing, overwhelming for voters, and diffuses their attention. Holding them at the time of parliamentary elections was suggested.

There are advantages to holding local elections at the same time as DHB ones. It reduces overall cost and effort for both administrators and voters. We consider that the advantages of holding local and DHB elections together outweigh the advantages of moving DHB or other elections to a different time.

Some members of the committee believe that DHB elections could be more manageable if DHBs were divided into wards. Some of us would recommend that the Government consider a ward system for DHBs.

DHB boundaries should be aligned with local government boundaries

We heard that DHB boundaries do not always align with local authority boundaries or do not accurately represent rural or provincial areas. As a result, some voters find themselves voting for a DHB that they do not belong to. These anomalies should be addressed where practicable.

Recommendation 17

We recommend that the Government ensure that, where practicable, DHB boundaries align with local authority boundaries.

Voting method

Under legislation, the main options for how to vote are booth voting and postal voting. Another possibility is online voting. We also note that the Local Electoral Matters Act 2019 allows regulations to be made for partial trials of new voting methods in local elections.

All local authorities use postal voting for their elections. However, the gradual reduction in postal services has affected voting. For example, we were disappointed to hear about voting papers not being delivered to voters or being returned too late to be counted. We also heard security concerns about postal voting. We heard, too, that it is difficult for overseas voters to cast a postal vote within the voting period.

Risks of online voting

We received various submissions about online voting. We agree that it could have advantages; for example, if well-designed, it could guide voters through a confusing process. It would also let them vote at home without having to go out. However, as set out in our chapter below on foreign interference, the strength of evidence around the security risks of online voting is compelling.

The prospect of future online voting has been held out for a long time as a mechanism to increase participation. We were surprised by the strength of the evidence from the security agencies and other submitters about the risks of online voting systems and the insufficient evidence that online voting would increase participation. We consider that any proposals by councils to undertake online voting trials should be approached with caution.

Recommendation 18

We recommend that the Government investigate what is the best voting method (or combination of methods), as an enduring solution for increasing turnout at local elections.

Voting in community venues

We understand that some local election administrators provide vote collection boxes in libraries, supermarkets, and so on. We encourage all local election administrators to do this.

Recommendation 19

We recommend that the Government consider the need to regulate for security protections when vote collection boxes are put in public areas.

Advance booth voting

We note that New Zealanders have welcomed the opportunity in general elections to participate in convenient venues such as supermarkets in the weeks prior to general elections. We believe there is the potential to make voting more convenient for New Zealanders in local elections, particularly with the decline of post, by exploring advance local election voting at supermarkets and other venues.

We note that existing regulations allow for booth voting, including regulations that allow for it to be conducted over a 20 day period. We believe that councils should consider trialling booth voting, including advance voting, at the next local elections, in convenient community venues.

We note our recommendation above about centralising the management of local body elections. We suggest that the Government choose a local authority in 2022 to trial advance booth voting.

Recommendation 20

We recommend that the Government support a trial of advance booth voting at the next local elections in 2022.

Better accessibility

Postal voting also has limitations for making voting accessible to disabled people. We heard numerous submissions about making voting more accessible. Although we do not support a move to online voting, we make two recommendations to help improve accessibility to local elections.

Recommendation 21

We recommend that the Government require the administrator of local elections to ensure that local election information is provided in accessible formats.

In the previous chapter, we mentioned the Election Access Fund Bill currently before Parliament. The bill would establish a fund to help with disability-related costs for disabled candidates. The bill would only apply to general elections.

Recommendation 22

We recommend that the Government develop a funding support model, similar to that proposed in the Election Access Fund Bill, for local elections.

Overseas voting for local elections

We heard from submitters that the overseas voting process for local elections is out of date. It was submitted that, as the availability and reliability of postal services decline, it is getting more and more difficult to return a vote in time for it to be counted.

We noted in Chapter 1 that the Government has announced changes to how overseas electors vote in general elections.

Recommendation 23

We recommend that the Government align local election overseas voting processes with general election overseas voting processes.

Improving information about voting and elections**Civics education**

One aspect of some submissions was that civics education in schools should improve. Some submitters suggested that a national education resource would work better than councils carrying out individual engagement with schools. Currently, civics education is undertaken by local government organisations and local councils.

There has been some progress in this area. Some local authorities and schools promote mock elections in schools. We are also aware that the School Leavers' Toolkit, a website for school leavers, provides information on voting, including in local elections.²²

We agree that civics education should be more prominent in schools. We heard that research has shown it to have a positive impact on voter engagement. It should therefore be taken more seriously as a way to improve voter participation in the long term. We were pleased to learn that the Ministry of Education is developing new civics education resources for teachers that can be used from Year 7. We were advised that the resources were to be available from October 2019. They are designed to complement existing citizenship education programmes. They focus on:

- processes and institutions of government
- the Treaty of Waitangi and its principles
- ways of developing students' capabilities and skills for actively participating in democratic society.

Some have suggested that the voting age be lowered to increase participation while support is available through school programmes. We believe it would create confusion and lead to enrolment complexities if the age was only lowered for local elections.²³

New Zealand-wide education campaign

Several agencies have roles in getting voters aware and engaged in local elections:

- The Electoral Commission has a responsibility to promote public awareness of electoral matters. It also carries out a resident enrolment campaign in advance of the local elections.
- The New Zealand Society of Local Government Managers carries out a ratepayer enrolment campaign.
- Local Government New Zealand runs a pre-election campaign to engage communities in key local issues and encourage people to stand for elections and vote in them. We understand that this cost \$100,000 in 2016.
- The Ministry of Health runs a campaign to encourage people to stand for DHB elections.
- Some local authorities run campaigns encouraging people to vote in local elections.

The Electoral Commission spent \$3.5 million and \$3.9 million respectively on the enrolment campaigns for the 2013 and 2016 local elections.

The Commission also carries out a campaign before each general election to raise public awareness and encourage voters to update their enrolment details. It spent \$9.9 million and \$14.5 million on the enrolment and awareness campaigns for the 2014 and 2017 general elections respectively. This equated to \$4 and \$5.50 respectively, per voter.

²² The website is at <https://school-leavers-toolkit.education.govt.nz/en/government-and-voting/voting/#e85>.

²³ We discussed lowering the voting age in the chapter on general elections.

The amount councils spend encouraging participation in local elections varies widely. For example, the Auckland Council spent \$1.09 per voter in 2013 and \$1.30 per voter in 2016, and the Far North District Council spent nothing in 2013 and \$0.25 per voter in 2016. (These amounts are only for expenses and do not include staff time spent on election promotion.)

We heard that, despite the efforts of the various agencies, voters overall still did not appear to know where to find information about elections. For example, voters often contacted the Electoral Commission, rather than their council, to get voting papers.

We believe that awareness campaigns should be bigger and more should be spent promoting local elections.

We consider that a single national campaign would be more efficient and effective than all these agencies working separately on separate aspects of engagement. It is a better use of resources, and would provide consistency, if a central body has a dominant role in encouraging people to participate in local elections. Campaigns could target youth, for example, or people using social media apps. We believe that the co-ordinating agency should be the Electoral Commission.

Recommendation 24

We recommend that the Government, as part of expanding the Electoral Commission's role in local elections, make the Electoral Commission responsible for leading and co-ordinating triennial, nationwide campaigns to encourage and support people standing for and voting in local elections.

Improving information about local election issues

Information about candidates

On their nomination form, local election candidates can state the name of an organisation or group that they claim to be affiliated to. In some cases, they state their affiliation to a political party registered under the Electoral Act. In other cases, the party named is not a registered political party, but rather an informal group of like-minded candidates. Some other candidates use the provision to incorporate a slogan on the voting paper. We think this is misleading and inappropriate. It can unfairly advantage the candidate.

Section 57 of the Local Electoral Act provides that an affiliation is an endorsement by any organisation or group (whether incorporated or unincorporated). There is no provision for a party to be registered under the Local Electoral Act, only under the Electoral Act which requires the party to make a declaration that they intend to have candidates at general elections.

We consider that the ability to state an affiliation on local election nomination forms should be limited to one of:

- stating that the candidate is independent
- naming a registered political party
- naming an unregistered organisation or group.

We consider that this third option is needed to ensure that like-minded candidates can group together. In this option, the election administrator should be able to ask for evidence that a party named on the nomination form is in fact a legitimate political organisation or entity.

Recommendation 25

We recommend that the Government strengthen legislation so that, when a local election candidate wishes to state on their candidate nomination form that they represent a non-registered political organisation or group, the election administrator may require the candidate to produce evidence that the organisation or group exists, and must reject any claimed affiliation unless there is clear evidence to show that the organisation or group exists.

Pre-election reports

In the lead-up to the election, the chief executive of a local authority must prepare a pre-election report to provide information and promote public discussion of local issues. Subjects covered in the report include financial and performance information and future plans. Pre-election reports have been required since the 2013 elections.

It was submitted that these reports do not add value to the local elections process. They receive minimal media coverage and may not reach voters. In addition, most of the information in a pre-election report has already been made public.

It was also submitted that, in preparing the pre-election reports, local authorities should be allowed to use annual plan forecasts for the year preceding an election year to help reduce costs.

Others hold a view that the pre-election reports provided valuable information for candidates and voters on the key issues facing a local authority. Council executives also noted that the report was useful in providing the equivalent of a “briefing for an incoming Government” for councillors and mayors.

Advertising and campaigning

We heard about various inconsistencies between the advertising rules in local and general elections, for example relating to the placement of signs, third party advertisers, and the unauthorised use of branding. In general, we consider that the rules around local election advertising should be consistent with the rules around parliamentary election advertising.

We learnt that legislation about campaigning and advertising for local elections was passed before social media or digital campaigning came to prominence. We consider that the definition of advertising should be expanded to include online advertising. We also compared other provisions about advertising for local and general elections.

