



Electoral Review Submission

14 November 2022

Transparency International New Zealand (TINZ) is an accredited Chapter of [Transparency International](#), the global civil society organisation against corruption. TINZ is a not-for-profit incorporated society with charitable status. TINZ is non-partisan, non-sectarian and objective.

TINZ is governed and supported by volunteer experts, with a small staff. Those who have provided expert advice on this submission are John Hall, Ellie McKenzie, Brendon Wilson, Debbie Gee and Julie Haggie. In addition we are informed by our past research, integrity assessments and submissions.

Our key areas of focus in regards political integrity have tended towards political party financing, lobbying transparency, Māori electoral options and the capacity of the regulatory system supporting free democratic elections.

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What work has TINZ done in the general area of political and electoral transparency and integrity?

- ✓ National Integrity System Assessment (2003, 2013 and 2018 update) (see following page)
- ✓ Online Political Campaigning in New Zealand, Research paper, October 2020
- ✓ Submissions
- ✓ Promotion of integrity focus questions, and events for central and local elections (2018, 2020)
- ✓ Designing a transparency and governance tool for local government elected councillors (2022)
- ✓ TINZ is Secretariat to the NZ Chapter of the Global Organisation of Parliamentarians against Corruption. As part of that work it has provided two papers on lobbying transparency.

What premises underpin TINZ opinions, advocacy and activity in this area?

- Political and electoral Integrity are essential pillars of a national integrity system.
- Public trust in politicians can be expected to shift, but persistent trust in the electoral process is a necessary contributor to engagement of citizens in democracy.
- The votes of individuals need to count – they should not be undermined by bias due to private financial or other forms of power influence.
- New Zealand democracy is enhanced by specific Māori representation and by diversity in representation.
- A stable democracy has better potential to protect and enable citizen political and civil rights and the rule of law.
- Foreign and global influences and disinformation can undermine local democracy. Civics education assists people to make informed choices at the ballot box.
- People will vote when they believe their vote will have impact, when they feel connected to the issues and representatives, and when they have relevant and simple access to voting.

National Integrity System Assessment

Political and electoral Integrity as essential pillars of a national integrity system.

Every ten years TINZ undertakes an assessment of the elements that comprise New Zealand's National Integrity System, and in 2018 it undertook an update to the 2013 NIS. In 2023 TINZ will begin its NIS assessment. Three pillars of the NIS are more or less relevant to the Electoral Review: **Political Executive, Electoral Management Body, and Political parties.**

In its 2013 NIS Assessment, TINZ made many recommendations under these pillars. Since our 2018 update we have monitored progress on the 2013 and 2018 actions. These are summarised below.

Recommendation	TINZ Evaluation of progress against recommendations
<ul style="list-style-type: none"> Extend the coverage of the Official Information Act 1982 to the Parliamentary Counsel Office, Officers of Parliament, the Speaker in the role of Responsible Minister for parliamentary agencies under the Public Finance Act 1989, the Office of the Clerk, and the Parliamentary Service (sections 1.2.1 and 4.2.1). 	No action
<ul style="list-style-type: none"> Introduce a code of conduct for members of Parliament (section 1.2.6) 	Some progress <ul style="list-style-type: none"> Statement of Behavioural expectations, and Independent Person to review complaints established 2021-2022
<ul style="list-style-type: none"> Introduce measures that provide an adequate degree of transparency to ensure that public officials, citizens and businesses can obtain sufficient information on, and scrutinise lobbying of members of Parliament and ministers (section 2.2.26) 	Some progress <ul style="list-style-type: none"> Release of Ministerial diaries from 2019- Proactive release of cabinet papers But <ul style="list-style-type: none"> most government ministers failing to meet the guidelines on cabinet paper release. No register of lobbyists or lobbying guidelines
<ul style="list-style-type: none"> Review public funding of political parties, the allocation of broadcasting time to political parties and the restrictions on parties purchasing their own broadcast election advertising (section 10.1.1). Require greater transparency of the finances (including donations) of political parties (sections 10.2.1–10.2.4). 	Several changes made over time to <ul style="list-style-type: none"> restrict donations by foreign donors limit anonymous donations from NZ donors increase transparency of political party funding increase reporting to Electoral Commission of sizeable donations requiring publication of political party financial statements But: <ul style="list-style-type: none"> Donations by government contractors still allowed No upper limit to political contributions made to parties or candidates which are not anonymous No review of the allocation of broadcasting time No easy access by public to information about political party donations ahead of the election
<ul style="list-style-type: none"> Strengthen the Electoral Act 1993 to make the lines clearer between legal and illegal activities and investigate the options for strengthening enforcement in response to complaints (sections 10.2.3, 10.2.4, and 5.1.3) 	Very good progress: <ul style="list-style-type: none"> Changes made to merge agency work and legislation from 2010 to 2012 have borne fruit with a highly professional Electoral Commission, with an improved reasonable level of independence. But <ul style="list-style-type: none"> Still insufficient investigative or enforcement capability And hearings of Electoral Commission remain non transparent as do decisions made about electoral behaviour and political finance. There is insufficient monitoring and regulation of funding of online political advertising

