

**Government Response to Justice Committee report**

***Inquiry into the 2017 General Election and 2016 Local Elections***

**Presented to the House of Representatives**

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#### **Introduction**

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The Government welcomes the Justice Committee's report *Inquiry into the 2017 General Election and 2016 Local Elections* published on 10 December 2019. The Government has examined the recommendations and responds to the report in accordance with Standing Order 252.

#### **Background**

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In July 2018, the Justice Committee initiated an inquiry into the 2017 General Election and 2016 Local Elections. In March 2019, it called for further submissions on the specific issue of how New Zealand can protect its democracy from inappropriate foreign interference.

The Committee's report makes 55 recommendations, divided into three chapters:

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

#### **Government Response**

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The Government thanks the Justice Committee for the comprehensive work it put into the preparation of its report. It responds to each chapter below.

##### **Response to Chapter 1: 2017 General Election**

Chapter 1 of the Committee's report makes fourteen recommendations for changes to the Electoral Act 1993 and the Broadcasting Act 1989.

As discussed further below for chapter three, some recommendations have already been progressed. Other recommendations are for significant changes. For example, the Committee recommends giving the Electoral Commission investigatory, enforcement and sanction powers (recommendation 13).

The Government considers that the Electoral Act 1993, parts of which were carried over from the Electoral Act 1956 and are over sixty years old, needs to be modernised. It proposes a comprehensive review of electoral law, to take place over the next two parliamentary terms. This timeframe will allow for an appropriate level of consultation and ensures that policy issues can be examined in sufficient depth before being implemented.

The review will commence following the next general election and will consider the recommendations for changes to electoral law made by the Committee in Chapter 1, among other matters. Cabinet will consider the scope and process for the review in due course. However, given the constitutional importance of electoral law, it will be important for the review to have a degree of independence from government.

The Committee recommended that the Government ask the Electoral Commission, in its report on the 2020 General Election, specifically to address the issue of astroturfing<sup>1</sup> and ways that New Zealand can deal with it (recommendation two). While policy responses will be considered as part of the comprehensive review of electoral law, the Government has asked the Commission to report on any trends it observes on social media use, including astroturfing, in the next election.

The Committee also recommended that the Government consider the matters raised by Blind Citizens NZ and Deaf Action New Zealand, which relate to making electoral processes more accessible (recommendation nine). Accessibility of electoral processes will be considered as part of the comprehensive review of electoral law but not all of the matters raised need to await that review. For example, the Electoral Commission advises that it plans to have secure video interpreter services available in polling booths for the 2020 General Election. The intention is for those services to be offered in one voting place in every electorate. The Government commends the rollout of this, and other initiatives that support political participation by New Zealanders with disabilities.

## **Response to Chapter 2: 2016 Local Elections**

The Committee makes twenty recommendations for local elections. The recommendations included aligning local electoral processes with general election processes, standardising and centralising local electoral processes and voting methods respectively and streamlining administrative processes.

The Committee also recommended Government consider the need to regulate security protections of voting boxes in public places and require the administrator of local elections to ensure local election information is provided in accessible formats.

### *Recommendations Government agrees to consider*

The Committee made recommendations that the Government agrees to consider. The recommendations are:

- requiring candidates to provide satisfactory evidence of citizenship (recommendation 30).

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<sup>1</sup> Astroturfing refers to a campaign designed to look like it is a genuine grass-roots movement, such as by the use of bots, fake accounts and trolls in social media.

- making enrolment on the ratepayer electoral roll continuous unless a ratepayer no longer wishes to remain enrolled or ceases to be eligible (recommendation 31).
- introducing amendments to the necessary legislation to give local authorities access to the supplementary roll and the deletion files held by the Electoral Commission (recommendation 32).
- introducing amendments to allow the electronic receipt candidate nomination forms and candidate statements (recommendation 29).
- considering the need to regulate providing security protections for vote collection boxes in public areas (recommendation 19).
- aligning local election advertising rules with general election advertising rules (recommendation 26).

The Government will consider how best to respond to the Justice Committee's recommendation. The Government notes that some aspects are best considered subsequent to the Government's proposed comprehensive review of the Electoral Act.

- supporting a trial of advanced booth voting (recommendation 20).

The Government is investigating what changes to voting rules are necessary to align booth voting with voters' needs.

- aligning local election overseas voting processes with general election overseas voting processes (recommendation 23).

The Government intends to provide practicable ways to enable overseas voting in a manner similar to general elections.