Recommendation 26

We recommend that the Government align local election advertising rules with general election advertising rules, including the following:

- include online electoral advertising in section 113 of the Local Electoral Act 2001

- align the definition of electoral advertising in the Local Electoral Act with that in the Electoral Act so that it covers all advertising that attempts to persuade people to vote or not to vote in a particular way
 - ensure that spending limits in section 111 of the Local Electoral Act are indexed to change annually, in line with inflation
 - introduce regulation of third party promoters in local elections for spending, registration, and declarations, based on similar principles to the framework in the Electoral Act
 - align provisions requiring candidates to report political donations that they have received for an election (section 112A of the Local Electoral Act and section 209 of the Electoral Act), so as to align the timeframes and format of donations and campaign expenditure
 - align local and general election provisions on anonymous, overseas, and corporate donations (see our recommendations in Chapter 3).
-

Disclosure regimes should be consistent

New Zealand has some mechanisms for ensuring transparency over potential conflicts of interest for politicians at the parliamentary level:

- The Electoral Act sets out the expense and donation requirements for political parties and candidates.
- Standing Order 163 requires members of Parliament to set out each year, in public, their financial and other specified interests. The Register of Pecuniary Interests and Other Specified Interests is published on Parliament's website. Interests that must be declared include all companies of which they are a director or hold control over 5 percent of the voting rights. They must also declare international travel and gifts over \$500.
- Standing Order 164 requires members to orally declare an interest before participating in an item of business that is not declared on the Pecuniary Interests Register.

There is less clear protection at the level of local government:

- Candidates only have to declare donations during election periods. Except as required in codes of conduct, sitting members do not have to disclose donations or gifts outside the election period.
- Many local authorities include a register of interests as part of their code of conduct for elected members. However, there are no statutory requirements as to what these registers should include or how they should work.
- The Local Authorities (Members' Interests) Act 1968 controls the making of contracts worth more than \$25,000 a year between councillors and local authorities. It also bans councillors from participating in matters before the authority in which they have a financial interest.
- The Local Government Act requires open and prudent decision-making and financial management.

- Issues of undue influence and preferential treatment are also dealt with in accounting and auditing standards, internal controls such as procurement policies and practices, scrutiny by media and the public, and the requirement that meetings be held in public.²⁴

We consider that local councillors should show the same level of transparency as members of Parliament regarding disclosure of their financial interests and gifts. Local government representatives make significant planning, resource consent, and other regulatory decisions that can have significant financial implications for property owners. It is important that any statutory regime around local authority disclosure rules protects the public from inappropriate financial decisions.

Recommendation 27

We recommend that the Government introduce requirements in legislation for elected members of local authorities to disclose financial and certain other interests that align with the requirements that apply to members of Parliament.

Local election timeframes

We considered several submissions about the timing of local elections.

The first issue relates to the school holidays overlapping with elections. The last two weeks of the voting period often coincide with the spring school holidays. Some families are away from home then and find it harder to place their votes. To make it easier for families, some submitters suggested that voting day be moved from the second Saturday in October to the first. The choice to hold local elections on the second Saturday in October pre-dates the change from a three- to a four-term school year.

Moving voting day forward one week would require changes to other dates in the Local Electoral Act. It would also reduce the length of time that the outgoing council has to consider its annual report.

Recommendation 28

We recommend that the Government shift the local election polling day to avoid the school holidays.

Updating local election processes

Nomination forms and candidate profile statements

We received a number of submissions that nomination forms and candidate profile statements should be able to be submitted electronically. We agree that the rules around nomination forms and profile statements need updating. The nomination form process should be aligned between local and general elections.

²⁴ Under the Local Government Official Information and Meetings Act 1987.

Recommendation 29

We recommend that the Government introduce amendments to allow the electronic receipt of nomination forms and candidate statements and appropriate deadlines for them, consistent with our overall theme of wanting alignment between general and local elections.

Proof of New Zealand citizenship

Local election candidates do not have to provide proof of New Zealand citizenship. This has caused problems because if a councillor is later found not to have citizenship, they must vacate the position and a by-election must be held, wasting time and money. We were advised that candidates do not purposely lie—these cases have occurred when a candidate has been mistaken about their citizenship.

The Local Electoral Act and the Electoral Act provide different approaches to ensuring that candidates are qualified to be elected. We believe that, before accepting nominations, electoral officers in both local and general elections should be able to require candidates to provide evidence of New Zealand citizenship. This would address submitters' concerns and would align processes between local and general elections.

The following recommendation is consistent with a similar recommendation that we made, in Chapter 1, about the citizenship of general election candidates.

Recommendation 30

We recommend that the Government introduce amendments to the Local Electoral Act to require candidates to provide satisfactory evidence of New Zealand citizenship if required by the local electoral officer, and ensure that this requirement aligns with the Electoral Act.

Ratepayer franchise

Until 1986, the main voters in local elections were the ratepayers. This was changed so that local authority electors became the residents—those on the parliamentary electoral roll for the local area. In 1990, non-residents who chose to enrol as ratepayer electors were re-enfranchised. Ratepayer electors are either property owners who do not live in the local authority area (such as holiday-home owners) or ratepayers who are not natural persons, such as companies or trusts. Ratepayer electors that are not natural persons nominate a natural person to vote on their behalf.

We heard submissions that enrolment for ratepayer electors should be continuous rather than needing to be reconfirmed at each election. The Justice and Electoral Committee of the 50th Parliament, in the report on its inquiry into the 2013 local elections, recommended that enrolment on the ratepayer electoral roll be made continuous, unless a ratepayer no longer wishes to remain enrolled or is no longer eligible. The Government accepted this recommendation but the necessary legislative changes have not been made.

Submitters also told us that the ratepayer franchise should be abolished. We heard that the basis of local elections should be “one person, one vote”. We also heard that low uptake of the ratepayer franchise shows that it is no longer needed.

Recommendation 31

We recommend that the Government make enrolment on the ratepayer electoral roll continuous, unless a ratepayer no longer wishes to remain enrolled or ceases to be eligible.

Special votes should be simpler to check

Electoral officers have to contact the Electoral Commission to check that a person who applies for a special vote is enrolled and eligible to vote. This is time-consuming and adds to the workload of the Electoral Commission.

The Justice and Electoral Committee of the 50th Parliament, in the report on its inquiry into the 2013 local elections, recommended that local electoral officers be able to access the Electoral Commission's "supplementary roll" and "deletions file" so that they can validate most special vote applications themselves. The Government agreed with the recommendation but the necessary legislative changes have not been made.

Recommendation 32

We recommend that the Government introduce amendments to the necessary legislation to give local authorities access to the supplementary roll and the deletions file held by the Electoral Commission.

Filling vacancies that arise between routine elections

When a local government vacancy occurs between elections (for example, if a councillor resigns), and the next local election is more than 12 months away, legislation requires a by-election to be held. If it is less than 12 months to the next election, the local authority may either fill the vacancy by appointment or leave it unfilled.

It was suggested that, instead of running a costly by-election, vacancies occurring within a certain time after an election should be filled by the highest polling unsuccessful candidate from the last election. Periods suggested for the application of this requirement ranged from one to six months after the local election. We note that, prior to 2001, local authorities had the discretion to appoint the runner-up (or any other qualified person) to vacant council (not mayoral) positions.

Recommendation 33

We recommend that the Government introduce legislation to require that, when a non-mayoral vacancy occurs within 12 months after a triennial local body election, the position be filled by the next highest polling candidate (or STV equivalent) at that election.

Probity in the 2016 local elections

We received several submissions about things that allegedly went wrong in 2016 local elections because of somebody's lack of probity, for example, council management that may have showed favouritism towards sitting councillors.

Public trust and confidence in elections is very important. It requires a robust and fit-for-purpose regulatory framework and for concerns, suspected breaches, and improper conduct to be properly dealt with.

Under the Local Electoral Act, the local electoral officer must report alleged offences to the Police. In addition, a candidate, or 10 electors, can file a petition demanding a District Court inquiry into the conduct of an election or a candidate or any other person at the election. The Judge of an inquiry initiated in this way must determine whether the election outcome was materially affected, and if so, whether the election should be void. We believe that District Court inquiries are rare; we are aware of only two that have been initiated in the last six years.

The submissions made us question the adequacy of the options for people not satisfied with the correctness of a local election process:

- participants may not find the rules adequate or clear enough
- electoral officers may not be seen as able to impartially investigate issues relating to the conduct of council staff or members who are standing again
- it would be difficult for participants to go to the Police directly if they do not know whether an offence was committed, what offence was committed, or how to gather evidence
- the Police may be seen as too busy or ill-equipped to deal with complaints about local elections
- a District Court inquiry may be seen as expensive and its mandate too narrow.

We do not think there are adequate processes for independently investigating allegations of inappropriate conduct in local elections. We note that, if the Electoral Commission was to take over the running of local authority elections, the number of complaints about the conduct of electoral officers could be reduced.

Recommendation 34

Consistent with our broader recommendations for alignment with general elections and a greater role for the Electoral Commission, we recommend that the Government introduce amendments to the Local Electoral Act to provide better mechanisms for the investigation and resolution of complaints related to the conduct of local elections.

Chapter 3: Foreign interference in New Zealand elections

In this chapter, we discuss how to protect New Zealand's democracy from inappropriate foreign interference. Our discussion includes the hacking of computer systems, the spread of disinformation, social media, election advertising, political donations, the vetting of electoral candidates, foreign lobbying, and diaspora communities.²⁵

We became aware of the seriousness of the issue of foreign interference in New Zealand elections on 25 October 2018 during the Electoral Commission's submission on our inquiry. Our concern about foreign interference was reinforced by a letter received on 8 November 2018 from the Minister of Justice. He invited us to look into the resilience of our electoral system against foreign interference risks, provide any recommendations for improvement, and reassure the public that they can vote and participate in future elections with confidence.

Evidence received from the New Zealand Security Intelligence Service (NZSIS) and the Government Communications Security Bureau (GCSB) was that:

Interference in New Zealand's elections by a state actor was, and remains, plausible... there are credible reports of interference campaigns in the elections of other countries, and these attempts are increasing in their sophistication.

We agree with this assessment.

What is foreign interference?

