

# Departmental Disclosure Statement

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Electoral Amendment Bill (No 2)

The departmental disclosure statement for a government Bill seeks to bring together in one place a range of information to support and enhance the Parliamentary and public scrutiny of that Bill.

It identifies:

- the general policy intent of the Bill and other background policy material;
- some of the key quality assurance products and processes used to develop and test the content of the Bill;
- the presence of certain significant powers or features in the Bill that might be of particular Parliamentary or public interest and warrant an explanation.

This disclosure statement was prepared by the Ministry of Justice.

The Ministry of Justice certifies that, to the best of its knowledge and understanding, the information provided is complete and accurate at the date of finalisation below.

29 November 2019

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## Part One: General Policy Statement

The Bill makes several changes to the Electoral Act 1993 to send a clear signal that only those who are part of New Zealand's democracy, and who live in, or have a strong connection to, this country, should participate in our electoral system.

### *Ban on donations from overseas persons*

The Bill amends the Electoral Act 1993 to restrict donations from overseas persons to political parties and candidates, to reduce the risk of foreign money influencing the election process.

The changes are being applied only to parliamentary elections, not local elections.

The Bill bans candidates and parties from accepting donations over \$50 from an overseas person in any form.

The definition of an overseas person in the Electoral Act 1993 is not being changed.

The ban applies to donations from—

- an individual who resides outside New Zealand and is neither a New Zealand citizen nor registered as an elector:
- a body corporate incorporated outside of New Zealand:
- an unincorporated body that has its head office or principal place of business outside New Zealand.

Candidates and party secretaries are required to take all reasonable steps to satisfy themselves that a donation over \$50 is not from an overseas person. Candidates and party secretaries will not be guilty of an illegal practice if they take reasonable steps, in the circumstances of the donation, to ensure that they do not accept or retain a donation over \$50 from an overseas person.

### *Other minor and technical changes*

The Bill introduces 2 further measures to minimise the risk of foreign interference.

These are—

- a party secretary, or any person acting in the position of secretary, must live in New Zealand:
- the offence of promoting anonymous advertisements relating to an election is extended so that it applies to all advertising mediums, including online advertising, in order to deter misleading anonymous online advertisements. This provision includes exemptions for online content that represents the personal political views of an individual.

## Part Two: Background Material and Policy Information

### Published reviews or evaluations

<b>2.1. Are there any publicly available inquiry, review or evaluation reports that have informed, or are relevant to, the policy to be given effect by this Bill?</b>	<b>YES</b>
The Justice select Committee's ongoing <i>Inquiry into the 2017 General Election and 2016 Local Elections</i> which includes in its terms of reference, a review of the risk of foreign interference to New Zealand's democracy. <a href="https://www.parliament.nz/en/pb/sc/business-before-committees/document/INQ_78888/inquiry-into-the-2017-general-election-and-2016-local-elections">https://www.parliament.nz/en/pb/sc/business-before-committees/document/INQ_78888/inquiry-into-the-2017-general-election-and-2016-local-elections</a>	

### Relevant international treaties

<b>2.2. Does this Bill seek to give effect to New Zealand action in relation to an international treaty?</b>	<b>NO</b>
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### Regulatory impact analysis

<b>2.3. Were any regulatory impact statements provided to inform the policy decisions that led to this Bill?</b>	<b>YES</b>
<i>Impact Summary: Mitigating foreign interference through party and candidate donations</i> Prepared 17 October 2019	

<b>2.3.1. If so, did the RIA Team in the Treasury provide an independent opinion on the quality of any of these regulatory impact statements?</b>	<b>NO</b>
The Regulatory Impact Statements did not meet the threshold for receiving an independent opinion on quality from the Regulatory Impact Analysis Team based in the Treasury.  The Regulatory Impact Statement was assessed internally by the Ministry of Justice Regulatory Impact Assessment Quality Assurance Panel. It was determined to partially meet the quality assurance criteria.	

<b>2.3.2. Are there aspects of the policy to be given effect by this Bill that were not addressed by, or that now vary materially from, the policy options analysed in these regulatory impact statements?</b>	<b>NO</b>
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### Extent of impact analysis available

<b>2.4. Has further impact analysis become available for any aspects of the policy to be given effect by this Bill?</b>	<b>NO</b>
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<b>2.5. For the policy to be given effect by this Bill, is there analysis available on:</b>	
<b>(a) the size of the potential costs and benefits?</b>	<b>YES</b>
<b>(b) the potential for any group of persons to suffer a substantial unavoidable loss of income or wealth?</b>	<b>NO</b>
The Regulatory Impact Statement contains discussions of the costs and benefits of the policy proposals.	

<b>2.6. For the policy to be given effect by this Bill, are the potential costs or benefits likely to be impacted by:</b>	
<b>(a) the level of effective compliance or non-compliance with applicable obligations or standards?</b>	<b>YES</b>
<b>(b) the nature and level of regulator effort put into encouraging or securing compliance?</b>	<b>YES</b>
The Regulatory Impact Statement discusses the potential compliance obligations for parties, candidates and the Electoral Commission.	