Comment on Specific Questions in Electoral Review consultation paper

1.1-2.3 Thresholds, overhangs, ratio, term and dates, eligibility rules, enrolment process

- TINZ has not formed a view on 1.1-1.7, nor 2.1-2.3 – these are not within our ‘knitting’ as such. In general we support access, simplicity, transparency and accountability (including easy verifiability by the public). This increases confidence in the process and reduces the likelihood of misinformation.

2.4 What changes, if any, are needed to the Māori Electoral Option?

- The electoral process should be a means for Māori to exercise Tino Rangatiratanga. We reference the 1994 finding of the Waitangi Tribunal around changes to the relevant part of the Electoral Act: “..the Crown is under a Treaty obligation actively to protect Māori citizenship rights and, in particular, existing Māori rights to political representation conferred under the Electoral Act 1993. This duty of protection arises from the Treaty generally and in particular from the provisions of article 3. The Tribunal further finds that the partnership relationship the Treaty envisages should be founded on reasonableness, mutual co-operation and trust.”¹
- We support the passing of the Electoral (Māori Electoral Option) Legislation Bill. There is no compelling reason why Māori should be restricted in their ability to express their roll preference. In this respect the current arrangement undermines their Tino Rangatiratanga. The Electoral Commission said it continues to see large numbers of Māori voters trying to change roll types outside of the Māori Electoral Option and finding it frustrating that the law does not allow this. In 2020, 24,000 Māori asked to change rolls – 59 per cent from the Māori to the general roll and 41 per cent from the general to the Māori roll – but were not able to. In the 2017 election, 19,000 people requested to change rolls but could not.²
- The Electoral Commission has recommended timing changes since 2011. In its report to the Justice Select Committee in the 2018 review of the 2017 Election it noted that the setting up the Māori Electoral Option at the same time as the general is not working. Instead if a limited period to opt is chosen then it should either be timed around general elections, or preferably Māori should simply be allowed to change electoral roll at any time.³
- TINZ favours the simpler option of enabling Māori to change electoral rolls at any time. Assoc Prof. Maria Bargh notes that changes between rolls should coincide with the election because that is when the Electoral Commission is investing in information and awareness campaigns; that this makes it easier to be able to communicate the rules and regulations around the Māori electorates during that particular time.”⁴ We agree. However the perception and wish of Māori to be able to exert their roll preference at any time is important.

¹https://forms.justice.govt.nz/search/Documents/WT/wt_DOC_68338112/Maori%20Electoral%20Option%201994.pdf

² <https://www.nzherald.co.nz/nz/some-maori-frustrated-they-cant-switch-electoral-rolls-until-2024/RUE6SF4M2QGZFT6HMWB6FOFKPM/>

³ Electoral Commission, 2018c, p. 32.