We adopt the definition of foreign interference provided to us by the NZSIS and the GCSB. It describes foreign interference as:

an act by a foreign state, or its proxy, that is intended to influence, disrupt or subvert a New Zealand national interest by covert, deceptive or threatening means.²⁶

It is, of course, acceptable to use diplomacy and open lobbying. Many states and organisations engage in such activity, seeking to shape perceptions and decisions in other countries. Unacceptable behaviour is purposely misleading, deceptive, covert, or clandestine.

Another state's decision to interfere in New Zealand political activity would be based on factors such as:

- the state's strategic goals, in particular the value it places on effecting a change in New Zealand's political environment

²⁵ A diaspora community is composed of expatriates—people who have immigrated from a foreign state.

²⁶ Submission from NZSIS and GCSB, p 5.

- the importance it places on abiding by the norms of international diplomacy
- its perception of the effectiveness of the interference activities balanced against the reputational risks of being caught
- the importance it places on controlling its diaspora and reducing the space for opposition viewpoints internationally.²⁷

Foreign interference could have negative effects, even if it was unsuccessful:

- People (including voters) could make decisions based on wrong information.
- New Zealand's sovereignty could be undermined if it was seen to be affected by foreign interference but doing nothing to stop it.
- The suppression of viewpoints that are critical of certain countries could artificially amplify more positive viewpoints of those countries. This could constrain free and open dialogue.
- The perception that a foreign state had improper influence could degrade confidence in New Zealand's values and democratic institutions.
- Members of a diaspora could feel less safe, secure, or free if they felt that they were being monitored and influenced by a foreign state.

Risk of foreign interference in New Zealand elections

The intelligence agencies developed a protocol for managing their engagement on foreign and cyber-security threats to the 2017 election. The protocol was not activated in 2017. However, the agencies told us that this is no cause for complacency. There is a real risk of foreign interference in future elections. We note that, from 2016 to 2018, at least 43 governments proposed or implemented laws or regulations to address aspects of foreign interference. We are very worried by recent examples showing that foreign interference is a growing problem in the world:

- Australian parliamentary and political party networks experienced cyber-security attacks, possibly by foreign governments, in 2011 and 2019. In addition, questionable donations have been made across the political spectrum by prominent people with likely links to foreign governments.
- A UK select committee was "deeply concerned" in 2017 about allegations of foreign interference in the 2016 Brexit referendum.²⁸
- State-sponsored cyber attacks often target Canadian government computer networks. They averaged 2,500 activities each year from 2013 to 2015. Foreign cyber-interference activities in Canada have included:

²⁷ Submission from NZSIS and GCSB, p 5.

²⁸ The Commons' Public Administration and Constitutional Affairs Committee, *Lessons Learned from the EU Referendum*, para 103, at https://publications.parliament.uk/pa/cm201617/cmselect/cmpubadm/496/49607.htm#_idTextAnchor022.

- using cyber tools to spread false or misleading information on Twitter about Canada, aimed at polarising Canadians or undermining Canada's foreign policy goals
- using foreign, state-sponsored media to disparage Canadian cabinet ministers
- manipulating information on social media to amplify and promote viewpoints that were critical of Canadian legislation imposing sanctions and travel bans on foreign officials accused of human rights violations.

New Zealand's democratic values and norms are negatively affected by foreign interference. We need to ensure that our safeguards—legislative and otherwise—are sufficient.

A Canadian security agency recently reported that half of the advanced democracies holding national elections in 2018 had their democratic processes targeted by cyber-threat activity. This was three times more than in 2015. The Canadian agency expects the upward trend to continue in 2019.²⁹

We were advised that several New Zealand agencies are working together to put measures in place to combat foreign interference in New Zealand's 2020 general election. We hope that our report can contribute to that preparedness.

Protective advice for politicians and officials

We were pleased to learn that, in 2019, the intelligence agencies offered protective security briefings to all parliamentary party leaders and independent members of Parliament. The briefings aim to improve members' ability to identify and protect themselves from foreign interference risks. The agencies also told us that they are available to advise any member of Parliament who has specific concerns.

Recommendation 35

We recommend that the Government ensure that the intelligence agencies proactively provide advice to all parliamentary candidates and their parties which is politically neutral, cost effective, and proportionate to a person's risk of foreign interference.

The agencies are also providing Local Government New Zealand with information about how mayors and councillors can protect themselves from foreign interference. We note also that the National Cyber Security Centre, located in the GCSB, provides support and advice to parties and candidates. The Department of Internal Affairs has met with the centre to facilitate the centre's support for local election administration.

Local elections involve many more candidates than parliamentary elections. Voters chose from over 3,000 candidates at the 2016 local elections. In addition, most local candidates do not have the support from political parties and party secretaries that most general election candidates can access. There is little framework for supporting them in protecting themselves against foreign interference.

Again, we note that the intelligence agencies may proactively provide advice to local authority officials if it is appropriate to do so, the agencies can maintain their political

²⁹ Communications Security Establishment, 2019 Update: Cyber Threats to Canada's Democratic Process, p 5.

neutrality, and the response is proportionate to the risk. However, we believe that they are not resourced to provide election security advice to the administrators of elections for 78 local authorities, 20 DHBs, and approximately 40 other entities. We heard that they may, from time to time, give specific assistance to affected councils on a particular topic.

Recommendations 36 and 37

We recommend that the Government resource the Government Communications Security Bureau (GCSB) and the New Zealand Security Intelligence Service (NZSIS) appropriately to allow them to provide advice proactively to local election candidates, local body elected members, and local body officials in a way that is politically neutral, cost effective, and proportionate to the risk of foreign interference in the circumstances.

We recommend that the Government encourage local authorities engaging with foreign governments to actively seek out advice about foreign interference from the intelligence agencies.

Response to risks of foreign interference should be proportionate

As a free and open society, New Zealand promotes robust political debate and freedom of expression. These are vital principles of democracy. Debate during general and local elections is only regulated to the extent necessary to promote political participation and transparency.

We believe that efforts to deter, prevent, or respond to foreign interference should be proportionate and uphold New Zealand's fundamental values as a free and democratic society. These are the same values that we wish to protect from foreign interference. We also especially wish to encourage new New Zealanders to adopt our democratic traditions.

Types of interference

We looked at how to protect New Zealand from various potential risks from foreign governments or entities:

- hacking emails and computer systems
- driving political campaigns—particularly via social media and advertising—and making them look domestic
- donating to political parties
- interfering with, or through, candidates and elected representatives
- lobbying inappropriately
- exerting pressure or control on diaspora communities.

Hacking

Like Canada and Australia, New Zealand does not have a legal definition for “hacking”. The Oxford dictionary defines it as “the gaining of unauthorised access to data in a system or computer”. The Cambridge dictionary definition also includes the spreading of a computer virus.

New Zealand has offences in the Crimes Act 1961 that address this type of behaviour:

- accessing a computer system without authorisation (section 252)
- accessing a computer system and making changes or causing damage (section 250(2))
- accessing a computer system dishonestly or by deception to obtain property or a benefit, or cause a loss (section 249).

We heard that it would be relatively easy to hack the private emails of candidates or parties. This is partly because of the many and wide channels that politicians and parties use to engage with voters. Hacked emails can be leaked, for example, to discredit parties.³⁰

We note that, in the lead-up to general elections, the Electoral Commission works with parties to advise them on where they can go for help in protecting themselves from unauthorised access to personal information and systems.

Recommendation 38

We recommend that the Government encourage all candidates and parties in general and local elections to seek help to protect their online security.

We note that human error is the most common threat to cyber security. Practical and immediate steps—for all New Zealanders, not just politicians—include:

- strong passwords
- updating security patches
- only using administrator access when necessary
- “white listing” (using lists of pre-approved email addresses, domain names, and Internet Protocol (IP) addresses).

CERT NZ is a government agency that aims to improve cyber security in New Zealand.

Recommendation 39

We recommend that the Government adequately fund appropriate agencies to provide specialist advice and support against targeted cyber attacks that cannot be avoided by best practice online.

Online voting is not safe

The risk of hacking makes online and electronic voting systems unsafe. The GCSB made very clear that it has ongoing concerns about the security implications of proposals to pilot or introduce online voting for local body elections. It said that manual voting is much less susceptible to compromise, and administrators of local elections do not have the support that the Electoral Commission does, including from the GCSB.

We also discussed this issue in Chapter 2, above.

³⁰ The leaking of hacked emails or data is an example of malinformation—accurate information that is acquired or released in order to discredit an individual or group.

Recommendation 40

We recommend that the Government retain manual or paper-based voting systems in local and general elections for the foreseeable future because of security concerns.

Penalties for hacking

As mentioned above, the Crimes Act stipulates three relevant offences for hacking. Section 252 (accessing a computer system without authorisation) has a maximum penalty of 2 years' imprisonment. The penalties for breaching section 250(2) (making changes or causing damage to a computer system without authorisation) and section 249(1) (accessing a computer system dishonestly or by deception, and thereby obtaining property or a benefit or causing a loss) are up to 7 years' imprisonment.

We note that, in early 2019, only a few months before a federal election, computer systems of the Australian national Parliament and three political parties were hacked by a foreign entity. The hackers gained access to policy papers and emails. The fact that this occurred in Australia reinforces for us the need for vigilance and preparedness against the possibility of a similar intrusion occurring in New Zealand.

Because hacking to interfere in an election can have very serious consequences, we believe it desirable to create a hacking offence specific to elections. We are interested in creating a separate offence of hacking the computer system of a party, candidate, or election administrator in order to affect the results of a general or local election. We believe the available penalty should be greater than 2 years' imprisonment.

Section 482 of the Canada Elections Act 2000, as recently amended, makes it an offence to intercept a computer system fraudulently with the intent to affect the results of an election. The Canadian legislation provides for a maximum penalty of 10 years' imprisonment and a fine of \$50,000.

We would also like a contingency system to be in place in case of a breach that compromised the integrity of a local or general election.

Recommendations 41 and 42

We recommend that the Government consider amendments to existing legislation to incorporate an offence, similar to that in section 482 of the Canada Elections Act 2000, that would prohibit hacking into computer systems owned by Parliament, local authorities, the Electoral Commission, election service providers, election officers, political parties, candidates, or members of Parliament with the aim of intending to affect the results of an election.