The Government considers these recommendations will streamline local electoral practices, reduce administration, and positively impact candidate and voter turnout.

#### *Recommendations to consider as other priorities allow*

A key theme of the Committee's recommendations is centralisation of aspects of local elections delivery, and standardisation of local election practices. This included giving responsibility for running all aspects of local elections to the Electoral Commission (recommendations 15, 16, 18, 23, 24 and 34).

Centralising the delivery of local elections is a fundamental change. There may be some benefits from centralisation of some aspects of local election delivery, but this would need to be carefully worked through as other priorities allow. The Committee, in its Inquiry into the 2019 Local Election has sought public feedback on its

centralisation recommendations, and the Government looks forward to receiving the Committee's further advice in its report on this inquiry.

The Committee recommended that Government introduce requirements in legislation for elected members of local authorities to disclose financial and certain other interests that align with those that apply to members of Parliament. Government agrees to consider this as part of any future work on elected local authority members but notes this will be considered in the context of the proposed comprehensive review of the Electoral Act.

The Committee recommended aligning District Health Boundaries with local authority boundaries. The Government has commissioned a New Zealand Health and Disability System Review, which will consider the overall function of the health and disability system, including institutional and governance arrangements. The final report is due on 31 March 2020. District Health Board governance and boundaries will be considered as part of the response to that broader review.

The Committee recommended that Government introduce requirements to ensure local election information formats are accessible. Government acknowledges this recommendation and is considering how best to make local election information accessible to persons with disabilities.

The Committee's recommendation that Government should introduce a funding support model for local elections similar to the new Election Access Fund for general elections (recommendation 22) will be considered by Government as part of its review of the operation of that Fund<sup>2</sup>.

#### *Recommendations not to be progressed*

The Government does not propose to progress the Committee's recommendation to require candidates to provide evidence if they represent a non-registered political organisation (recommendation 25). Section 57 of the Local Electoral Act already allows an electoral officer to request a candidate produce sufficient evidence that they are affiliated to a claimed group.

The Government does not propose moving the polling date for local elections to avoid school holidays (recommendation 28) as there is little evidence to suggest that the polling date adversely impacts voter turnout.

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<sup>2</sup> The Election Access Fund will come into force from 1 July 2021, for any subsequent by-elections and general elections. Section 9 of the Election Access Fund Act 2020 requires the Minister of Justice to review the operation and effectiveness of the Act, including the operation, purpose, and scope of the Fund within approximately 12 months of the 2023 General Election.

The Government does not propose filling extraordinary vacancies that occur within 12 months after a triennial local body election, with the next highest polling candidate or Single Transferrable vote equivalent (recommendation 33). The Government considers this approach would contravene democratic principles and adversely impact effective voter representation.

### **Response to Chapter 3: Foreign interference in New Zealand elections**

The Government agrees with the Committee that there is a real risk of foreign interference in future New Zealand elections. The Government notes the evidence of the Directors-General of the Government Communications Security Bureau (GCSB) and New Zealand Security Intelligence Service (NZSIS) to the Committee that there are credible reports of interference campaigns in the elections of other countries and those are increasing in their sophistication. The Directors-General also noted that motivated state actors work assiduously over many years, including in New Zealand, to covertly garner influence, access and leverage.

The Committee made 21 recommendations to address these risks. The Government has already taken progressed some of the recommendations and agrees that there is further work to be done, as described further below.

#### *Recommendations already progressed*

In December last year the Government enacted the Electoral Amendment Act 2019. It provides additional safeguards against foreign interference ahead of the 2020 General Election. This Act banned candidate and party donations from overseas persons. This is to reduce the risk of foreign money influencing our political process and send a clear signal that foreign interference in our democratic processes is not welcome.

The Act also:

- introduced a new positive duty on candidates or party secretaries to take reasonable steps to satisfy themselves that a donation or contribution over \$50 is not from an overseas person (partially implementing recommendation 14)
- required that a party secretary, or any person acting in the position of secretary, must reside in New Zealand (recommendation 45), and
- extended the requirement in section 221A of the Act, to include publisher name and address details on election advertisements, to apply to advertisements in all medium (recommendation 3).

The GCSB and NZSIS have also progressed recommendations 35, 36, 37 and 38. The GCSB and NZSIS Directors General completed briefings to all Members of Parliament in September 2019 on the risks of foreign interference to our democracy, and provided advice on how to mitigate these risks. All political party presidents have

subsequently been offered briefings on how to improve their party's protective security practices.