⁴ <https://www.rnz.co.nz/news/te-manu-korihiki/421911/some-maori-frustrated-they-can-t-switch-electoral-rolls-until-2024>

- The failures in the 2018 Census, that particularly affected the counting of Māori, highlight the risks of relying on an online census tool, in combination with a five yearly electoral option tool to set electoral boundaries for a population that tends to have both lower digital connectivity and generally lower levels of engagement in national elections.⁵
- We support a broader review of the Māori Electoral option including consideration for Māori to switch between electoral rolls for both general and local government elections (and separately for each). We also agree that further research and community awareness raising is needed.
- We also agree with Assoc Professor Maria Bargh who has recommended, that:
 - 1.1.1 More awareness raising with Māori is needed to build knowledge and understanding about the significance of the Māori Electoral Option and its link to the number of Māori seats
 - 1.1.2 Much more research is needed on this complex topic, given its importance to Māori and New Zealand's constitutional arrangements.
 - 1.1.3 Equating the choice of electoral roll over a 4-month period with approval in itself of the Māori seats may be unhelpful. There are simply too many factors that could cause Māori to change or not change rolls during a 4-month period that can be completely unrelated to whether people support one electoral roll over another.

2.5 Do the current ways of voting, including special voting, meet voter needs? If not, what changes should be made?

2.6 What changes, if any, should be made to make voting more accessible?

- The Voting Attitudes and Behaviour survey shows that providing voting close to where people work and shop, and extending the period of advanced voting does encourage people to use that method to vote and is probably halting the declining interest in the power of the vote. In addition the advertising and communications provided (online, newspaper and the Easy Vote pack) are other effective methods to encourage people to vote.
- Problem still exist. Whilst it was great to see turnout in the Māori electorates growing to 69% and an increase in the number of voters of Māori descent on the Māori and general rolls growing by 15.1%, those of Māori ethnicity are still less likely to vote (64% versus 78% for non-Māori ethnicity). More of those of Māori ethnicity have less understanding of how to vote (9% versus 3% for non-Māori ethnicity). Non-voting Māori were more likely to have been considering voting, but significant numbers had access problems due to having to work. Also, more younger Māori have less confidence in or adequate knowledge of the electoral system.
- The report also shows that Pasifika people are less likely to be enrolled than non-Pasifika and that Pasifika and Asian people are more likely to cast a special vote. Pasifika and Asian people are also much less likely to have read the Easy Vote pack. Pasifika people are less likely to have found voting venues convenient for them. They are more likely to have voted just because of the accompanying referendums.

⁵ https://population.org.nz/app/uploads/2019/02/NZPR-Vol-44_Kukutai-and-Cormack.pdf

- It also shows that disabled people are least informed about the channels they can use to enrol or change their enrolment address, but that they were more likely to read through the easy vote pack and find it useful, and more likely to call the Electoral Commission number for information.
- We are sure that the Commission will be consulting with Māori, Pasifika and Asian and disability communities to make voting options and communications more relevant to people from those communities, and championed by those communities.

2.7 Are the safeguards protecting the integrity of the voting process strong enough? If not, what changes should be made?

- The Director-General of Security noted at the Select Committee hearing for the 2020 election⁶ that:
 - a) the NZSIS observed some limited activity related to the 2020 General Election but not an overall sustained or coordinated foreign interference campaign.
 - b) New Zealand needs to remain alive to these sorts of risks, which we see playing out in many democracies around the world.
 - c) A primary concern is foreign interference - 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.
 - d) Another concern is about the efforts of foreign governments to monitor or obtain influence over communities in New Zealand and to shape the information available to speakers of foreign languages, including through foreign language media and technology-enabled censorship. The security services have seen this occurring.
 - e) What security services have noted is foreign actors building influence and leverage over elected representatives and political parties, including through donations. This includes attempts to obscure the origin of donations to avoid the New Zealand laws. This can involve, for example, funds originating overseas, and being channelled through New Zealand citizens and permanent residents acting on behalf of foreign states.
- NZSIS and GCSB have adequate assessment processes and protocols in place to give assurances to our national security system, but there are most definitely threats to New Zealand's electoral integrity. Some additional actions (by Electoral Commission and others) could include:
 - a) More active engagement via political parties with potential candidates to advise the risks of interference and how to avoid them
 - b) More active engagement with migrant communities in New Zealand to ensure they have information in their own languages about the election process and information about the value of democracy and democratic processes in New Zealand

⁶ <https://www.nzsis.govt.nz/news/the-following-is-a-submission-by-the-director-general-of-security-nzsis-and-acting-director-general-of-the-gcsb-on-the-justice-committee-inquiry-into-the-2020-general-election-and-referendums/#:~:text=These%20are%3A,Malicious%20cyber%20activity.>

2.8-2.10 Emergencies, postponements, adjournments.