We recommend that the Government ensure that a contingency system is in place in case of a security breach of relevant computer systems that compromises the integrity of a local or general election.

Disinformation

We learnt that, globally, the most common cyber threat to democratic elections is interference that targets voters. It is often carried out via social media campaigns on the internet. We mentioned earlier the example of a foreign entity that had recently manipulated information on social media to promote views that were critical of certain Canadian legislation.³¹

Disinformation is false or misleading content that is designed to influence people's perceptions, opinions, or behaviour. It is different from misinformation, which is also false or misleading, but comes from private citizens with no underlying strategic purpose. Disinformation and misinformation can also be called "fake news".

Disinformation can increase social or ethnic tension, promote extremist political agendas, and reduce people's ability to tell the difference between true and false information. In social media, disinformation could be in the form of news, advertising, or comments by individuals.

We were pleased to learn that the Electoral Commission is preparing information for voters on how to be alert to misinformation, how to check sources, and how to complain about content. In the wider context, the Government is working on misinformation, disinformation, and malinformation as part of an international project on using digital technology to improve citizens' lives.³²

In this inquiry, we focus on the actions of foreign entities in spreading disinformation in New Zealand. We are not interested in New Zealanders' legitimate use of social media, freedom of speech being one of our core values. We do note that it is an offence under section 199A of the Electoral Act to deliberately publish a false statement, with the intention of influencing an elector, on election day or the two days prior.³³

The internet makes it easier for foreign entities to interfere in New Zealand elections. It also makes public debate more open. Even the visibility of disinformation campaigns overseas can affect New Zealanders' trust in their own media and government.

Foreign interference via social media content

We considered how to control and regulate posts, advertisements, and comments that appear on social media, to reduce the risks of foreign interference via disinformation.

Some internet campaigns can appear to have grass-roots support when in fact they have been spread by robot accounts, overseas entities with vested interests, and paid participants. The spreading of disinformation in this way is known as "astroturfing". Instigators of this sort of campaign should have to comply with rules about election advertising. However, it is hard to tell "bot" accounts from genuine accounts, and it is hard to

³¹ Communications Security Establishment, 2019 Update: Cyber Threats to Canada's Democratic Process, p 21.

³² The Digital 9 is a network of advanced digital nations with the shared goal of harnessing digital technology and new ways of working to improve citizens' lives. Countries include New Zealand, Canada, Estonia, Israel, Mexico, Portugal, South Korea, the UK, and Uruguay.

³³ We discussed section 199A in Chapter 1 and Government members of the committee recommended extending its timeframe to the beginning of advance voting.

identify the instigator. In our chapter on the general election, we recommended that the Electoral Commission, in its report on the 2020 general election, specifically address the issue of astroturfing and how New Zealand can manage it.

We note also our comments and recommendations relating to the use of social media in Chapter 1.

Engaging social media companies to help reduce disinformation

A good way to approach the spread of disinformation on social media is to engage with social media companies. These companies have developed the tools and algorithms to spread information and they are best placed to adapt these or create new tools and algorithms to help suppress disinformation.³⁴

The Australian Electoral Commission has an arrangement with Twitter and Facebook for removing content that violates Australian electoral laws. A submitter commented on this framework, saying that it was challenging to implement because it is hard to distinguish between disinformation and regular political debate.

In Europe, many companies have signed up to a voluntary Code of Practice on Disinformation. The code was implemented in October 2018 and signed by platforms, social networks, and the advertising industry. Signatories include Facebook, Twitter, and Google. Part of their commitment was to report monthly, for the five months to May 2019, on their actions in the areas of:

- improving the scrutiny of advertisement placements
- ensuring transparency of political and issue-based advertising
- tackling fake accounts and malicious use of bots.

They will report again near the end of 2019. We were pleased to learn that the Electoral Commission has approached Facebook to obtain similar commitments for New Zealand. We strongly support this.

In 2019, a select committee of the UK Parliament recently reported on its inquiry into disinformation and “fake news”.³⁵ Of special interest to us were the recommendations:

- to create an independent regulator with statutory powers to monitor relevant technology companies and ensure that they comply with a compulsory Code of Ethics
- to improve media literacy and safe online practices
- to improve transparency in online political advertising and campaigning.

An Australian select committee examining the conduct of the 2016 federal election made recommendations including:

³⁴ For example, we note that most large social media platforms have algorithms to curate information to present to users, often based on relevancy rather than the recency of a post.

³⁵ The report, dated 14 February 2019, can be found at <https://www.parliament.uk/business/committees/committees-a-z/commons-select/digital-culture-media-and-sport-committee/inquiries/parliament-2017/fake-news-17-19/>.

- the establishment of a permanent taskforce to prevent and combat cyber-manipulation in Australia's democratic process and to provide transparent, post-election findings about any pertinent incidents, focusing on systemic privacy breaches
- greater clarity to the legal framework around social media services and their designation as "platform" or "publisher".³⁶

Recommendation 43

We recommend that the Government consider the applicability of implementing recommendations relating to foreign interference via social media content from the UK House of Commons' Digital, Culture, Media and Sport Committee's report on *Disinformation and 'fake news'* and the Australian Joint Standing Committee on Electoral Matters' *Report on the conduct of the 2016 federal election and matters related thereto*. We recommend that the Government also consider the applicability to local government of the UK and Australian recommendations.

Foreign interference via election advertising

We considered several issues relating to domestic election advertising. They are set out in Chapter 1. Here, we consider overseas-based election advertising.

Overseas-based online advertising

In our chapter on the general election, we made recommendations about making online advertisements transparent. We recommended that all online platforms be required to keep a register of electoral advertisements, and that electoral advertisements must be identified as such.

Recommendation 44

We recommend that the Government follow the Australian Government in prohibiting foreigners from advertising in social media to influence a New Zealand election outcome and that it provide appropriate constraints and legal obligations on social media platforms so that this can be enforced.

Party secretaries should live in New Zealand

Political party secretaries are responsible for their party's compliance with electoral laws, including those around election advertising. However, there is no requirement that party secretaries must live in New Zealand. Having a party secretary overseas presents enforcement challenges. Party secretaries should live in New Zealand.

We note that this issue is addressed in clause 16 of the Electoral Amendment Bill (No 2), passed under urgency on Tuesday 3 December 2019, which will require party secretaries to live in New Zealand.

³⁶ That report can be found at https://parlinfo.aph.gov.au/parlInfo/download/committees/reportjnt/024085/toc_pdf/Reportontheconductofthe2016federalectionandmattersrelatedthereto.pdf;fileType=application/pdf.

Recommendation 45

We recommend that the Government introduce amendments to the Electoral Act to require political party secretaries to be New Zealand residents.

Financial limits on election advertising by foreign entities

There is a limit on how much may be spent on advertising during the regulated period:

- for political parties, the amount is currently \$1.169 million plus an additional \$27,500 for each electoral district contested by a candidate for the party
- for candidates, the amount is currently \$27,500 (\$54,900 for a by-election)
- for unregistered third parties, it is currently \$13,200
- for registered³⁷ third parties, it is currently \$330,000.³⁸

An overseas person may advertise; however, they may not become a registered third party. As unregistered promoters, therefore, they must spend less than \$13,200 on advertising during the regulated period.

We discussed a submission advocating reducing the amounts that may be spent on campaigns, because online advertising costs are so low. We determined not to propose any changes to the amount. It is our view that overseas entities should not be leading our political debate, and that, instead of reducing amounts that foreign advertisers may spend, we should remove their ability to advertise.

Recommendations 46 and 47

We recommend that the Government introduce legislation to allow only persons or entities based in New Zealand to sponsor and promote electoral advertisements.

We recommend that the Government introduce legislation creating an offence for overseas persons placing election advertisements as well as organisations selling advertising space to knowingly accept impermissible foreign-funded election advertising.

We note the possibility that foreign entities could get around limitations on advertising by giving money to those who are eligible to advertise, particularly third parties. We discuss donations next.

Foreign donations

Another way that foreign states could interfere in elections is by donating money to political parties or candidates in order to achieve covert influence and leverage.

We reiterate and accept that states can and do seek to influence each other as a legitimate part of their diplomatic and trade relationships. This desire to influence is acceptable if it is open and frank. However, donations could create a sense of reciprocity in New Zealand

³⁷ Registered with the Electoral Commission as a third-party promoter intending to spend over \$13,200 during the regulated period.

³⁸ The amounts are indexed annually, which means they increase each year in line with inflation.

political recipients. For example, the recipient could be expected to interfere on behalf of the foreign state in a future scenario.

We heard evidence from New Zealand security agencies and other submitters that, overseas, there is an increase in the incidence of foreign governments using donations to inappropriately try to achieve their ends. For these reasons we recommend a tightening of the rules around foreign donations.

Foreign political donations over \$1,500 are currently banned

We were advised that, to date, anonymous donors have given relatively small sums of money to New Zealand candidates and parties.

The Electoral Act limits foreign and anonymous donations to \$1,500 each year.³⁹ Political parties and candidates must submit annual returns showing how many anonymous and overseas donations under \$1,500 they have received, and the total value of such donations. This information becomes public.⁴⁰

If a donation is funded by more than one contributor, the donor must disclose who contributed. If a donation is transmitted to a party on behalf of a donor, the transmitter must disclose the donor's name. It is an offence to circumvent the overseas donation limits such as by donating via an intermediary or splitting a donation between two or more bodies corporate.

Another mechanism for donating anonymously is to give up to \$46,822 via the Electoral Commission.⁴¹ The Electoral Commission forwards the money to parties. Donors must tell the Commission their full name and address as well as that of every person who has contributed over \$1,500 to the donation. That information remains confidential. We were advised that \$109,000 was donated this way during the 2017 election.

Other countries ban large foreign donations

We found that numerous other countries ban foreign donations over a very small amount. We were also interested to learn that some countries, including Canada and Ireland, cap donation amounts from any donor, whether domestic or foreign.

