

Hon Andrew Little
Minister of Justice

Proactive release – Cabinet Paper: Banning Foreign Donation to Parties and Candidates

Date of issue: 20 December 2019

The following documents have been proactively released in accordance with Cabinet Office Circular CO (18) 4.

Some information has been withheld on the basis that it would not, if requested under the Official Information Act 1982 (OIA), be released. Where that is the case, the relevant section of the OIA has been noted and no public interest has been identified that would outweigh the reasons for withholding it.

No.	Document	Comments
1	Banning Foreign Donation to Parties and Candidates <i>Cabinet Paper</i> Office of the Minister of Justice 23 October 2019	Some information has been withheld in accordance with section 6(a) of the OIA to prevent prejudice to the security or defence of New Zealand or the international relations of the Government of New Zealand, and section 9(2)(f)(iv) of the OIA to protect the confidentiality of advice tendered by Ministers of the Crown and officials. No public interest has been identified that would outweigh the reasons for withholding it.
2	Regulatory Impact Analysis: Mitigating foreign interference through party and candidate donations Ministry of Justice 17 October 2019	The Regulatory Impact Assessment is publicly available at https://treasury.govt.nz/publications/search and www.justice.govt.nz/justice-sector-policy/publications/ .
3	Banning Foreign Donations to Parties and Candidates <i>Cabinet Minute: SWC-19-MIN-0163</i> Cabinet Office 23 October 2019	Some information has been withheld in accordance with section 6(a) of the OIA to prevent prejudice to the security or defence of New Zealand or the international relations of the Government of New Zealand, and section 9(2)(f)(iv) of the OIA to protect the confidentiality of advice tendered by Ministers of the Crown and officials. No public interest has been identified that would outweigh the reasons for withholding it.
4	Electoral Amendment Bill (No 2): Approval for Introduction <i>Cabinet Paper</i> Office of the Minister of Justice 18 November 2019	Some information has been withheld in accordance with section 6(a) of the OIA to prevent prejudice to the security or defence of New Zealand or the international relations of the Government of New Zealand, and section 9(2)(f)(iv) of the OIA to protect the confidentiality of advice tendered by Ministers of the Crown and officials. No public interest has been identified that would outweigh the reasons for withholding it. The copy of the Electoral Amendment Bill (No 2) provided to Ministers with this paper has been withheld in accordance with section 61 of the Legislation Act 2012 and section 9(2)(h) of the OIA to maintain legal professional privilege.

5	<p>Electoral Amendment Bill (No 2): Approval for Introduction <i>Cabinet Minute:</i> CAB-19-MIN-0597 Cabinet Office 18 November 2019</p>	<p>Some information has been withheld in accordance with section 9(2)(f)(iv) of the OIA to protect the confidentiality of advice tendered by Ministers of the Crown and officials. No public interest has been identified that would outweigh the reasons for withholding it.</p>
6	<p>Electoral Amendment Bill (No 2): Additional due diligence requirement <i>Cabinet Paper</i> Office of the Minister of Justice 2 December 2019</p>	<p>Some information has been withheld in accordance with section 9(2)(f)(iv) of the OIA to protect the confidentiality of advice tendered by Ministers of the Crown and officials. No public interest has been identified that would outweigh the reasons for withholding it.</p> <p>The copy of the Electoral Amendment Bill (No 2) provided to Ministers with this paper has been withheld in accordance with section 61 of the Legislation Act 2012 and section 9(2)(h) of the OIA to maintain legal professional privilege.</p> <p>Legislative instruments are publicly available at www.legislation.govt.nz/.</p> <p>The Departmental Disclosure Statement is publicly available http://disclosure.legislation.govt.nz.</p>
7	<p>Electoral Amendment Bill (No 2): Additional due diligence requirement <i>Cabinet Minute:</i> CAB-19-MIN-0636 Cabinet Office 2 December 2019</p>	<p>Some information has been withheld in accordance with section 9(2)(f)(iv) of the OIA to protect the confidentiality of advice tendered by Ministers of the Crown and officials. No public interest has been identified that would outweigh the reasons for withholding it.</p>

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Office of the Minister of Justice
Chair, Cabinet Social Wellbeing Committee

BANNING FOREIGN DONATION TO PARTIES AND CANDIDATES

Proposal

1. I seek Cabinet's agreement to ban foreign donations to political parties and candidates. In light of the changing international environment, this will send an immediate signal that foreign interference in New Zealand's politics is not welcome.

Executive summary

2. s6(a)
[REDACTED]
3. The risk of foreign interference is of real concern – it is an international phenomenon and New Zealand is not immune. Modest reform before the next election will provide some safeguards. More importantly perhaps, it will send a clear signal that the Government considers this an issue that warrants immediate attention.
4. I am therefore proposing, in the short term, to introduce a ban (with a de minimis threshold of \$50) on foreign donations to political parties and candidates. This will 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. In order to make this change before the next election, I am seeking to enact a second Electoral Amendment Bill, by December 2019.¹
5. The proposed ban on foreign donations is just a start. s6(a)
[REDACTED]
A thorough reform of the donations and electoral advertising regime is not possible in the time available before the next election. It is also evident that a comprehensive review and possibly a rewrite of the Electoral Act 1993 is overdue. This would best be carried out through a highly consultative process over the next two Parliamentary terms, to allow changes to be enacted well in advance of a general election.
6. The Justice Committee is due to report back shortly on its consideration of potential risks and mitigations relating to foreign interference (which has formed part of its Inquiry into the 2017 General Election and 2016 Local Elections). I will be considering its recommendations very carefully.

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The proposals in this paper are focused on foreign donations at parliamentary level. There may be benefits in aligning some of the rules for local elections, but these do not need to be addressed in the same urgent time frame.

Background

s6(a)



The Justice Committee will shortly be making recommendations on foreign interference

10. At my request, the Justice Committee called for and heard from submitters on the risk of foreign interference to our democracy, as part of its Inquiry into the 2017 General Election and 2016 Local Elections. The Committee's Inquiry covered a wide range of issues including hacking, online social media and disinformation, foreign and corporate donations and online advertising and advertising by overseas promoters.
11. I understand the Committee is likely to table its report in mid-November. Its Inquiry has covered a significant number of issues, and I anticipate its recommendations will be equally wide-ranging. We will need to allow sufficient time to work through the Committee's recommendations in detail, particularly those that extend beyond pure 'electoral' matters to issues of online and social media regulation. The Committee's recommendations will help inform the work already underway across government on these issues.