## Part Three: Testing of Legislative Content

### Consistency with New Zealand's international obligations

**3.1. What steps have been taken to determine whether the policy to be given effect by this Bill is consistent with New Zealand's international obligations?**

The Ministry of Justice analysed the Bill and did not identify any international obligations that conflict with the policies contained in the Bill.

### Consistency with the government's Treaty of Waitangi obligations

**3.2. What steps have been taken to determine whether the policy to be given effect by this Bill is consistent with the principles of the Treaty of Waitangi?**

The Ministry of Justice analysed the Bill and did not identify any inconsistency with the Treaty principles.

### Consistency with the New Zealand Bill of Rights Act 1990

**3.3. Has advice been provided to the Attorney-General on whether any provisions of this Bill appear to limit any of the rights and freedoms affirmed in the New Zealand Bill of Rights Act 1990?**

**YES**

The Crown Law Office has provided advice to the Attorney-General. This advice will be available on the Ministry's website at <https://www.justice.govt.nz/justice-sector-policy/constitutional-issues-and-human-rights/bill-of-rights-compliance-reports/>

### Offences, penalties and court jurisdictions

**3.4. Does this Bill create, amend, or remove:**

**(a) offences or penalties (including infringement offences or penalties and civil pecuniary penalty regimes)?**

**YES**

**(b) the jurisdiction of a court or tribunal (including rights to judicial review or rights of appeal)?**

**NO**

Clause 10 amends an existing offence at section 207L of the Electoral Act 1993 to provide that a candidate or party secretary who receives a donation from an overseas person will not be guilty of an illegal practice if they take reasonable steps, in the circumstances of the donation, to ensure that a donation over \$50 was not from an overseas person.

Clause 17 extends an existing offence provision at section 221A of the Electoral Act 1993 to cover all advertising in any medium, including online.

**3.4.1. Was the Ministry of Justice consulted about these provisions?**

**NO**

The provisions were developed by the Ministry of Justice.

## Privacy issues

<b>3.5. Does this Bill create, amend or remove any provisions relating to the collection, storage, access to, correction of, use or disclosure of personal information?</b>	<b>YES</b>
Clauses 12 and 13 remove the requirements on party secretaries and candidates to collect and disclose the names of overseas persons making donations, as donations over \$50 will no longer be allowed.	

<b>3.5.1. Was the Privacy Commissioner consulted about these provisions?</b>	<b>NO</b>
There are no privacy implications as the changes only relate to the collection and disclosure of personal information of overseas persons, which will no longer be collected. The change will not alter existing collection and disclosure requirements in candidate and party returns for donations from permissible sources.	

## External consultation

<b>3.6. Has there been any external consultation on the policy to be given effect by this Bill, or on a draft of this Bill?</b>	<b>YES</b>
The Electoral Commission was consulted on the policy and the draft Bill.	

## Other testing of proposals

<b>3.7. Have the policy details to be given effect by this Bill been otherwise tested or assessed in any way to ensure the Bill's provisions are workable and complete?</b>	<b>NO</b>
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## Part Four: Significant Legislative Features

### Compulsory acquisition of private property

4.1. Does this Bill contain any provisions that could result in the compulsory acquisition of private property?	NO
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### Charges in the nature of a tax

4.2. Does this Bill create or amend a power to impose a fee, levy or charge in the nature of a tax?	NO
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### Retrospective effect

4.3. Does this Bill affect rights, freedoms, or impose obligations, retrospectively?	NO
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### Strict liability or reversal of the usual burden of proof for offences

4.4. Does this Bill:	
(a) create or amend a strict or absolute liability offence?	YES
(b) reverse or modify the usual burden of proof for an offence or a civil pecuniary penalty proceeding?	NO
As noted above, clause 10 amends the existing strict liability offence at section 207L of the Electoral Act 1993, and places a reverse onus on party secretaries to prove that they took all reasonable steps in the circumstances to check that a donation over \$50 was not from an overseas person.,	

### Civil or criminal immunity

4.5. Does this Bill create or amend a civil or criminal immunity for any person?	NO
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### Significant decision-making powers

4.6. Does this Bill create or amend a decision-making power to make a determination about a person's rights, obligations, or interests protected or recognised by law, and that could have a significant impact on those rights, obligations, or interests?	NO
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### Powers to make delegated legislation

4.7. Does this Bill create or amend a power to make delegated legislation that could amend an Act, define the meaning of a term in an Act, or grant an exemption from an Act or delegated legislation?	NO
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4.8. Does this Bill create or amend any other powers to make delegated legislation?	NO
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### Any other unusual provisions or features

4.9. Does this Bill contain any provisions (other than those noted above) that are unusual or call for special comment?	NO
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