Canadian donation laws

In Canada, only individuals—citizens and permanent residents—may donate to electoral parties, associations, contestants, and candidates. Corporations are not permitted to donate.

Donations under C\$20 may be anonymous. Donations between C\$20 and C\$200 require the donor's name to be recorded and a receipt issued. For donations over C\$200, the donor's address must also be recorded. The annual limit for donations to parties and candidates is currently C\$1,600.

³⁹ Any such donations over \$1,500 must be returned to the donor or given to the Electoral Commission.

⁴⁰ Parties must also report all donations, contributions, and loans over \$15,000, and must promptly report any donations totalling over \$30,000 from one donor in a 12-month period.

⁴¹ The amount is indexed annually. The maximum amount that a party may be paid in donations via the Electoral Commission is 10 percent of the party expenditure limit under section 206C(1).

Other people and groups that participate in or influence elections are known as third parties. Anybody can donate to third parties but there are limits on how the third party can spend the money.

Third parties that engage in certain electoral activities (including partisan activities, election advertising, and surveys) must not use funds from a foreign or unknown entity to pay for such activities during the four months leading up to an election.⁴² A third party may not use a contribution to pay for electoral activities if it does not know the contributor's name and address or it cannot determine the type of contributor. Foreign third parties may not engage directly in the specified electoral activities.

Third parties spending more than C\$500 during elections must register with Canada Elections. They must be Canadian citizens or residents or entities that are incorporated or carry on business in Canada.

Third parties must report the sources of all of their contributions both during election periods and between elections.

Australian donation laws

Australian law allows anonymous and overseas donations under A\$100 to political entities, political campaigners, and third parties.⁴³

Foreigners may donate A\$100 to A\$1,000 to political entities and campaigners only if the amount is not given or accepted with the intent of being spent on election expenses. Third parties may not knowingly receive foreign donations over A\$100 to be used for electoral expenditure.

Foreign donations over A\$1,000 are banned in Australia. Anonymous domestic donors may give up to A\$14,000 if they confirm that they are not a foreign donor. The recipient of a donation over A\$14,000 must get the donor's written confirmation that they are not foreign.⁴⁴ The recipient must verify this (for example, by checking the electoral roll or companies register).

Donors of over A\$14,000 must lodge a return to the Australian Electoral Commission. This provides more transparency than in New Zealand, where only the donation recipients have to report to the Electoral Commission.

⁴² Canada has a regulated election period and a pre-election period, and the four months would apply to a fixed date general election.

⁴³ "Political entities" includes registered political parties and candidates. "Third parties" are registered parties who spend less than the amount required to register as a political campaigner. "Political campaigners" are those who spend more than \$500,000 in the present or any previous three financial years; or more than \$100,000 in the financial year and their electoral expenditure during the previous financial year was at least two-thirds of their revenue for that year.

⁴⁴ The amount is indexed annually.

UK donation laws

In the UK, donations below £500 are not regulated by the Political Parties, Elections and Referendums Act 2000. It is an offence to knowingly participate in an arrangement, withhold information, or supply false information so as to evade the restrictions on donation sources.

Donations over £500 are only permitted if they are from domestic individuals or entities.⁴⁵ Before accepting a donation over £500, parties must take all reasonable steps to verify the donation's source and ensure that it is permissible. This could include checking the electoral roll or companies register. It is an offence to keep an impermissible donation.

Donors to a political party of over £7,500 must declare in writing that they are a permissible donor, including providing their full name and address. These donations (and donations over £1,500 for party accounting units) must be reported to the UK's Electoral Commission. Political parties, campaigners, and others must also disclose loans, amounts spent on a campaign, annual accounts, and any impermissible donations they received. This is all published on the internet.

US donation laws

Federal US law prohibits foreign nationals from directly or indirectly contributing to US elections. However, corporations can establish and sponsor a Political Action Committee (PAC) which solicits contributions from members. There are limits on the amounts the PAC may donate.⁴⁶

Corporations may also make unlimited independent expenditure on advertising for or against a candidate, as long as the advertisement is not made in cooperation with or at the suggestion of a candidate or party. Corporations can also donate an unlimited amount to Super PACs, which make independent expenditure. Some activities, such as legal and accounting services, may be given freely. Corporations, including domestic subsidiaries of foreign entities, may contribute where the donations derive entirely from funds generated by the subsidiary and all decisions and actions concerning the donation are made by US citizens or permanent residents, except the setting of overall budget amounts.

There is a US\$50 limit on anonymous cash donations. Between US\$50 and US\$200, the recipient must obtain and record the donor's name and address. For amounts over US\$200, they must make their "best efforts" to also record the donor's occupation and employer. Where a contribution presents a genuine question as to whether it is made by an impermissible source (like a corporation or a foreign national or entity), the recipient must establish its legality within 10 days of receiving the donation by making a written or oral request for evidence of legality. If a recipient cannot verify the legality of a donation, they must return it.

⁴⁵ Companies, partnerships, and other entities must be registered in the UK under the relevant legislation and must carry on business there. Unincorporated associations may donate if they carry on their activities wholly or mainly in the UK and their main office is there.

⁴⁶ The amounts can range from US\$2,800 to US\$35,500, depending on whether the PAC is a multi-candidate committee or not, and whether the donation is to a party or a candidate.

Ban foreign donations over a certain limit

As mentioned above in relation to advertising, it is our view that only persons in New Zealand should take part in New Zealand political campaigns. That is why we support the banning of foreign donations over a certain amount to election campaigns. Currently (under section 207K of the Electoral Act) the amount is \$1,500.

Government members of the committee note that this issue is addressed by clause 9 of the Electoral Amendment Bill (No 2), which sets the amount at \$50. Clause 7 of the bill will replace section 207I in the Act. New section 207I will require candidates and party secretaries to forfeit anonymous donations over \$50 to the Electoral Commission if they believe, or have reasonable grounds to suspect, that the donation was received from an overseas person.

We note that the anonymous donations limit is currently \$1,500 and is not changed by the Electoral Amendment Bill (No 2). To avoid the anonymous donation provision being misused by a foreign donation being made anonymously, we recommend a catch-all provision about anti-avoidance, below.

A de minimis is required because we do not want political parties having to ask for evidence of New Zealand residency or citizenship for small donations that are unlikely to inappropriately influence an election, as this would add bureaucracy to legitimate fundraising by political parties. The amount should not place undue restrictions on low-value fundraising campaigns such as collecting cash donations from an audience at an event.

National Party members agree with the Electoral Commission that there should be a consistent *de minimis* across foreign donations, anonymous donations, and the requirement for political parties to do due diligence on donations. We believe the appropriate level is \$500. We believe the new \$50 limit provided in the Government's Electoral Amendment Bill, passed under urgency on 3 December 2019, is not robust with the anonymous donation amount still being \$1,500.

Government members of the committee consider that, as sources of funding change for electoral purposes, and the New Zealand public seeks greater transparency, it remains an alternative that the advantages and disadvantages of state funding for electoral purposes be debated, either partially or in full, and to ascertain the public's view on this.

Transmission to individuals who then make a political donation

We note the foreign interference risk of an overseas entity giving money to a New Zealander who then donates the amount to a political candidate or organisation. This behaviour is already unlawful under the Electoral Act, which contains several anti-collusion provisions:

- Section 207D specifically references overseas persons. It makes it an offence for a donor, with the intention of concealing the identity of any or all of the contributors, to fail to comply with section 207C (disclosure that a donation is made up of contributions and, if more than \$1,500, the details of those contributors, including names, addresses, whether the contributor is an overseas person, and the amount of the contribution or aggregated contributions).

- Section 207F makes it an offence for a transmitter, with the intention of concealing the identity of a donor of any or all of the contributions, not to comply with section 207E (disclosure that a donation is transmitted on behalf of a donor, the name and address of the donor, and, where necessary, that a donation is made up of contributions and the details of those contributions as required above).
- Under section 207H, it is an offence for a person involved in the administration of affairs of a candidate or party not to disclose to a candidate or party secretary the identity of a donor of an anonymous donation over \$1,500 where the person knows the donor's identity and intends to conceal the identity of the donor.
- Under section 207J, it is an offence to enter into an agreement, arrangement, or understanding with any other person that has the effect of circumventing section 207I(1) or (2) (restrictions on anonymous donations). A candidate or party secretary who fails to pay to the Electoral Commission part of an anonymous donation in excess of the \$1,500 limit is guilty of an illegal practice.⁴⁷
- Section 207L specifically references overseas persons. It makes it an illegal practice to enter into an agreement, arrangement, or understanding with any other person that has the effect of circumventing section 207K(2) or (3) (restrictions on overseas donations or contributions over \$1,500). It is a corrupt practice if the circumvention is wilful.
- Under section 207LA, it is a corrupt practice to direct or procure, or be actively involved in directing or procuring, two or more bodies corporate to split between the bodies corporate a contribution to, or a party donation in order to, conceal the total amount of the donation and avoid the donation's inclusion by the party secretary in the return of party donations.

By enabling the Electoral Commission to have investigation and enforcement powers, we consider that these existing legal provisions will have greater efficacy for electoral law. In addition to this, we are also recommending (below) an overarching anti-collusion provision to aid enforceability.

Anti-avoidance provisions

It is our view that the transmission rules must be strong, robust, and well-enforced. Foreign entities should not be able to circumvent a ban on foreign donations by setting up local companies just for the purpose of donating. It is important to be able to differentiate between real local businesses and these "shell" companies.

We considered how to define which businesses and unincorporated bodies should be eligible to make an election donation, at either local or parliamentary level. We considered whether it should be those "carrying on business" in New Zealand, a definition which has developed in law both overseas and in New Zealand. Another option was to adopt the definition in the Overseas Investment Act 2005. We also considered whether only natural persons should be allowed to make political donations. Options that we explored are set out below.

⁴⁷ Candidates, party secretaries, or registered promoters found guilty of an illegal practice under this Part of the Act are liable to a fine of up to \$40,000.