Banning donations from overseas persons

Donations are a legitimate form of political participation

12. Donations to political parties and candidates are a legitimate form of political participation. Our existing donations rules aim to balance freedom of expression with transparency, through a series of limitations on the amounts that can be donated, and public disclosure of donations over certain thresholds.
13. There is concern, however, that foreign governments could leverage influence through political donations. This arises particularly when some aspect of a donation is obscured or is channelled in a way that prevents scrutiny of its origin. The concern is that once a relationship of influence or sense of reciprocity is established, it may be used as leverage to facilitate future interference.

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We already have restrictions on the amount of foreign donations

14. The Electoral Act 1993 already restricts overseas persons donating to candidates and political parties in New Zealand. Donations from an overseas person (either as a single donation or aggregate) cannot exceed:
 - \$1,500 for a political party in a calendar year; and
 - \$1,500 for a candidate in respect of their election campaign.
15. Any amount received above this \$1,500 threshold must either be returned to the overseas person, or sent to the Electoral Commission if it cannot be returned.
16. An overseas person is defined as:
 - an individual who resides outside New Zealand, and is neither a New Zealand citizen nor registered as an elector; or
 - a body corporate incorporated outside of New Zealand; or
 - an unincorporated body that has its head office/principal place of business outside of New Zealand.
17. Transparency is also achieved through the donation disclosure requirements. Candidates must declare and identify all donors making donations over \$1,500. Parties must declare the number of donations received over \$1,500, and individually identify donors making donations of over \$15,000. Parties must also declare the number and total amount of all foreign or anonymous donations received. Both candidates and parties must declare any foreign or anonymous donations in excess of the \$1,500 threshold (and whether returned to the donor or paid to the Electoral Commission).
18. Anti-collusion provisions make it an offence to enter into arrangements to avoid these thresholds and disclosure requirements. For example, the Electoral Act requires donors to disclose where a donation is funded by more than one contributor, and it requires a person to disclose the donor's name when they transmit a donation on their behalf. These provisions make it an offence, for example, for a New Zealand citizen to channel a donation on behalf of an overseas person, or for an overseas person to establish a New Zealand company with the sole aim of channelling a donation to a candidate or political party.

Banning foreign donations outright provides a clear public statement of our position on foreign interference in our democracy

19. I propose to ban (with a de minimis threshold of \$50) all donations, including contributions to donations, from overseas persons to candidates and parties. I acknowledge that foreign participation should not be conflated with foreign interference. I also acknowledge the current threshold for foreign donations is relatively low in dollar terms, and that the total amount of foreign donations received by parties is low (see Appendix 2). There is an argument that these small amounts do not 'buy' much influence.
20. However, it is not the absolute amount that concerns me. It is the implicit message that allowing foreign donations sends to those who are not part of our electoral system. A ban will be a strong statement of principle. It will make clear our opposition to covert foreign influence in our democratic processes. I think this an important signal to send ahead of the next election.

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21. I note that Australia, Canada and the UK restrict foreign donations too; for example, foreign or anonymous donations may only be accepted under AUS \$100², CAN \$20 or GBP £500 respectively.
22. My proposal will mean that parties and candidates (and any person acting on their behalf) cannot accept donations from overseas persons (over the \$50 de minimis threshold). The full definition of candidate and party donations are in Appendix 1, but broadly includes:
 - money or similar;
 - goods or services provided by a donor at below the reasonable market value;
 - payment from a donor for goods or services provided to them at above market value; or
 - credit provided by a donor on favourable terms.
23. Goods or services provided free are not classed as donations, if their reasonable market value is less than \$300 (for candidates) or \$1,500 (for parties). My proposals will also remove this concession threshold for goods and services provided by overseas persons. This will prevent donations (over \$50) being channelled in this form, so as to defeat the intention of the proposed change.
24. Voluntary labour is also not classed as a donation. I do not intend to change this. People from overseas could continue to volunteer their labour free of charge. This is a pragmatic approach as such a ban would be impracticable to enforce. Most volunteers will be people living in New Zealand, so will not fall within the definition of overseas persons anyway.

Donations protected from disclosure

25. For the avoidance of doubt, the ban will also make it clear that overseas persons cannot use the rules for donations protected from disclosure. These rules allow for the making of donations directly to the Electoral Commission for the benefit of a party, while preventing the disclosure of the donor's identity to the recipient party or the public. Although such donations are, by their nature, intended to be anonymous, allowing overseas monies to flow into our electoral system through this route would defeat the intention of the proposed ban.

Party secretaries and candidates will need to take reasonable steps to ensure they do not accept foreign donations

26. It is the responsibility of the candidate or party secretary to check the eligibility of donors making donations. The Act currently provides that a candidate or party secretary is guilty of an illegal practice if they receive a donation from an overseas person that exceeds the \$1,500 threshold and does not return the excess to the donor or send it to the Electoral Commission. With my proposed ban, a candidate or party secretary would be guilty of an illegal practice if they receive any donation (over \$50) from an overseas person and do not return it to the donor or send it to the Electoral Commission.

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Australia also permits foreign donations to parties and candidates between AU\$100 and \$1,000, but only if the donation is not given or accepted with the intent of being spent on election expenses (e.g. advertising). New Zealand's rules for party donation do not distinguish donations on the basis of the purpose to which they will be put by the party. Candidate donations are defined as donations in respect of the candidates' election campaign but are not otherwise distinguished by purpose.