The GCSB and NZSIS are also establishing relationships with the local government sector (recommendations 36-37). Last year the GCSB and NZSIS Directors General spoke to mayors and local body chief executives to raise awareness of foreign interference risks across the local government sector. The GCSB has also engaged with local government ICT managers.

In line with recommendation 40, the Government has no plans to move away from paper-based voting systems. The Government is working on refreshing local election regulations to ensure practicable and accessible paper voting opportunities can be provided in the 2022 local elections.

#### *Recommendations Government agrees to consider*

The Committee also recommends further reform to electoral law to address foreign interference risks (recommendations 41, 44, and 46-50). These recommendations include:

- only allowing persons or entities based in New Zealand to sponsor and promote electoral advertisements (recommendation 46), and
- examining how to prevent transmission of donations through loopholes, for example, shell companies or trusts (recommendation 48).

The Government agrees that further work on the Committee's recommendations for changes to electoral finance law is needed. The Government will consider whether some of these recommendations could be suitable for progressing through an Electoral Amendment Bill to be passed before the 2023 general election. However, electoral finance law, including any of the Committee's recommendations not already progressed, will be considered as part of the comprehensive review of electoral law.

Some of the Committee's recommendations relate to funding agencies for their activities in combatting foreign interference (recommendations 36 and 39). The Government will take these recommendations into account when determining agency resources. As noted above, some of these activities are already occurring with existing funding.

The Committee recommends 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 (recommendation 55). The Government agrees that this matter should be considered as part of the upcoming review of media content regulation by the Ministry for Culture and Heritage and Department of Internal Affairs.

The Committee also recommended that the Government carry out further policy work in two other areas: social media content and disinformation, and lobbying transparency.

## (1) Social media content and disinformation

The Committee recommended that the government:

- consider the applicability of recommendations relating to foreign interference via social media content from the UK and Australia (recommendation 43)
- engage with social media platforms and explore regulatory tools that would assert New Zealand's strong tradition of free speech (recommendation 52).

New Zealand's electoral law already contains measures that reduce the risks posed by disinformation campaigns, such as electoral advertising rules that apply online. The Electoral Commission is engaging with social media platforms ahead of the 2020 General Election as part of its role in encouraging compliance with our electoral advertising rules.

The comprehensive review of electoral law will consider electoral advertising on social media and whether there is a need for greater transparency or new obligations on social media platforms, as have been introduced in some other countries.

The UK and Australian reports the Committee refers to also discuss broader issues, such as whether there should be greater regulation of the harms caused by social media platforms and digital literacy programs.

The Ministry for Culture and Heritage and the Department of Internal Affairs are also scoping a review of media content regulation. Ministers will likely consider the inclusion of regulation of content on social media within the scope of the review when they report to Cabinet on terms of reference later this year. More comprehensive work on disinformation at this time requires a multi-agency approach and would have to be suitably resourced.

## (2) Lobbying transparency regimes

The Committee recommended that the Government investigate whether the Australian foreign influence transparency scheme is applicable to New Zealand (recommendation 51). The Government agrees that there is merit in considering whether requirements for more transparency of political lobbying activities would be worthwhile in New Zealand. The Government also agrees with the Committee that such work will need to consider how strong the evidence is of a problem in this area relative to the costs of introducing any such requirements. The Government will prioritise this work alongside other Government priorities.

### *Recommendations not to be progressed*

The Government does not propose to progress the Committee's recommendations that it:

- consider requiring all media organisations to have a majority of board members who live in New Zealand (recommendation 53), and

- prohibit foreign governments or foreign state entities from owning or investing in media organisations in New Zealand (recommendation 54).

In certain trade agreements New Zealand has committed not to treat foreign media service suppliers less favourably than domestic media service suppliers. We also have investment obligations relating to the composition of senior management positions and boards of directors.

However, the Phase Two reform of the Overseas Investment Act 2005 will enhance the Government's ability to manage risks associated with foreign control of media entities. It will:

- increase Ministers' discretion when considering investments already subject to the Overseas Investment Act through a National Interest Test (allowing them to decline any prospective investment deemed contrary to New Zealand's national interest),
- grant Ministers the power to block investments in certain other assets not ordinarily subject to the Overseas Investment Act, including media entities worth less than \$100m (or the relevant higher amount available to some partners under New Zealand's Free Trade Agreements), if the investment in those assets posed a material risk to national security or public order.

A Bill implementing the Phase Two reform of the Overseas Investment Act is anticipated to be introduced in early 2020.