- We think the current arrangements for postponement or adjourning are sufficient, and stood up well for the postponement of the 2020 election date, which was in response to opposition party calls for a delay to allow parties to have a fair go at campaigning.
- In addition the recent amendments to the Electoral Act enabling the chief electoral officer to stop voting due to “an unforeseen or unavoidable disruption”, including an epidemic, have relieved some of the pressure on the single decision available to the PM, and have also enabled a decision to have a level of independence from the PM. The Electoral Act also allows the chief electoral officer to implement “alternative voting processes”, such as electronic voting. This is an appropriate safety backstop to have.
- We have seen recently in the Solomon Islands the postponement of the election on a very thin premise, and how that has undermined public confidence in the power used by the Executive.

2.11-2.12 – vote counting and integrity of vote count.

- There is very little public reporting on the level of informal voting. Statistics for disallowed and informal votes should be clearly distinguished. It is not easily obtainable on the Electoral Commission website as part of statistical analysis. Yet the Commission’s report in May 2021 to the Select Committee hearing on the 2020 election⁷ states that the number of informal votes almost doubled in 2020. As a proportion, 0.73% of party votes and 1.98% of candidate votes were informal, up from 0.41% and 1.19% in 2017. The Commission noted that “a similar doubling occurred at the 2011 election which appears to confirm that informal votes increase as a result of holding referendums with an election”.
- It is of some concern that people may be losing their right to vote due to a reaction to a referendum. We suggest that more care and communication is needed about how to avoid one’s vote being informal or disallowed, particularly when a referendum is being held.
- It was great to see that the number of disallowed votes fell from 6% in 2017 to 2% in 2020 (11,000 votes down from 27,000), meaning more votes count. The Commission noted that this is largely due to election day enrolment and improvements in enrolment services in voting places.
- We also support the recommendations⁸ by the Electoral Commission that there is legislative change to further enable overseas voters to vote (eg use of electronic signatures); to increase flexibility of special voting for overseas voters, to enable overseas voters to enrol and vote electronically in situations where pandemics do not allow them to come physically to a voting place; and to be able to use remote voting services and receive electronic correspondence in certain circumstances. In addition the Commission has made recommendations to allow for flexibility around special votes; early vote counting; and the ability to recognise if an envelope has been incorrectly enveloped.
- We recognise also that we are likely to transition to electronic voting at least as an option, and that the transition needs to be managed carefully to ensure no one is left behind.

⁷ <https://elections.nz/assets/2020-general-election/Report-of-the-Electoral-Commission-on-the-2020-General-Election-and-referendums.pdf>

⁸ <https://elections.nz/assets/2020-general-election/Report-of-the-Electoral-Commission-on-the-2020-General-Election-and-referendums.pdf>

3.1 What changes, if any, are needed to the system for a party to become and remain registered?

- We support the recommendation by the Commission for legislative change to add a statutory deadline, being the start of the regulated period, for party registration applications to be lodged with the Commission, to ensure certainty for applicants. This supports the intent of emerging political parties to ensure they meet deadlines, are familiar with rules and able to access broadcasting allocation time. Similarly we support the other recommendations made by the Commission about reviewing existing umbrella and component party provisions.
- TINZ would like to see political party financial information and auditing made available in a publicly searchable register. This would encourage and support the public to research parties that they intended to vote for and would encourage parties to ensure that their dealings were clear and above reproach.

3.2 -3 We have no comment on candidate eligibility rules, selection of party lists or candidate nomination process.