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27. The \$50 de minimis will help to ensure the ban will not unreasonably affect small-scale fundraising activities such as bucket donations and whip-rounds. Even so, the ban may have an unintended chilling effect. Any due diligence requirements in respect of foreign donations (and contributions to donations) over \$50 need to balance the intent of deterring foreign interference with the potential negative impact on political participation through excessive compliance costs.
28. I propose to address this by providing that a candidate or party secretary will not be guilty of an illegal practice if they took reasonable steps, in the circumstances of the donation, to ensure that the donation was not from an overseas person. This will encourage parties and candidates to be diligent in their acceptance of donations. What constitutes 'reasonable steps' will need to be considered by recipients, taking into account the circumstances and the size of the donation. The Electoral Commission will issue guidance on this.³
29. There may still be an issue with ensuring that an anonymous donation is not being accepted in breach of the prohibition on overseas donations. For a donation to be anonymous, the candidate or party secretary must not know, nor be reasonably expected in the circumstances to know, the identity of the donor. As donor information is not available, this makes it impossible for a candidate or party secretary to take 'reasonable steps' to confirm the donor is not an overseas person.
30. This issue does not currently arise because anonymous donations to parties and candidates cannot exceed \$1,500, which is currently the same threshold as for foreign donations. I am not proposing to reduce the threshold for anonymous donations. Instead I propose to focus on the rare circumstances in which a party secretary or candidate might receive an anonymous donation over \$50 which they suspect, or might be reasonably expected in the circumstances to suspect, is from an overseas person. I propose that in these circumstances, the party secretary or candidate be required to send the full amount of the donation to the Electoral Commission.
31. I recognise this may mean anonymous donations are sent to the Commission when they do not need to be. For example, one reason why it might be "reasonable to suspect" that an anonymous donation is from an overseas person is because it is from an overseas bank account. However, it could be from a New Zealand citizen living overseas, and so is not within the statutory definition of 'overseas person'. As they cannot know that, a party secretary or candidate may assume it is from an overseas person and so send the donation, in full, to the Commission. However, I believe the slight risk of candidates or parties not being able to accept some permissible anonymous donations is outweighed by the reduced risk of anonymous donations being used to circumvent the ban on foreign donations.

Minor and technical changes

Residence of party secretaries

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For example, in the UK parties must take all reasonable steps to verify the identity of a donor of more than £500. The UK Electoral Commission provides guidance on what "reasonable steps" are, which includes taking the full name and address, and checking individual donors against the elector register, or corporate donors against the Companies House register.

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32. The party secretary is responsible for the party's compliance with the donation rules. However, there is no requirement that a party secretary be resident in New Zealand. Having a party secretary based overseas may present enforcement challenges should the Electoral Commission need to seek information or take enforcement action.
33. To support my proposed changes to the foreign donations rules, I propose to amend the Electoral Act to require that a party secretary, or any person acting in the position of secretary, must be residing in New Zealand. 'Residing in' takes its ordinary meaning; I am not proposing to impose a New Zealand citizenship or permanent residence test. The change will provide that a party secretary must be living here while serving in that capacity.

Election-related advertising

34. I propose a technical amendment to make section 221A of the Electoral Act non-medium specific, in order deter anonymous online advertisements. I am particularly concerned to deter advertisements aimed at interfering with our democracy by providing incorrect information to voters.
35. Section 221A relates to advertisements that do not come within the definition of "election advertisements" in section 3A (being advertisements that encourage voters to vote or not vote for a particular candidate or party). These might include advertisements that contain information about voting and voting services. It is an offence to promote such an advertisement without a promoter name and address. This offence currently applies only to broadcasting, leaflets and billboards, but not online advertisements.
36. This gap could allow foreign (or domestic) players to promote online election advertisements aimed at, for example, new migrants, giving them incorrect information about their eligibility to vote with the aim of deterring them from enrolling. I propose to extend section 221A so that the offence of not including a promoter statement covers all advertising mediums, including online (with appropriate exemptions for online content that represents the personal political views of an individual).
37. The aim is to deter such advertisements, on the assumption that promoters will be less willing to run them if they are required to identify themselves. I acknowledge that there may be enforcement difficulties, as online advertising can be highly targeted and not visible to the public at large. Enforcement is an area I have asked my officials to continue to work on more generally.

Ongoing work

Foreign interference work is ongoing

38. s6(a) [REDACTED]
39. s6(a) [REDACTED] This activity is potentially a greater interference threat than donations directly received from overseas persons but will require more complex policy and legislative changes. Changes to address these risks need to be

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considered over a longer time frame; a thorough reform of the donations and electoral advertising regime is not possible in the time available before the next election.

40. s6(a)

Electoral Act 1993 review and rewrite

41. It is evident that a comprehensive review and modernisation of the entire Electoral Act 1993 is overdue.
42. The scale of this review, and the issues involved (including the risk of foreign interference), suggest to me it should be carried out over the next two Parliamentary terms. The review will need to involve:
- input from constitutional and electoral experts;
 - close liaison with key stakeholders such as the Electoral Commission;
 - public consultation and cross-party collaboration.
43. I expect such a review to form a substantive part of the Justice policy work programme over the next 5-6 years. This will give sufficient time for a fully consultative policy and legislative process to be completed, and for the entire Electoral Act to be rewritten in a more modern and accessible style, before any changes come into effect at an election. I will provide further information to Cabinet on the proposed scope and approach to a longer-term review of the Electoral Act following the next election.

Consultation

44. The following departments, agencies and crown entities have been consulted on this paper: Treasury, the State Services Commission, the Ministry of Foreign Affairs and Trade, the Departments of Prime Minister and Cabinet and Internal Affairs, the Government Communications Security Bureau and the Electoral Commission.
45. No consultation with political parties or candidates has been carried out.

Financial implications

46. This paper does not seek agreement for any proposals with financial implications for the Government.
47. There will be minor financial impacts on political parties, who will no longer be able to receive foreign donations. Parties and candidates may also have some increased compliance costs, in taking reasonable steps to verify the source of some donations.

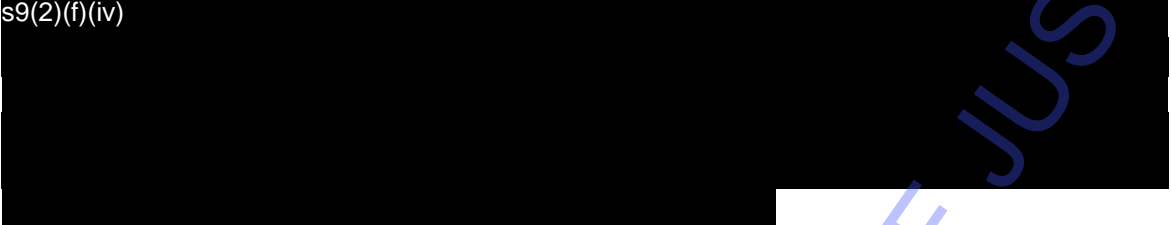
Legislative implications

48. I noted in my previous Cabinet paper that there might be an opportunity for the Government to consider implementing foreign interference-related amendments to the Electoral Act 1993 through the current Electoral Amendment Bill. This Bill is currently before the Justice Committee, and not due to be reported back on until 6 February 2020, with enactment in late February/March 2020.