Option 1—Follow the Overseas Investment Act definition

The Overseas Investment Act definition of overseas person includes:

- an individual who is neither a New Zealand citizen nor resident
- a company incorporated outside New Zealand
- a New Zealand-incorporated company that is a 25 percent or more subsidiary of a foreign-incorporated company
- a company where overseas persons hold 25 percent or more of any class of securities, have the power to control the composition of 25 percent or more of the board, or control 25 percent or more of the voting power at a company meeting
- an unincorporated body (except trusts and unit trusts) where overseas persons make up 25 percent or more of its members, have a beneficial interest in or entitlement to 25 percent or more of its profits or assets, or control 25 percent or more of the voting power at a meeting
- a trust where overseas persons make up, or can control, the composition of 25 percent or more of the trustees, or have a beneficial interest in or entitlement to 25 percent or more of the trust property, or can amend the trust deed.

This definition provides a series of “bright line” tests which look at the overseas control of an entity. It would support the aim of preventing entities being used by overseas persons to avoid a ban on foreign donations.

This definition provides a clear set of rules. We understand that it is relatively straightforward to apply to registered companies but acknowledge that it may be more complex to apply to listed companies and unincorporated bodies. We also note that the 25-percent foreign ownership test could include many of New Zealand’s larger multinational companies.

Option 2—Use the concept of “carrying on business” in New Zealand

A “carrying on business” test would focus on whether the entity (company, trust, or unincorporated association) carries on a business (whether for the purpose of making a profit or not) or otherwise engages in economic, philanthropic, or social activities in New Zealand. The aim would be to restrict donations and advertising to entities that have a reasonable interest or stake in our democracy.

Similar tests are used elsewhere. Under UK law, a company is a “permissible” electoral donor if it is incorporated within the European Union and “carrying on business” in the UK. A similar idea is used in Australia. To qualify as an Australian donor, the entity must be incorporated in Australia, have its head office there, or have its “principal place of activity” there.

“Carrying on business” is currently used in New Zealand in company and commercial law, and the words take their ordinary meaning relevant to the context. There is established case law defining it in those contexts (as there is in overseas jurisdictions).

Option 3—Only natural persons should be allowed to donate

The third option is based on the view that only natural persons who are eligible to vote in New Zealand should be participating in our political system. Under this proposal, entities such as companies, trusts, or unincorporated associations, whether foreign or New Zealand owned, should not take part in New Zealand political campaigns by advertising, donating, or seeking to influence voters.

We note that similar provisions apply in Canada, which only allows donations from natural persons, although we also note that Canadian political parties receive some state funding for their election campaigns.

The Electoral Act sets out who is eligible to vote in general elections. It includes all New Zealand citizens, and permanent residents who have lived in New Zealand continuously for 12 months or more at some time. New Zealand citizens living overseas must have been in New Zealand within the last three years to be eligible to vote, and permanent residents living overseas must have visited New Zealand within the last 12 months.

The Local Electoral Act uses the same eligibility rules for residential electors. It also allows for voting by ratepayer electors, which may include individuals nominated by a company, trust, corporation, or society that owns a rateable property.⁴⁸

We believe that this is an area requiring considerable policy work that should involve consultation with other parties. We ask that the Government undertakes this to ensure that any loopholes in the current law can be closed that allow foreign persons/entities to establish shell companies/trusts where donations can be transmitted while reasonably allowing New Zealanders to participate in the political process.

Recommendation 48

We recommend that the Government examine how to prevent transmission through loopholes, for example, shell companies or trusts. We recommend that these issues be further explored and that the Government consult with political parties about how best to approach the problem.

Our recommendations about donations from overseas should also apply, as far as possible, to local body elections.

Placement of anti-collusion provisions

The Electoral Act contains various provisions to prevent people colluding to break the rules about who can make donations and to what value. For example, it is an offence to fail to comply with section 207E (disclosing that a donation was transmitted on behalf of a donor and giving the name and address of the donor). We wonder if, instead of having several different provisions in different places in the legislation, it would be better to have an overarching anti-collusion provision. This might allow better scope for shutting down unacceptable behaviour. We note that the UK's Political Parties, Elections and Referendums Act has just one provision to cover collusion. Section 61 makes it a criminal offence to

⁴⁸ Ratepayer electors are property owners who either live outside the local authority area or are not natural persons, such as companies or trusts. The latter may nominate a natural person to vote on their behalf.

knowingly participate in an arrangement or to withhold information, or supply false information, so as to evade the restrictions on the sources of donations.

Recommendation 49

We recommend that the Government consider one over-arching anti-collusion mechanism, including penalties, to replace those in the Electoral Act.

We note also that there should be consistency between electoral law and other areas of law concerning the transparency and accountability of financial transactions.

Enforcement

We discussed ways to improve enforcement in Chapter 1.

Donations to third parties

Although domestic third parties may legitimately participate in New Zealand democracy, New Zealand law does not regulate donations to them. As noted above, some other countries do regulate donations to third parties, or their expenses. We consider that such regulation could be useful here.

Additionally, we note that third parties should not be allowed to use foreign donations to pay for election activities at any time.

The Electoral Act currently requires third party advertisers spending over a certain amount to register with the Electoral Commission. Section 204L requires third-party promoters to register if they spend, or intend to spend, over \$13,200 on election advertising during the three-month regulated period before election day.⁴⁹ The register is available for public inspection.

Under sections 204B and 206V, a registered promoter can spend up to \$330,000 (including GST) on election advertising during the regulated period for a general election. Section 206ZC requires registered promoters to file a return of election expenses if they have spent more than \$100,000. Section 206ZD allows the Commission to require that return to be audited if there are reasonable grounds to believe it contains false or misleading information.

However, section 204K prohibits an overseas person from becoming a registered third-party promoter. This means that overseas promoters must spend no more than \$13,200 on election advertising during the regulated period.

To protect freedom of expression, section 3A(2)(e) sets out an exemption for individuals using social media to express personal political views provided they are not paying, or receiving payment, to publish those views. This includes posting, reposting, commenting, and sharing on social media.

⁴⁹ The amount includes GST and is indexed annually. A promoter is the person or organisation that has initiated or instigated an election advertisement (in any medium, including online). Under section 204F, their name and address must appear on the advertisement. They must also have written permission from the political party or candidate to make the advertisement (section 204G and 204H).

National Party members of the committee do not wish to see an extension of the regulatory regime for third party advertising for those below the existing *de minimis* of \$13,200. However, for campaigns above this amount, there needs to be a reporting regime on donations to provide transparency and ensure that foreigners are not interfering inappropriately in our elections.

Government members of the committee recommend that all third parties should have to declare where they get their donations from. Government members also recommend that third parties spending over \$1,000 should have to register with the Electoral Commission and undertake “due diligence” to ensure that their donations conform to the rules.

Recommendation 50

We recommend that the Government:

- make it unlawful for third parties to use funds from a foreign entity for electoral activities
- require registered third parties to declare where they get their donations from.

Risk of direct interference by political candidates

One issue about foreign interference relates to candidates directly. We wish to ensure that election candidates, members of Parliament, and local government elected members are not improperly influenced by foreign states or entities, or at risk of such influence.

We discussed the merits of political parties asking the intelligence agencies to vet national and local election candidates. We agreed that the agencies should continue to perform their usual roles of following leads in relation to foreign interference or terrorism. We also note that the primary focus of measures to protect New Zealand from inappropriate foreign interference should, of course, be foreign state actors rather than election candidates.

We are not concerned by the intelligence agencies providing advice about a particular candidate in response to a request from their political party. We think it is important that the agencies are able to provide a confidential service to political parties, separate from Government, about individual candidates where there may be concerns about political foreign interference.

We encourage the intelligence agencies to proactively approach the political party if they have significant concerns about a candidate or prospective candidate. For candidates who are sitting members of Parliament, we note that there are protocols in place between the Speaker and the security agencies about protecting parliamentary privilege.

Lobbying transparency regimes

A number of other countries require that people lobbying on behalf of foreign governments or organisations be registered. The aim is to provide transparency about foreign influence. For example, in July 2018, Belgium introduced a parliamentary lobbying register. Everyone who intends to influence policy-making and decision-making, directly or indirectly, must register. The register records who the lobbyists are and information about the organisation or client they are working for. The register is publicly accessible on a website.

Another example is the Australian Foreign Influence Transparency Scheme (FITS), which came into force in December 2018. FITS requires individuals or entities who have arrangements with foreign principals, or who undertake certain activities on their behalf, to register and disclose their relationship and activities. Activities that must be registered include:

- parliamentary lobbying
- general political lobbying (such as lobbying public officials, government agencies or departments, political parties, or candidates)
- communications activities
- financial disbursement activities for political or governmental influence
- employment of Cabinet Ministers, members of Parliament, or senior officials (anywhere in the world).

A foreign principal includes foreign governments, foreign political organisations (including political parties), and individuals and entities (including companies) that are related to a foreign government. A company is covered by FITS if a foreign government or foreign political organisation:

- holds more than 15 percent of the issued share capital of the company
- holds more than 15 percent of the voting power in the company
- can appoint at least 20 percent of the company's board of directors
- can exercise total or substantial control over the company; or
- has obliged company directors to act in accordance with its directions, instructions, or wishes.

During voting periods, people and entities who must register under the scheme have specific obligations. They include updating or confirming their registration information and reporting any registerable activities during voting periods that relate to the relevant vote or election. Those disbursing money or things worth over A\$13,800 must report such activity within seven days.⁵⁰

Certain activities do not have to be registered under FITS, including humanitarian aid and activities that are within the scope of a person's function as a diplomat or consular official. Former Cabinet Ministers have a lifetime obligation to disclose all activities taken on behalf of a foreign principal. Former members of Parliament and senior officials must report activities for 15 years after they leave their position.

We expect that FITS will help to increase transparency in Australian donations and lobbying, and to decrease illegitimate activities. We look forward to receiving more information on whether this is the case.

⁵⁰ The amount is indexed annually.