3.5 What changes, if any, should be made to political financing rules?

- Non-transparent practice has appeared in political party funding in recent years. There appear to be several causes including lack of due diligence and deliberate skirting of the law. There have also been instances of conflict of interest. A political party naturally wants to maximise its funding, but it is also the main actor in control of the accounting of the funding that it receives.
- Generally, these poor practices call for more intense reporting and auditing. TINZ considers that such auditing would be supported by a number of new requirements.
 - An increase in the frequency of non-anonymous donation reporting. A move to the publication of quarterly returns in non-election years and more frequent returns in an election year should ensure that a high quality of resource is spent by political parties on accounting for donations and loans.
 - The introduction of a simplified due diligence process for the payment of donations and loans to political parties. This process could mirror a basic level of the anti-money laundering due diligence required under the AMLCFT Act. TINZ does not see a requirement for such due diligence to extend to membership subscriptions paid to political parties, so long as such subscriptions remain fixed and non-variable.
 - The creation of a public register of political party donations and loans. This would include donations and loans made to third party non-commercial entities at the direction of natural persons who are political party candidates. It could also include an in-kind donations register. Similar to a gifts or pecuniary interests register, this register would be compulsory for candidates in an election year between the time the date for the election was set and the date of the election. It would disclose the receipt of any gifts of significant value by political party candidates.

3.6 How should parties and candidates be funded?

- The appropriate structure for the funding of parties and candidates is a substantive topic about which opinions vary. TINZ is more concerned with transparency elements within whatever structure exists, but in general supports the current mixed model (private/public).
- TINZ has consistently argued for greater transparency of the use of funding allocated to parties by Parliamentary Services. This is entirely opaque.
- Companies and organisations that contract to or supply government agencies should not be permitted to make donations to political parties or candidates. There is a risk that donations from such companies and organisations are perceived as being made in exchange for maintenance of supply or other contracts.
- Partly and fully owned public entities should not be permitted to make donations to political parties or candidates. State resources should never be used in favour or against a political party or candidate.

3.7 What changes, if any, should be made to election advertising and political campaigning rules?

3.8 What restrictions, if any, should apply to election advertising and campaign spending? Who should the restrictions apply to?

- We support the recommendation of the Electoral Commission for a review of the allocation criteria and the current broadcasting regime. As noted in our National Integrity System Assessment the current allocation embeds an unfair advantage for incumbent large parties.

A strong argument can be made that all parties contesting the list vote in New Zealand should receive exactly the same allocation of funding. Any other allocation is contrary to natural justice and notions of democracy and “level playing fields”. Electoral expert Alan McRobie supports this view, saying, “the differential allocations of state funding and broadcasting time appear to run counter to the long-standing objective of providing all who seek elective office with equality of opportunity”.

It appears that the commission’s allocation method is still based on the previous first past-the-post electoral system, when a cartel effectively operated in dividing up the broadcast allocation mostly between only Labour and National. Historically, the overall effect of this system may have helped consolidate the present players in the party system, prevent the entry of new competitors, and make it more difficult for small parties to grow.

Many countries allocate direct access broadcasting time on the basis of equality between the different political parties or candidates. Of course, it is not clear that the Electoral Commission can move to significantly more equality under the existing Broadcasting Act provisions. The commission does, however, have substantial discretion as to how much weight it gives for the criterion of “fairness” in its allocation model. At the moment, the fairness criterion appears to be afforded the least weight of all the criteria the commission considers.

(TINZ National Integrity System Assessment 2013)

- The introduction of advance voting and the high use of it generates inconsistency between the election day and advance voting advertising rules. We support the recommendation of the Electoral Commission that parties and candidates be allowed to broadcast election programmes from the start of the regulated period and that the use of allocation money for internet advertising not be restricted to advertising run during the election period.
- The Commission has recommended that an option could be for election day to have the same rules as advance voting which only bans advertising and influencing voters in voting places and inside the 10 metre buffer zone around voting places.
- It is important to ensure that payment for and procurement of election advertising is transparent. Secondly, it is also important to protect personal information from improper use in political campaigning.
- The public should be able to identify what advertising has been procured by which parties (or third parties associated to which political parties). This requires changes to recording of financial information but we also suggest wider recording obligations.
- We would recommend expense reports for all Parliamentary Service funded advertising. We would also like to see more detailed accounts of advertising accounts (from all sources of funding) made public. This would include a clear notation of what media were used and what expenses were incurred. We are keen to ensure that it is clear where the money comes from and what it is spent on.