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49. The Office of the Clerk has advised that amendments to address foreign interference risks are unlikely to be within scope of the Bill as introduced. Adding any foreign interference related amendments to the current Bill will therefore require approval from the Business Committee or the House.

50. s9(2)(f)(iv)



51. Enactment by the end of the year will allow for the ban on foreign donations to commence from 1 January 2020. This aligns with the start of the reporting year for donations returns.

52. Cabinet Circular (02) 4: *Acts Binding the Crown: Procedures for Cabinet Decision* notes that bills that are amending existing Acts will generally follow the position of the principal Act on whether the Act is binding on the Crown. The Electoral Act 1993 does not bind the Crown and it is proposed that this Bill will follow that position. The Electoral Amendment Bill (No. 2) will therefore not bind the Crown.

Power to Act on minor amendments if needed

53. I recommend that Cabinet authorise me to make minor amendments needed to implement these decisions as required during the drafting of this Bill. The Cabinet paper seeking approval for the Bill will identify any such changes.

Impact Analysis

54. Regulatory Impact Analysis requirements apply to the proposal to ban foreign donations. A Regulatory Impact Assessment (RIA) is attached. The Ministry of Justice's RIA Panel has reviewed the RIA and considers that it partially meets the Quality Assurance Criteria.

55. The Panel notes that the analysis of options is constrained by the desire to have changes in place for the 2020 General Election. Further changes may be considered in the future as part of a wider review of electoral legislation. Depending on the option adopted, there will be some additional administrative requirements for political parties to determine the origin of donations. This is not expected to be significant based on existing data about overseas donations. However, political parties have not been consulted on the options or the proposed threshold for donations.

Human Rights and the New Zealand Bill of Rights 1990

56. These proposals extend existing prohibitions on overseas persons making donations on the basis of citizenship status, or place of incorporation or association. This limitation on the ability of overseas persons to participate in our electoral system and engage with New Zealanders during the electoral period is seen as justified and proportionate in supporting public confidence in the electoral system.

57. A ban on foreign donations (except voluntary labour) will extend those limits and so further impact on the right to freedom of expression affirmed in section 14 of the New

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Zealand Bill of Rights Act 1990 (NZBORA), to the extent that the giving and receiving of a donation is considered a matter of freedom of expression.

58. Given increasing levels of concern about foreign interference in democracies around the world, which can be particularly heightened during election times, it is important that New Zealand send a clear statement of our position with regard to foreign activity in our political system. The proposed ban on foreign donations is one such statement and, in my view, justifies any small additional limitation on freedom of expression.
59. The extension of the offence for promoting an anonymous election advertisement (section 221A) will compel those advertising online to provide their name and address on the advertisement. This is a minor interference with freedom of expression, but one which advertisers in other mediums already face. The objective is to promote transparency at election time, which is important for democratic freedoms. The proposed change goes no further than is required to achieve this objective, so it is a proportionate limitation.

Proactive Release

60. To enable Ministers to make decisions on the detail of the Bill before Cabinet papers are made public, I will proactively release this Cabinet paper, with any appropriate redactions, after the Bill is introduced into the House.

Recommendations

61. I recommend that the Committee:
 1. **note** that the Justice Committee is due to report back shortly on its consideration of the risks of foreign interference, as part of its Inquiry into the 2017 General Election and 2016 Local Elections;
 2. s6(a) 
 3. **note** that some changes to the Electoral Act 1993 before the next election are appropriate to provide some safeguards and to signal that the Government considers foreign interference to be an issue that warrants attention now;

Ban on donations from overseas person

4. **agree** that no donations from an overseas person (above a \$50 de minimis) be allowed to be accepted by candidates and parties, and that this will apply to:
 - money;
 - goods or services provided at a value less than their reasonable market value;
 - goods or services provided to an overseas person at a value more than their reasonable market value; and
 - credit provided on terms and conditions substantially more favourable than prevailing commercial terms and conditions.
5. **agree** to clarify that overseas persons cannot make party donations protected from disclosure;

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Due diligence requirements

6. **agree** that a candidate or party secretary 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 is not from an overseas person;
7. **agree** that candidates and party secretaries who receive an anonymous donation over \$50 which they suspect, or might be reasonably expected in the circumstances to suspect, is from an overseas person, be required to send the full amount of the donation to the Electoral Commission;

Technical amendments

8. **agree** that a party secretary, or any person acting in the position of secretary, must be residing in New Zealand;
9. **agree** to amend section 221A of the Electoral Act, which makes it an offence to promote anonymous advertisements relating to an election, so that it applies to all advertising mediums, including online advertising, with appropriate exemptions for online content that represents the personal political views of an individual.

Legislative Vehicle

10. s9(2)(f)(iv) 
11. **note** that this Bill will not bind the Crown;
12. **invite** the Minister of Justice to prepare drafting instructions for Parliamentary Counsel Office to give effect to these recommendations;
13. **authorise** the Minister of Justice to make additional minor amendments required to implement decisions that may arise during the drafting of this Bill.
14. **note** that the Minister of Justice will provide information to Cabinet on the longer-term review of the Electoral Act, after the next election.