We discussed whether FITS would be a proportionate response in New Zealand given that there was not a substantial amount of evidence in this area. We heard three submitters on this subject matter. Their concerns included:

- foreign states with strategies that target local leaders and get them to promote the state's foreign agenda in New Zealand
- links between foreign entities and academics
- use of sister-city relationships
- local government investment schemes
- connections with indigenous groups
- associations that work for foreign embassies and serve as the mouthpiece for a foreign government to promote the foreign state's values and interests to influential New Zealanders.

Greater transparency is required where individuals are lobbying or undertaking related activities on behalf of a foreign government or organisation. One of our concerns is the extent to which corporate lobbyists may be operating in New Zealand as fronts for foreign state entities.

Recommendation 51

We recommend that the Government investigate whether the Australian Foreign Influence Transparency Scheme is applicable to New Zealand, taking into account the evidence of problems in this area relative to the costs of introducing such a regime.

Media use in diaspora communities

Some foreign states try to control their diaspora in other countries. This is easier when the diaspora speak the language of their home state and are still connected to family there. Foreign-language media in New Zealand are one way for states to influence their diaspora. For example, submitters mentioned WeChat, a Chinese-language social media platform that has 170,000 users in New Zealand.

We were concerned to hear from submitters that some foreign states exert control over their diaspora's use of social media by encouraging self-censorship, monitoring content, and threatening to close down accounts that do not comply with certain conventions. Free speech is very important as a fundamental value in a free and democratic country and we are very concerned about foreign governments limiting the rights of free speech of New Zealand citizens and residents. We wish to protect and encourage the right of free speech for all New Zealanders, including immigrants.

Recommendation 52

We recommend that the Government:

- engage with international social media platforms to encourage them to adhere to our laws and customs regarding free speech
- explore regulatory tools that would assert New Zealand's strong tradition of free speech.

Foreign ownership of media companies

The Overseas Investment Act requires foreign investors to seek consent if they wish to acquire 25 percent or more in companies that hold an interest in sensitive land or are worth at least \$100 million.⁵¹ Investments in media companies are unlikely to meet either of these thresholds. Even if consent is required, there is no ability to consider foreign interference and other national security risks.

We note the recent announcement that the Government plans to make changes to the Overseas Investment Act:

- increasing ministerial discretion when considering proposed investments, including allowing Ministers to block an investment that is contrary to our national interest
- granting Ministers the power to block certain investments in certain assets not ordinarily subject to the Act—such as media companies—that present a material risk to New Zealand's national security or public order.

The Companies Act 1993 requires companies registered in New Zealand to have at least one director who lives in New Zealand or Australia. If the director lives in Australia they must also be a director of a company incorporated there.

We are concerned by the likelihood that significant media organisations that serve a diaspora in New Zealand have inappropriate links to foreign governments in other countries, and, as a consequence, their editorial independence is compromised.

We note the recent news story involving a South African media company called Independent Media. Since 2013, two state-owned Chinese companies have owned a 20 percent stake in Independent Media. In 2018, a South African journalist used his column, which ran in several Independent Media newspapers, to criticise Chinese treatment of the Uighurs, a Muslim minority group in China. His contract was cancelled just hours after the column was published.⁵²

Recommendation 53

We recommend that the Government consider requiring all media organisations to have a majority of board members who live in New Zealand.

We note that this would have to be considered in the context of New Zealand's free trade obligations, including those relating to the composition of senior management positions and boards of directors, and any exceptions to those obligations.

Recommendation 54

We recommend that the Government prohibit foreign governments or foreign state entities from owning or investing in media organisations in New Zealand.

⁵¹ Depending on the investor's nationality, the minimum may be higher.

⁵² Sources: <https://mg.co.za/article/2013-08-15-chinese-companies-scoop-shares-in-independent-news/>, <https://www.theguardian.com/news/2018/dec/07/china-plan-for-global-media-dominance-propaganda-xi-jinping>.

Media pluralism

The fact that New Zealand has several media organisations is itself a protection against foreign interference via the media. Media organisations tend to scrutinise each other and are likely to publicise any concerning activities of their competitors. In a recent Commerce Commission ruling, two leading media organisations were forbidden to merge. The decision was made partly because of the desirability of media pluralism. National members of the committee note that this decision was in an environment in which there has been huge growth of alternative media and the argument of print media being merged was not necessarily the framework for considering media competition.

We note that journalism and reporting have changed since the rise of the internet. A negative effect has been that traditional media organisations have suffered from reduced advertising revenue. However, an advantage of the internet is that new online media organisations can emerge relatively easily.

Regulation of media content

We note that only one offence in the Electoral Act relates to the publication or content of electoral advertisements: the offence of publishing false statements to influence voters on polling day or the two days before, under section 199A. Other complaints about the content of election advertising are dealt with by the Broadcasting Standards Authority and the Advertising Standards Authority. These are industry self-regulatory bodies and do not impose civil or criminal penalties.

Media regulation has not kept up with the rise of the internet. The Broadcasting Standards Authority is an independent complaints service for programmes on television and radio. It does not cover on-demand content other than livestreaming by a broadcaster. Online media companies can submit to the New Zealand Media Council's jurisdiction; however, membership is voluntary. The Advertising Standards Authority regulates advertising. None of these organisations can review editorial decisions such as whether certain topics are covered. The Broadcasting Standards Authority can impose penalties but the other two cannot.

We were pleased to learn that the Government is reviewing the regulation of media content across all platforms. It will involve the Ministry for Culture and Heritage, the Ministry of Business, Innovation and Employment, and the Department of Internal Affairs. We understand that it may propose comprehensive reforms. We look forward to examining those proposals.

National members are cautious and concerned at Government plans to extend regulation of the media. The Justice Minister's recent attack on the Advertising Standards Authority because it did not uphold his complaint adds to our worries that freedom of speech risks being compromised.

We are also concerned about recent reports of the Government creating a new unit within the Ministry of Justice to monitor and manage public debate on the upcoming 2020 referendum.

We note that some overseas jurisdictions have used the issue of fake news and hate speech to shut down legitimate criticism of government. Any additional measures to regulate the media or others expressing views, will need to pass a vigorous test of protecting freedom of speech and ensuring independence from the Government of the day.

Recommendation 55

We recommend that, as part of its review of media content regulation, the Government consider requiring all media companies to belong to an industry self-regulating body.

Foreign interference risks and local government

Our discussion of foreign interference issues has often focused on parliamentary elections and candidates. However, foreign interference is also an important issue in local elections. Councils must be vigilant in this area. We wish to make it clear that our commentary and recommendations should also apply to local government as much as possible.

Senior local government elected officials are at risk from foreign interference by foreign state actors and should be aware of this. Councils today have a lot more contact with overseas governments, states, and local government entities, including through sister-city relationships. These are to be encouraged as part of New Zealand being outward-looking and engaged with the world. Our concerns are for those relationships that may involve inappropriate foreign influence activities. We encouraged the security agencies to proactively approach chief executives of local authorities if they have significant concerns about inappropriate foreign influence activities.

We note that security agencies are available to advise local councils about preventing foreign interference. We encourage councils to make use of their expertise.

There may be examples where the concerns are about a specific candidate, councillor, or mayor. We consider that, when issues arise regarding local politicians, the security agencies' relationship should be with the local authority's chief executive, unless the person of concern is the mayor, in which case the agencies should go to the Minister of Local Government.

We were also concerned about the inconsistency between disclosure requirements for members of Parliament and those for local body representatives. We make a recommendation in that regard in Chapter 2.

We have recommended that the Government consider the applicability of implementing recommendations about foreign interference via social media content as contained in the UK and Australian select committee reports.⁵³ We note that we have recommended that the Government also consider the applicability of those recommendations to local government.

⁵³ The reports are the UK House of Commons' Digital, Culture, Media and Sport Committee's report on *Disinformation and 'fake news'* and the Australian Joint Standing Committee on Electoral Matters' *Report on the conduct of the 2016 federal election and matters related thereto*.

Government members' views

While the committee has conducted a thorough inquiry into elements of foreign interference in elections, and, as raised by some submitters, has come up with sound recommendations, some elements of donation-raising activity that has been prevalent in the media in the past 18 months cause concern and should be publicly noted in this report.

Government members are concerned about the circumstances surrounding the involvement of a former Minister in the previous National Government in the procuring of a \$150,000 donation from the Inner Mongolia Rider Horse Industry (NZ) Ltd that was received by the National Party and declared on 17 May 2017.

Government members note that the Inner Mongolia Rider Horse Industry (NZ) Ltd is a New Zealand registered company that is 100 percent owned by a China-based entity and controlled by a Chinese foreign national. We also note that Inner Mongolia Rider Horse Industry (NZ) Ltd carries out the business of exporting horses to China from New Zealand.

Government members believe it is noteworthy that a former Minister, less than a year before the donation was received, met with the founder of Inner Mongolia Rider Horse Industry (NZ) Ltd, Mr Lang Lin, in China in July 2016. The former Minister met again with Mr Lang in New Zealand not long after in their local electorate in April 2017. The former Minister has been quoted in the media as saying the local electorate meeting was where Mr Lang indicated “that Inner Mongolia Rider Horse Industry (NZ) Ltd would like to support the National Party”.

It has been publicly reported that, following these meetings with Mr Lang, the former Minister approached another National MP at the time to seek his support to collect a donation from Inner Mongolia Rider Horse Industry (NZ) Ltd. This took place by way of a series of phone calls and emails with agents for the company where, at the time, the former Minister was kept informed of developments either because he was in the other National MP's office when phone calls were taking place, or contact was made between the former Minister and the National MP at various intervals during the procurement process.

We believe this activity is alarming for the following reasons. Firstly, the former Minister had ministerial responsibility for policy interests of a foreign national that the former Minister then had discussions with regarding electoral donations. Secondly, while Inner Mongolia Rider Horse Industry (NZ) Ltd is a New Zealand-registered company, the ultimate shareholding is in China and the source of funding for the donation made by Inner Mongolia Rider Horse Industry (NZ) Ltd is unclear. It is impossible, without further scrutiny of the flow of funds, for the public to be satisfied that Inner Mongolia Rider Horse Industry (NZ) Ltd was not simply a transmitter for a foreign donor, rather than being the true donor utilising funds derived within New Zealand. Thirdly, it has been reported that the donation was made into the National Party bank account controlled by the local electorate of the National Party of which the former Minister is a member.