4.1 What are your views on the roles and functions of the Electoral Commission?

- TINZ has recommended the Electoral Commission be given greater investigatory, enforcement and sanctions powers. We fully support the Commission's recommendation and the previous Justice Committee recommendations for legislative change to give effect to this change. We support the recent recommendation by the Commission that the Electoral Act include an overarching anti-collusion provision to aid enforceability.
- We also support the Commission's recommendation of the inclusion of 'adding failure to transmit a donation' as an offence to the Electoral Act to further strengthen the donations regime.
- Our 2013 NIS also noted the relative lack of transparency and reporting by the Commission of breaches of the Electoral Act, and compared to other jurisdictions where hearings are in public. This is a good time to review that responsibility. Most certainly any increase in investigation power should be accompanied by increased public transparency and reporting.

4.2 What are your views on how electoral rolls, including the unpublished electoral rolls, are maintained and accessed?

- TINZ supports the recommendation of the Electoral Commission for legislative change to remove electoral rolls and habitation indexes from general sale except to MPs, parties and candidates for electoral purposes, and that public inspection of an electronic copy of the roll is provided for only at national and regional offices of the Commission.
- TINZ also supports the Commission's recommendation for a review of the provisions for the sale and inspection of the Index to Places and Streets and clarification of the address information provided by Land Information New Zealand and their access to the habitation index for that purpose in relation to the use of data in political campaigning.

- The current availability of electoral rolls is out of step with our Privacy Legislation and with practice overseas.
- To protect the privacy of the public, we would also like to promote a code of practice to govern the use of personal information in political campaigns. The Privacy Commissioner might be an appropriate agency to work on such a code.
- There is too little transparency in how online advertising is managed by social media platforms and how users of the platforms are targeted. See our recommendations further below.

4.3 What changes, if any, are needed to the Representation Commission and the way electorate boundaries are set and named?

No comment

4.4 What changes, if any, should be made to the current offences, penalties, and mechanisms for enforcement?

- As noted above TINZ would like to see more funding and resources made available to the Electoral Commission to enable it to investigate electoral expenditure offences and issue penalties.
- We would also support inclusion in the Electoral Act of an overarching anti-collusion provision to aid enforceability.
- We support the inclusion of ‘adding failure to transmit a donation’ as an offence to the Electoral Act to further strengthen the donations regime.
- We would also like to see consideration of the capacity, enforcement power and scope of the Advertising Standards Authority to ensure that it obtains and maintains the full capability to address digital election complaints in a timely manner. Effective enforcement of offences against the Electoral Act are imperative to ensuring the ongoing integrity of the electoral system. (See recommendations in our Online Political Campaigning report)

4.5 What changes, if any, should be made to ways disputes over electoral rules or election outcomes are settled?

- As long as the dispute and outcome are transparently and publicly reported, we have no other comment to make

4.6 What, if anything, do you think should be done to reduce the risk of disinformation and misinformation influencing New Zealand’s elections?

- The government can do some things, by pressuring social media platforms to regulate disinformation. But the best change comes within communities, and enabled through civil society, including public journalism.
- Promotion of easy to read misinformation and disinformation guides, such as that currently provided by the UN/Wikihow [How to Fight Misinformation Online](https://www.wikihow.com/How-to-Fight-Misinformation-Online)⁹
- Promotion (and expansion including for NZ context) of online tools such as ‘Who targets me’
- Information provision about how to access Facebook ad library to see who is funding advertising.
- Please also see our Online Political Campaigning report¹⁰

⁹ <https://www.wikihow.com/How-to-Fight-Misinformation-Online>

¹⁰ <https://www.joshuaferrier.com/publication/online-political-campaigning-in-new-zealand/>

4.7 What, if anything, should be done to reduce the risk of foreign interference influencing New Zealand's elections?

- See our comments made earlier about the role and protocols of NZ security services.
- In relation to both misinformation, disinformation and foreign interference, TINZ believes it is important to increase the level of engagement conducted by the Electoral Commission with minority communities. Such engagement should include research on community attitudes to and understandings of democratic processes, influence, transparency and democratic accountability.
- Research of this kind should help to build a picture of existing misinformation, disinformation and interference threats. However, it could also be used to ensure that Electoral Commission messaging concerning democratic processes, transparency and democratic accountability reflect community understandings of democracy. It is important to realise that cultural understandings of democracy have a degree of legitimate difference between different cultures.