Authorised for lodgement

Hon Andrew Little
Minister of Justice

Appendix 1: Definitions of anonymous, candidate and party donations

Section 207 Electoral Act 1993

anonymous,—

(a) in relation to a candidate donation, means a donation that is made in such a way that the candidate who receives the donation—

- (i) does not know the identity of the donor; and
- (ii) could not, in the circumstances, reasonably be expected to know the identity of the donor:

(b) in relation to a party donation, means a donation that is made in such a way that the party secretary who receives the donation—

- (i) does not know the identity of the donor; and
- (ii) could not, in the circumstances, reasonably be expected to know the identity of the donor

candidate donation means a donation (whether of money or of the equivalent of money or of goods or services or of a combination of those things) that is made to a candidate, or to any person on the candidate's behalf, for use in the candidate's campaign for election and—

(a) includes,—

- (i) where goods or services are provided to a candidate, or to any person on the candidate's behalf, under a contract or arrangement at a value less than their reasonable market value, the latter being a value that exceeds \$300, the amount of the difference between the former value and the reasonable market value of those goods or services; and
- (ii) where goods or services are provided by a candidate under a contract or arrangement at a value that is more than their reasonable market value, the amount of the difference between that value and the reasonable market value of those goods or services; and
- (iii) where credit is provided to a candidate on terms and conditions substantially more favourable than the commercial terms and conditions prevailing at the time for the same or similar credit, the value to the candidate of those more favourable terms and conditions; but

(b) excludes,—

- (i) the labour of any person that is provided to a candidate free of charge by that person; and
- (ii) goods or services provided free of charge to a candidate, or to any person on the candidate's behalf, that have a reasonable market value of \$300 or less

party donation means a donation (whether of money or of the equivalent of money or of goods or services or of a combination of those things) that is made to a party, or to any person or body of persons on behalf of the party who are involved in the administration of the affairs of the party, and—

(a) includes,—

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(i) where goods or services are provided to a party, or to any person on the party's behalf, under a contract or arrangement at a value less than their reasonable market value, the latter being a value that exceeds \$1,500, the amount of the difference between the former value and the reasonable market value of those goods or services; and

(ii) where goods or services are provided by a party under a contract or arrangement at a value that is more than their reasonable market value, the amount of the difference between that value and the reasonable market value of those goods or services; and

(iii) where credit is provided to a party on terms and conditions substantially more favourable than the commercial terms and conditions prevailing at the time for the same or similar credit, the value to the party of those more favourable terms and conditions; but

(b) excludes—

(i) the labour of any person that is provided to a party free of charge by that person; and

(ii) goods or services provided free of charge to a party, or to any person on the party's behalf, that have a reasonable market value of \$1,500 or less; and

(iii) any candidate donation that is included in a return made by a candidate

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Appendix 2: Anonymous and overseas donations

Table 1: Returns of party donations from overseas persons since 2011

Year of Return (Return filed by 30 April the following year)	Party	Number of overseas donations under \$1500	Total of overseas donations under \$1,500	Overseas donations over \$1500	Overseas donations returned
2011 Return	Libertarianz	1	\$129.87		
	National	2	\$2,500.00		
2012 Return	Libertarianz	1	\$97.53		
	Mana	2	\$306.00		
	NZ First	1	\$116.18		
2013 Return	ACT	12	\$960.00		
	Māori			\$7,450.00	Returned excess of \$5,950 to donor
	National	1	\$400.00		
2014 Return	ACT	1	\$1,360.00		
	Green	2	\$2,000.00		
2015 Return	ACT	12	\$960.00		
	Green	300	\$9,698.00		
2016 Return	ACT	12	\$960.00		
2017 Return	ACT	12	\$960.00		
	Green	60	\$2,825.00		
	Internet	3	\$376.21		
	National	17	\$17,180.00	\$49,975.00	Returned all to donor Returned excess of \$2,500 to donor
				\$4,000	
NZ First	29	\$1,930.50			
2018 Return	Green Party	57	\$510.00		
	Labour	16	\$900.00		

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Table 2: Returns of party donations from overseas persons since 2011

Year of Return (Return filed by 30 April the following year)	Party	Number of overseas donations under \$1500	Total of overseas donations under \$1,500	Total donations protected from disclosure
2011 Return	ACT	19	\$8,042.94	\$61,730.00
	Conservative	30	\$1,201.00	\$0.00
	Labour	37	\$5,694.20	\$0.00
	Libertarianz	10	\$1,362.41	\$0.00
	National	17	\$3,015.00	\$192,415.00
	New Zealand First	548	\$27,034.00	\$0.00
2012 Return	ACT	4	\$590.00	\$0.00
	Conservative	6	\$1,015.00	\$0.00
	Democrats for Social Credit	2	\$89.00	\$0.00
	Labour	24	\$3,201.20	\$0.00
	Libertarianz	3	\$1,512.51	\$0.00
	Mana	0	\$0.00	\$0.00
	Māori	1	\$45.00	\$0.00
	National	8	\$2,215.00	\$0.00
	NZ First	13	\$915.00	\$0.00
2013 Return	ACT	4	\$1,985.70	\$0.00
	ALCP	6	\$419.50	\$0.00
	Conservative	7	\$1,245.00	\$0.00
	Labour	25	\$4,951.00	\$0.00
	Māori	15	\$936.00	\$0.00
	National	18	\$6,635.00	\$0.00
	New Zealand First	4	\$1,050.00	\$0.00
2014 Return	ACT	17	\$6,467.00	\$86,350.00
	ALCP	130	\$7,538.16	\$0.00
	Ban 1080	2	\$30.00	\$0.00
	Conservative	0	\$0.00	\$10,000.00
	Labour	1054	\$30,583.00	\$0.00
	Māori	18	\$5,303.00	\$0.00
	National	52	\$13,011.60	\$129,700.00
	New Zealand First	21	\$2,704.54	\$0.00
2015 Return	ACT	8	\$1,115.59	\$0.00
	ALCP	10	\$1,492.00	\$0.00
	Conservative	3	\$160.00	\$0.00
	Internet	16	\$676.65	\$0.00
	Labour	6	\$521.00	\$0.00
	Māori	4	\$4,060.00	\$0.00
	National	19	\$4,590.25	\$0.00
2016 Return	ACT	5	\$1,070.00	\$0.00
	Green	25	\$1,632.00	\$0.00
	Internet	25	\$886.60	\$0.00
	Labour	100	\$5,491.95	\$0.00

IN CONFIDENCE

Year of Return (Return filed by 30 April the following year)	Party	Number of overseas donations under \$1500	Total of overseas donations under \$1,500	Total donations protected from disclosure
	Māori	34	\$11,244.00	\$0.00
	National	15	\$2,700.00	\$44,628.00
	New Zealand First	327	\$17,504.64	\$0.00
2017 Return	ACT	11	\$748.50	\$0.00
	Conservative	6	\$332.00	\$0.00
	Green	53	\$3,044.74	\$0.00
	Internet	14	\$506.21	\$0.00
	Labour	83	\$26,388.46	\$0.00
	National	30	\$8,270.69	\$20,000.00
	NZ First	3109	\$253,501.27	\$88,628.00
2018 Return	ACT	4	\$572.00	\$0.00
	Green	33	\$1,388.60	\$0.00
	Labour	18	\$1,137.60	\$0.00
	National	18	\$3,124.21	\$0.00
	New Conservative	1	\$50.00	\$0.00
	New Zealand First	79	\$7,689.60	\$0.00
	NZ Outdoors	5	\$60.00	\$0.00
	The Opportunities Party	550	\$20,343.00	\$0.00