We do not believe the National Party or a former Minister in the previous Government has met the spirit or intent of the Electoral Act's restrictions on foreign donations. We further note the apparent foreign interference in New Zealand's democracy whereby a Minister has involved himself in the procurement of donations through discussions with a foreign national that has direct interests in the policy area that the Minister has responsibility for.

New Zealand cannot pretend its electoral laws provide for a high standard of transparency when a Minister, through connections formed in his capacity as a Minister, and utilising the assistance of another member of Parliament who is not subject to the same freedom of information requirements of the Official Information Act 1981, can effectively procure a donation from a company controlled by foreign interests.

National response

National notes that the matters above were not raised in submissions and this material was tabled at the committee at midday on 5 December 2019 with no opportunity for a reply or response. We note that this donation was disclosed, unlike the issues with New Zealand First, where no specific donations were declared for Election 2017.

Appendix A—Committee procedure and members

Committee procedure

Inquiry into 2016 local elections

On 20 October 2016, the Justice and Electoral Committee of the 51st Parliament resolved to conduct an inquiry into the 2016 Local Authority Elections. The committee made a public call for submissions with a closing date of 22 August 2017. The committee received 50 submissions from individuals and organisations listed in Appendix B; however, it did not consider them because the 51st Parliament ended.

Combined inquiry into general and local elections

On 26 July 2018, we resolved to consider the previous committee's inquiry together with an inquiry into the 2017 General Election. Submissions received on the Inquiry into the 2016 Local Authority Elections would be considered as part of the new, combined inquiry.

We met between 26 July 2018 and 5 December 2019 to consider this combined inquiry. We called for public submissions with a closing date of 21 September 2018. We received 51 submissions from individuals and organisations listed in Appendix B.

We also considered several issues relevant to our inquiry that were submitted on in relation to two bills. One was the Local Electoral Matters Bill that we reported on in December 2018. The other was the Local Government Regulatory Systems Amendment Bill, which was reported on by the Governance and Administration Committee in December 2018. That committee asked us to look into several issues that were raised during consideration but which were out of scope of the bill.

Call for further submissions on foreign interference

On 14 March 2019, we resolved to invite further submissions about how New Zealand could protect its democracy from inappropriate foreign interference. The closing date for these further submissions was 26 April 2019. We received 42 submissions from organisations and individuals listed in Appendix B.

Total submissions received

In total, we received submissions from 137 submitters. This includes submissions received by the previous committee on its inquiry into the 2016 local authority elections, submissions on our combined inquiry into local and general elections, and submissions on foreign interference.

We heard oral evidence from 44 submitters between 25 October 2018 and 27 August 2019.

Petitions

Petition 2014/60 of Andrew Mark Judd was presented to the 51st Parliament on 2 May 2016. The House initially referred it to the Local Government and Environment Committee of the 51st Parliament. It was transferred to the Justice and Electoral Committee on 7 June 2016.

At the start of the 52nd Parliament, we asked the Governance and Administration Committee to accept the petition because we considered the issues fell more appropriately within the local government responsibilities and expertise of that committee. That committee accepted our request and the petition was transferred to it on 31 January 2018. However, in May 2019, the Governance and Administration Committee asked us to consider receiving the petition back, because the issues raised by Mr Judd related to matters in our Inquiry into the 2017 General Election and 2016 Local Elections. We agreed, and the petition was transferred back to the Justice Committee on 23 May 2019.

Mr Judd made a written and oral submission on the inquiry which covered the same issues as his petition. We treated his evidence as addressing both his petition and the inquiry.

The petition of Kim Robinson for Deaf Action New Zealand was referred to us on 9 May 2018. We received written submissions from Deaf Action New Zealand, the Electoral Commission, and the Human Rights Commission. We heard oral evidence from Kim Robinson. We treated the evidence on the petition as addressing both the petition and the inquiry.

Committee members

Hon Meka Whaitiri (Chairperson and member from 31 July 2019)

Ginny Andersen (from 15 November 2017)

Hon Clare Curran (from 24 July 2019)

Hon Tim Macindoe (from 24 July 2019)

Hon Mark Mitchell (from 21 March 2018)

Greg O'Connor (from 15 November 2017)

Chris Penk (from 22 May 2019)

Hon Dr Nick Smith (from 21 March 2018)

Jami-Lee Ross participated in this item of business.

There were several changes to the committee's permanent membership during our consideration of this item of business. Other permanent members involved in our earlier consideration of this inquiry were:

Raymond Huo (Chairperson and member from 15 November 2017 to 31 July 2019)

Hon Maggie Barry (from 21 March 2018 to 22 May 2019)

Chris Bishop (from 15 November 2017 to 24 July 2019)

Dr Duncan Webb (from 15 August 2019 to 24 July 2019)

Appendix B—List of submitters

We considered submissions from the following 91 individuals and 46 organisations:

| Individuals | |
|-----------------------|-------------------------------------|
| Akshay Bajad | Freeman Yu |
| Alan Matteucci | Geoff Aitken |
| Alan Paterson | Geraldine Travers and Anna Lorck |
| Alec van Helsdingen | Graeme Ebbett |
| Andrew Judd | Harry Misselbrook |
| Anna Gould | Hazel Taylor |
| Benjamin Kearns | Heughan Rennie QC |
| Betty Shore | Hilda Halkyard-Harawira |
| Brian Webb | Hinewaito Bigham |
| Charles Crothers | Howie Tamati MBE |
| Christina Hemara | Jacques Windell |
| Christina Robertson | Jill Spicer |
| Colin Bell | Jodie Anne Somerville |
| Collin Blackman | Joel Gapes |
| Cr Soraya Peke-Mason | Julia Rapira |
| Daphne Bell | Kim Robinson (oral submission only) |
| Darrien Le Comte | Kirstin Dingwall |
| David Farrar | Kristy Robinson |
| David Howard | Leanne Hu |
| David Maclure | Louana Fruean |
| David Renwick | Matt Taylor |
| Dean Attewell | Matthew Baird |
| Dean Hyde | Matthew Peter Tait |
| Deanne Thomas | Maureen Stroud |
| Dr Jean Drage | Mawera Karetai |
| Elizabeth Grace Price | Michael Reddell |
| Frankie Letford | Michelle Davies |
| | Michelle Howie |

| |
|----------------------------|
| Mike Smith |
| Naisi Chen |
| Nicky Blake |
| Patrick McCombs |
| Paul Clark |
| Paul Eagle MP |
| Pauline Cochrane |
| Pauline Isaachsen |
| Peter Yearbury |
| Professor Andrew Geddis |
| Professor Anne-Marie Brady |
| Professor Jack Vowles |
| Qiubo Zhang |
| Rachael Fleming |
| Rachel Rolston |
| Ray Craig |
| Robert Frank Terry |
| Rodney Jones |
| Ross and Ellie Williamson |
| Rowan McCaffery |
| Samantha Cook |
| Sheldon Whittaker |
| Simione Faagutu |
| Stevie Turkington |
| Stuart Keene |
| Terry O'Connor |
| Thomas Harvey |
| Tiffany Wu |
| Timothy Kuhner |
| Tom Frewen |
| Tom Sear |
| Vishala Jekic |

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|--|
| Wakerori Rooney |
| William Oosterman |
| Yu Wu |
| Zhao Yang Jiang |
| Organisations |
| ActionStation |
| Advertising Standards Authority Incorporated |
| Auckland Council |
| Blind Citizens of New Zealand |
| Blind Foundation |
| Carterton District Council |
| Christchurch City Council |
| Deaf Action New Zealand |
| Disabled Persons Assembly NZ |
| Dunedin City Council |
| Electoral Commission |
| Falun Dafa Association of New Zealand |
| Government Communications Security Bureau |
| Greater Wellington Regional Council |
| Green Party of Aotearoa New Zealand |
| Hastings District Council |
| Henderson-Massey Local Board |
| InternetNZ |
| Kawerau District Council |
| Libertas Digital |
| Local Government New Zealand |
| MANA Movement |
| Maungakiekie-Tāmaki Local Board |
| National Council of Women of New Zealand |
| New Plymouth District Council |

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| New Zealand Labour Party |
| New Zealand Post Limited |
| New Zealand Security Intelligence Service |
| NZME Publishing Ltd |
| Pacific Institute of Resource Management |
| Palmerston North City Council |
| Postal Workers Union of Aotearoa |
| Rotorua District Residents and Ratepayers |
| Ruapehu District Council |
| Society of Local Government Managers |

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| Te Maruata |
| Te Taura Whiri i te Reo Māori / the Māori Language Commission |
| The Brainbox Institute |
| Titahi Bay Residents Association |
| Transparency International New Zealand |
| Waikato-Tainui |
| Waipa District Council |
| Wellington City Council |
| Wellington City Youth Council |
| Wellington Community Justice Project |
| Whau Local Board |

Appendix C—Glossary

Below is a list of some of the technical words and phrases used in this report.

| Term | Meaning |
|--------------------|---|
| astroturfing | The spreading of disinformation on the internet that appears to have grass-roots support but is actually from bots or people with vested interests. |
| bot account | A social media account belonging to a computer or robot (bot is short for robot) rather than a real person. |
| diaspora | A group of people who have immigrated from another country. |
| disinformation | False or misleading content that is designed to influence audience perceptions, opinions, or behaviour. |
| malinformation | Accurate information that is acquired or released to discredit an individual or group. Examples are email or data hacks and leaks. |
| misinformation | False or misleading information that comes from private citizens and has no underlying strategic purpose. |
| promoter statement | A mandatory statement on electoral advertisements showing the name and address of the person who has authorised the advertisement. |
| regulated period | A period of three months ending on the day of a general election during which extra requirements apply (for example, about advertising). |
| third parties | People or groups (other than candidates and political parties) that participate in or influence an election. |
| writ day | The day that the Governor-General formally instructs the Electoral Commission to hold an election. The writ is issued within 7 days of the dissolution of Parliament and a month before election day. |