The recommendations of our 2020 Online Political Campaigning report are as follows

Recommendations

TI New Zealand identified four major recommendations to increase the level of transparency and accountability of online political campaigning in New Zealand.

Recommendation 1: Parliament should include, in its Select Committee inquiry into the 2020 election, consideration of legislation requiring those who sell advertisements directly or indirectly online to keep a public, searchable register of published election advertisements targeting New Zealanders, including detailed information on demographic microtargeting, ad reach, cost, and source of payment.

This was also recommended by Government members in the Parliamentary inquiry into the 2017 general election.¹¹ Online platforms have proven reluctant to add transparency measures. It is therefore up to New Zealand's parliament to require the creation of a strong transparency regime. Canada provides one model, requiring such a database from online providers depending on yearly traffic of each website. This recommendation is likely to be implemented in the next parliament.

Recommendation 2: The Electoral Commission should consider requiring parties, candidates, and third-party promoters to provide more detailed accounts of online ad buys and the medium of expenditure in their expense returns. Parliament should also consider passing legislation requiring itemised expense reports of all Parliamentary Service-funded advertising.

We consider that these common-sense transparency measures could shed much-needed light on online political expenditures. However we acknowledge that this is a relatively new and rapidly evolving medium of advertising, needing broader consideration. The Electoral Commission has statutory power to require more thorough itemization in expense returns, giving the public a clearer picture of what political actors are spending on online advertising. Publishing more detailed expense returns would give the public more information about how political actors are spending money to influence their vote. Finally, publicly funded Parliamentary Service allocations are opaque and present a clear conflict of interest.¹² The organization overseeing these expenditures, the Parliamentary Service Commission, is staffed by the political parties that benefit from the money. Basic disclosure standards should be followed for all publicly funded advertising expenditures. The Official Information Act 1982 should also be extended to cover the administration of Parliament.¹³

Recommendation 3: Parliament should include, in its Select Committee inquiry into the 2020 election, consideration of the enforcement capabilities of the Electoral Commission to investigate election expenditure offences and issue penalties.

¹¹ Ibid., 18.

¹² Transparency International New Zealand, 2019: 275.

¹³ Ibid., 280, 382.

The select committee report on the inquiry into the 2017 general election unanimously recommended giving the Electoral Commission power to investigate electoral offences, obtain evidence, and impose fines and other remedies for breaches of electoral law.¹⁴ The commission does not currently have the statutory powers of investigation or resources to fully enforce existing campaign finance provisions. Only the most flagrant violations lead to police referrals, and few of these result in prosecution.¹⁵ Legislative change will allow the commission to proactively enforce existing campaign finance regulations and penalise minor infractions to ensure a culture of compliance.

Recommendation 4: Parliament should include, in its 2021 Select Committee inquiry into the 2020 election, consideration of the capacity, enforcement power, and scope of the Advertising Standards Authority to ensure its continued ability to address digital election complaints in a timely manner. This should include whether the Advertising Standards Authority should extend its “rapid-response” elections unit to cover the beginning of every election year through polling day.

A substantial increase in the number of election complaints and the fast-track election complaint process in place close to polling day is a strain on the ASA’s limited resources. Hilary Souter, the Chief Executive of the ASA, noted that filling this funding gap would cost less than NZ\$100,000 (US\$66,000) to ensure the continuing ability of the ASA to address election complaints.¹⁶ Extending the fast-track complaint process to the beginning of the year would reflect the realities of a longer online campaign period, with parties spending heavily on online advertisements well in advance of polling day.¹⁷

Conclusion

In summary, New Zealand has core provisions in place that provide for the regulation of election advertisements. However, the growth of digital campaigning has yet to be met with a sufficiently robust response. Problems with regulation and enforcement, misinformation, and cybersecurity will continue to grow in the coming years. The recommendations presented provide a pathway forward to tackle these challenges head-on.

SUBMISSION ENDS

¹⁴ Justice Committee, 2019: 5.

¹⁵ Geddis, 2014: Chapter 9 and Justice Committee, 2019: 30–31.

¹⁶ Interview of Hilary Souter, Chief Executive, Advertising Standards Authority with author, July 28, 2020.

¹⁷ Cooke, “Stopping viral misinformation...”, 2019.