Source: Electoral Commission



Cabinet Social Wellbeing Committee

Minute of Decision

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Banning Foreign Donations to Parties and Candidates

Portfolio Justice

On 23 October 2019, the Cabinet Social Wellbeing Committee:

- 1 **noted** that the Justice Committee is due to report back shortly on its consideration of the risks of foreign interference, as part of its Inquiry into the 2017 General Election and 2016 Local Elections;
- 2 s6(a)
[REDACTED]
- 3 **noted** that some changes to the Electoral Act 1993 before the next election are appropriate to provide some safeguards and to signal that the government considers foreign interference to be an issue that warrants attention now;

Ban on donations from overseas person

- 4 **agreed** that no donations from an overseas person (above a \$50 *de minimis*) be allowed to be accepted by candidates and parties, and that this will apply to:
 - 4.1 any money; or
 - 4.2 any goods or services provided at a value less than their reasonable market value; or
 - 4.3 any goods or services provided to an overseas person at a value more than their reasonable market value; or
 - 4.4 any credit provided on terms and conditions substantially more favourable than prevailing commercial terms and conditions;
- 5 **agreed** to clarify that overseas persons cannot make party donations protected from disclosure;

Due diligence requirements

- 6 **agreed** that a candidate or party secretary 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 is not from an overseas person;

- 7 **agreed** that candidates and party secretaries who receive an anonymous donation over \$50 which they suspect, or might be reasonably expected in the circumstances to suspect, is from an overseas person, be required to send the full amount of the donation to the Electoral Commission;

Technical amendments

- 8 **agreed** that a party secretary, or any person acting in the position of secretary, must be residing in New Zealand;
- 9 **agreed** to amend section 221A of the Electoral Act, which makes it an offence to promote anonymous advertisements relating to an election, so that it applies to all advertising mediums, including online advertising, with appropriate exemptions for online content that represents the personal political views of an individual;

Legislative Vehicle

- 10 s9(2)(f)(iv)
- 11 **noted** that this Bill will not bind the Crown;
- 12 **invited** the Minister of Justice to prepare drafting instructions for Parliamentary Counsel Office to give effect to the above decisions;
- 13 **authorised** the Minister of Justice to make additional minor amendments required to implement decisions that may arise during the drafting of the Bill;
- 14 **noted** that the Minister of Justice will provide information to Cabinet on the longer-term review of the Electoral Act after the 2020 Election.

Vivien Meek
Committee Secretary

Present:

Rt Hon Jacinda Ardern
Hon Kelvin Davis
Hon Grant Robertson
Hon Dr Megan Woods
Hon Chris Hipkins
Hon Andrew Little
Hon Carmel Sepuloni (Chair)
Hon Dr David Clark
Hon Nanaia Mahuta
Hon Stuart Nash
Hon Jenny Salesa
Hon Kris Faafoi
Hon Tracey Martin
Hon Willie Jackson
Hon Poto Williams
Hon Julie Anne Genter
Jan Logie, MP

Hard-copy distribution:

Minister of Justice

Officials present from:

Office of the Prime Minister
Officials Committee for SWC
Office of the SWC Chair

Chair
Cabinet


Electoral Amendment Bill (No 2): Approval for Introduction

Proposal

1. This paper seeks approval for the introduction of the Electoral Amendment Bill (No 2) (the Bill).

Policy

Banning donations from overseas persons

2. s6(a)

3. On 4 November 2019 Cabinet noted and agreed that changes to the Electoral Act 1993 before the next general election are appropriate to provide some safeguards and to signal that the Government considers foreign interference to be an issue that warrants immediate attention. [SWC-19-MIN-0163, CAB-19-MIN-0559]
4. Cabinet agreed to amend the Electoral Act 1993 to:
 - 4.1. ban candidates and parties from accepting donations (over \$50) from overseas persons in any form, including:
 - 4.1.1. money;
 - 4.1.2. goods or services provided at a value less than their reasonable market value;
 - 4.1.3. goods or services provided to an overseas person at a value more than their reasonable market value; and
 - 4.1.4. credit provided on terms and conditions substantially more favourable than prevailing commercial terms or conditions;
 - 4.2. clarify that overseas persons cannot make party donations protected from disclosure;
 - 4.3. provide that a candidate or party secretary 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 is not from an overseas person;
 - 4.4. provide that candidates and party secretaries who receive an anonymous donation over \$50 which they suspect, or might be reasonably expected in the circumstances

to suspect, is from an overseas person, be required to send the full amount of the donation to the Electoral Commission;

- 4.5. require that a party secretary, or any person acting in the position of secretary, must be living in New Zealand; and
 - 4.6. extend the offence of promoting anonymous advertisements relating to an election in section 221A of the Act so that it applies to all advertising mediums, including online advertising, with appropriate exemptions for editorial content, or online content that represents the personal political views of an individual.
5. These amendments are intended 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.

Wider reform is not possible at this time, s6(a)

6. Due to the complexity of foreign interference issues, options to address foreign interference risks need to be considered over a longer time frame. More thorough reforms, such as implementing extensive changes to the electoral funding and electoral advertising regimes is not possible in the time available before the next election.

7. s6(a)

Electoral Act 1993 review and rewrite

8. It is evident that a comprehensive review and modernisation of the entire Electoral Act 1993 is overdue.
9. The scale of this review, and the issues involved (including the risk of foreign interference), suggest to me it should be carried out over the next two Parliamentary terms. The review will need to involve:
- 9.1. input from constitutional and electoral experts;
 - 9.2. close liaison with key stakeholders such as the Electoral Commission;
 - 9.3. public consultation and cross-party collaboration.
10. I expect such a review to form a substantive part of the Justice policy work programme over the next 5-6 years. This will give sufficient time for a fully consultative policy and legislative process to be completed, and for the entire Electoral Act to be rewritten in a more modern and accessible style, before any changes come into effect at an election. I will provide further information to Cabinet on the proposed scope and approach to a longer-term review of the Electoral Act following the next election.

Impact analysis

- 11.** A Regulatory Impact Analysis for the proposal to introduce a ban on foreign donations was prepared in accordance with Cabinet requirements and was submitted along with the paper seeking policy approvals on 18 October 2019 [SWC-19-MIN-0163].

Compliance

- 12.** The Bill complies with:
 - 12.1.** the principles of the Treaty of Waitangi;
 - 12.2.** the rights and freedoms contained in the New Zealand Bill of Rights Act 1990 and the Human Rights Act 1993;
 - 12.3.** the disclosure statement requirements (a disclosure statement prepared by the Ministry of Justice is attached);
 - 12.4.** the principles and guidelines set out in the Privacy Act 1993;
 - 12.5.** relevant international standards and obligations; and
 - 12.6.** the Legislation Guidelines (2018 edition), which are maintained by the Legislation Design and Advisory Committee.

Consultation

- 13.** The Treasury, the State Services Commission, the Ministry of Foreign Affairs and Trade, the National Security Policy Directorate in the Department of Prime Minister and Cabinet, the Department of Internal Affairs, Crown Law and the Electoral Commission were consulted on the policy development of this Bill. Apart from the Electoral Commission, they have not been consulted on the draft Bill itself.
- 14.** No public or external consultation has been carried out.
- 15.** The government caucus and other parties represented in Parliament have been consulted.

Binding on the Crown

- 16.** Cabinet Circular (02) 4: Acts Binding the Crown: Procedures for Cabinet Decision notes that bills that are amending existing Acts will generally follow the position of the principal Act on whether the Act is binding on the Crown. The Electoral Act 1993 does not bind the Crown and it is proposed that this Bill will follow that position. The Bill will therefore not bind the Crown.

Creating new agencies or amending law relating to existing agencies

- 17.** The Bill does not create any new agencies.

Allocation of decision-making powers

- 18.** The Bill does not allocate decision making powers between the executive and judiciary.

Associated regulations

19. The Bill does not amend any associated regulations.

Other instruments

20. The Bill does not include any provision empowering the making of other instruments deemed to be legislative instruments or disallowable instruments.

Definition of Minister/department

21. The Bill does not contain a definition of Minister, department or Chief Executive of a department.

Commencement of legislation

22. Most of the Bill will come into force on 1 January 2020.

23. A three-month grace period has been provided for the requirement for the party secretary to live in New Zealand; this provision will come into force on 1 April 2020.

s9(2)(f)(iv)

Publicity

26. The policy changes in this Bill will be announced following Cabinet today.

Proactive Release

27. I propose to release this, and the previous Cabinet papers, and related Minutes, with any necessary redactions, following the introduction of the Bill.

Recommendations

The Minister of Justice recommends that the Committee:

1.

s9(2)(f)(iv)
2. **note** that the Bill addresses the risk of foreign interference by:
 - 2.1. banning candidates and parties from accepting donations (over \$50) from overseas persons in the form of, but not limited to, money, goods or services provided at a value less than their reasonable market value, goods or services provided to an overseas person at a value more than their reasonable market value, and credit provided on terms and conditions substantially more favourable than prevailing commercial terms or conditions from an overseas person;

- 2.2. clarifying that overseas persons cannot make party donations protected from disclosure;
 - 2.3. making clear that a candidate or party secretary will not be guilty of an illegal practice if they take reasonable steps, in the circumstances of donations over \$50, to ensure that it is not from an overseas person;
 - 2.4. making clear that candidates and party secretaries who receive an anonymous donation over \$50 which they suspect, or might be reasonably expected in the circumstances to suspect, is from an overseas person, be required to send the full amount of the donation to the Electoral Commission;
 - 2.5. requiring that a party secretary, or any person acting in the position of secretary, must be living in New Zealand; and
 - 2.6. extending the offence of promoting anonymous advertisements relating to an election in section 221A of the Act so that it applies to all advertising mediums, including online advertising, with appropriate exemptions for editorial content, or online content that represents the personal political views of an individual.
3. **approve** the Electoral Amendment (No 2) Bill for introduction, subject to the final approval of the government caucus and sufficient support in the House of Representatives;
 4. **authorise** the Minister of Justice and Parliamentary Counsel Office to make minor technical and drafting changes to the Bill prior to introduction;
 5. s9(2)(f)(iv)
 - 6.

Authorised for lodgement

Hon Andrew Little
Minister of Justice



Cabinet

Minute of Decision

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Electoral Amendment Bill (No 2): Approval for Introduction

Portfolio Justice

On 18 November 2019, Cabinet:

- 1 s9(2)(f)(iv)
- 2 **noted** that the Bill addresses the risk of foreign interference by:
 - 2.1 banning candidates and parties from accepting donations (over \$50) from overseas persons in the form of, but not limited to, money, goods or services provided at a value less than their reasonable market value, goods or services provided to an overseas person at a value more than their reasonable market value, and credit provided on terms and conditions substantially more favourable than prevailing commercial terms or conditions from an overseas person;
 - 2.2 clarifying that overseas persons cannot make party donations protected from disclosure;
 - 2.3 making clear that a candidate or party secretary will not be guilty of an illegal practice if they take reasonable steps, in the circumstances of donations over \$50, to ensure that it is not from an overseas person;
 - 2.4 making clear that candidates and party secretaries who receive an anonymous donation over \$50 which they suspect, or might be reasonably expected in the circumstances to suspect, is from an overseas person, be required to send the full amount of the donation to the Electoral Commission;
 - 2.5 requiring that a party secretary, or any person acting in the position of secretary, must be living in New Zealand;
 - 2.6 extending the offence of promoting anonymous advertisements relating to an election in section 221A of the Electoral Act 1993 so that it applies to all advertising mediums, including online advertising, with appropriate exemptions for editorial content, or online content that represents the personal political views of an individual;
- 3 **approved** for introduction the Electoral Amendment Bill (No 2) [PCO 22502/6.0], subject to the final approval of the government caucuses and sufficient support in the House of Representatives;

4 **authorised** the Minister of Justice to make minor technical and drafting changes to the Bill
prior to introduction;

5 s9(2)(f)(iv)
6 [Redacted]

Michael Webster
Secretary of the Cabinet

Hard-copy distribution:
Prime Minister
Deputy Prime Minister
Minister of Justice

RELEASED BY THE MINISTER OF JUSTICE

Chair
Cabinet

Electoral Amendment Bill (No 2): Additional due diligence requirement

Proposal

1. This paper seeks approval for an additional provision to the Electoral Amendment Bill (No 2) ("the Bill") to add a proactive requirement for party secretaries and candidates to check whether donations are from an overseas person.

Background

2. On 4 November 2019 Cabinet agreed to amend the Electoral Act 1993 to ban candidates and parties from accepting donations (over \$50) from overseas persons [SWC-19-MIN-0163, CAB-19-MIN-0559]. This, and other amendments within the Bill, are intended 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.
3. On 18 November 2019 Cabinet approved for introduction the Electoral Amendment Bill (No 2) [PCO 22502/6.0], subject to the final approval of the government caucuses and sufficient support in the House of Representatives [CAB-19-MIN-0597].
4. s9(2)(f)(iv)

A proactive due diligence requirement

5. Currently under the Electoral Act, candidates and party secretaries are responsible for checking the eligibility of donors making donations. They are guilty of an illegal practice if they receive a donation that exceeds the existing threshold and do not return the excess to the donor or send it to the Electoral Commission.
6. On 18 November, Cabinet agreed to a version of the Bill that provided a defence to this illegal practice in the case of overseas donations. The defence provides that if a candidate or party secretary can prove that they took all 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, they will not be guilty of an illegal practice.
7. This is a 'defence' provision. I wish to strengthen the donations rules by adding a 'proactive' requirement for party secretaries and candidates to check whether donations are from an overseas person.
8. This would require that party secretaries and candidates must take reasonable steps to ensure that a donation, or a contribution to a donation (other than an anonymous donation)¹ over the \$50 foreign donation threshold is not from an overseas person. This proactive provision would be in addition to the defence provision.

¹ It is not feasible to require candidates/party secretaries to take "reasonable steps" to check the origin of an anonymous donation because, by definition, there is no way to investigate the origin of donations that do not state or carry evidence of their origin.

9. For every donation they receive, candidates and party secretaries will have a positive obligation to check whether it may be from an overseas person. This will encourage parties and candidates to be diligent in their acceptance of donations, so increasing the integrity of the donations scheme.
10. Party secretaries and candidates are ultimately responsible for deciding what checks to make in the circumstances of any donation. The Electoral Commission will issue guidance, as part of its handbook for candidates and party secretaries, on what 'reasonable steps' they might take to check the origin of donations.
11. Similar guidance issued by the UK and Australian Electoral Commissions (which have similar due diligence rules) includes steps such as checking the name and address details of donors against public registers, checking whether a company or organisation is on the companies' register, or similar, including a check box on donation forms for donors to affirm they are not foreign, or seeking copies of documents such as incorporation certificates, passports, or trust deeds.

Consultation

12. The Electoral Commission has been consulted on this proposed change.

Parliamentary stages

13. Cabinet previously agreed [CAB-19-MIN-0597] that the Bill be introduced in the week of 18 November 2019. Given the changes I have suggested, I now propose that the Bill should be introduced in the week of 2 December instead.

14. s9(2)(f)(iv)

15. Given these timeframes, I do not propose that the Bill be referred to a Select Committee for consideration.

Publicity

16. I intend to announce the policy changes in this Bill shortly.

Proactive Release

17. I intend to release this, the previous Cabinet papers and related Minutes, and related briefings, with any necessary redactions, following this Cabinet meeting.

Recommendations

18. The Minister of Justice recommends that the Committee:

1. s9(2)(f)(iv)

2. **note** that on 4 November 2019, Cabinet agreed to amend the Electoral Act 1993 to ban candidates and parties from accepting donations (over \$50) from overseas persons [SWC-19-MIN-0163, CAB-19-MIN-0559] 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;

3. **note** that on 18 November 2019 Cabinet approved the Bill for introduction, subject to the final approval of the government caucuses and sufficient support in the House of Representatives [CAB-19-MIN-0597];
4. **approve** the proposed change to the Bill, which adds a proactive provision requiring that party secretaries and candidates must take reasonable steps to ensure that a donation, or a contribution to a donation (other than an anonymous donation) over the \$50 foreign donations threshold is not from an overseas person;
5. **approve** the updated Electoral Amendment (No 2) Bill for introduction, subject to the final approval of the government caucus and sufficient support in the House of Representatives;
6. **s9(2)(f)(iv)**
[REDACTED]
7. **note** that I intend to announce the policy changes in this Bill shortly;
8. **note** that I intend to release this, the previous Cabinet papers and related Minutes, and related briefings, with any necessary redactions, as soon as practicable following the introduction of the Bill.

Authorised for lodgement

Hon Andrew Little
Minister of Justice

RELEASED BY THE MINISTER OF JUSTICE



Cabinet

Minute of Decision

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Electoral Amendment Bill (No 2): Additional Due Diligence Requirement

Portfolio Justice

On 2 December 2019, Cabinet:

- 1 **noted** that:
 - 1.1 s9(2)(f)(iv) [REDACTED]
 - 1.2 on 4 November 2019, the Cabinet Social Wellbeing Committee agreed to amend the Electoral Act 1993 to ban candidates and parties from accepting donations (over \$50) from overseas persons 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 [SWC-19-MIN-0163];
 - 1.3 on 18 November 2019, Cabinet approved the Bill for introduction [CAB-19-MIN-0597];
- 2 **approved** an amendment to the Bill, which adds a proactive provision requiring that party secretaries and candidates must take reasonable steps to ensure that a donation, or a contribution to a donation (other than an anonymous donation) over the \$50 foreign donations threshold is not from an overseas person;
- 3 **approved** the Electoral Amendment Bill (No 2) [PCO 22502/11.0] for introduction, subject to the final approval of the government caucuses, and sufficient support in the House of Representatives;
- 4 s9(2)(f)(iv) [REDACTED]
- 5 **noted** that the Minister of Justice intends to announce the policy changes in the Bill shortly.

Michael Webster
Secretary of the Cabinet

Hard-copy distribution:

Prime Minister
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Minister of Justice