



28 June 2022

Attorney-General

Electoral Amendment Bill (PCO24488/9.0) – Consistency with the New Zealand Bill of Rights Act 1990

Our Ref: ATT395/358

1. We have examined the Electoral Amendment Bill (“the Bill”) for consistency with the New Zealand Bill of Rights Act 1990 (“the Bill of Rights Act”). We have concluded that the Bill is not inconsistent with the Bill of Rights Act.

Amendments relating to donations

2. The Bill amends the political donations framework. These changes are to “increase public confidence in the funding of political parties and to maintain trust in New Zealand’s electoral system.”¹
3. The Electoral Act places disclosure requirements on a party secretary. The Bill amends these in the following ways
 - 3.1 Currently a party secretary must file an annual return giving donor name and address and other details for party donations received from the same donor during the year if they exceed the threshold of \$15,000. The Bill lowers this threshold to donations and contributions exceeding \$5,000.²
 - 3.2 The Bill adds a requirement for a party's annual return to disclose the number and total of donations under \$1,500.³ The Bill requires a party’s annual return to disclose the total amount received for each class of party

¹ Explanatory note, General policy statement, p 1.

² Clause 4, amendment to s 210(1)(a) and (b)

³ Clause 4(2), proposed s 201(6A)(b).

donation specified in s 201(1) and an aggregate of those totals, with a breakdown showing the total amount of monetary donations and the total amount of non-monetary donations.⁴

3.3 Auditing requirements are amended. A party secretary is required to obtain an auditor's report on an annual return of party donations only if the return shows the total amount of donations received for the year exceeds \$50,000 or the party has entered at least 1 loan during the year or has an unpaid balance exceeding \$15,000 on a loan entered in any previous year.⁵

3.4 Currently, within 10 working days of receipt, a party secretary must file a return in respect of every party donation from the same donor that exceeds \$30,000 (either on its own or in combination with previous donations from that donor over the past 12 months).⁶ This threshold is lowered to a donation exceeding \$20,000. The Bill amends s 210C to provide that this obligation will apply only for donations received within the "specified period" prior to a general election.⁷

Amendments relating to loans

4. Under the current Act, each year a party secretary must file a return setting out the lender name, address and other details of loans entered by the party that year with a total loan amount (on its own or when aggregated with other loans from the same lender) of more than \$15,000. The return must also list the number and total of loan amounts between \$1,500 and \$15,000.⁸ Loans from a registered bank at a commercial interest rate are not included.⁹ Loan returns must be audited.¹⁰ The Bill amends this requirement to provide that nil loan returns need not be

⁴ Clause 4, proposed s 210(6B).

⁵ Clause 5, proposed amendment to s 210A.

⁶ Electoral Act, s 210C.

⁷ If a general election is held in the calendar year in which Parliament is due to expire, the specified period commences on the day after the date on which the Prime Minister gives public notice of the day that is to be polling day, or 1 January of that year, whichever is the earlier. If a general election is held in any other year, the specified period commences on the day after the day on which public notice is given of the date of polling day. In both cases the specified period ends on the day before polling day.

⁸ Electoral Act, s 214D.

⁹ Electoral Act, s 212.

¹⁰ Electoral Act, s 214C.

audited.¹¹

5. The Bill extends loan disclosure requirements to candidates. A candidate must file a return of loans disclosing the name and address of the lender, the amount of the loan and other details. If there is nothing to disclose the candidate must file a nil return. A loan to a candidate excludes “any money lent by a registered lender at a commercial interest rate.” Candidates are not required to have their loan returns audited.¹²

Section 14 – freedom of expression in relation to disclosure requirements for donations, loans, and financial statements

6. We consider a non-anonymous political donation is an expressive act for the purpose of s 14 of the Bill of Rights Act (the “right to freedom of expression, including the freedom to seek, receive, and impart information and opinions of any kind in any form”). Provided the donor and the party or candidate know each other’s identity, a political donation of any size impliedly expresses the donor’s support for the donee party or candidate. A loan falling outside normal commercial terms is an expressive act for the same reasons.
7. Disclosure requirements constrain political expression by opening these forms of political support to public scrutiny and so potentially disincentivising such support. Whether these limitations on the s 14 right are justifiable in terms of s 5 requires examination of:¹³
- 7.1 whether the limit serves a purpose sufficiently important to justify curtailment of the right.
- 7.2 Whether the limit is rationally connected to that objective, impairs the right no more than is reasonably necessary, and is in due proportion to the objective.
8. The explanatory note to the Bill explains that the changes will increase transparency about the donations received by parties and their overall financial

¹¹ Clause 12, proposed amendment to s 214B.

¹² Clause 16, proposed ss 214GA – 214GB.

¹³ *R v Hansen* [2007] 3 NZLR 1 SC at [70], [123], [203] – [204] and [271].

position while minimising the additional compliance burden on parties¹⁴.

9. An objective of transparency for political donations and loans, so that the public are aware of financial contributions to political parties and candidates, is important. It leads to public trust in the integrity of the electoral system. Aspects of the amendments are also intended to minimise the additional compliance burden on parties.¹⁵
10. The disclosure requirements add transparency to the donation and loan process and are rationally connected to providing information to the public. Disclosure requirements already exist for donations to parties and candidates and for loans to parties. The lowering of the thresholds and the extension of loan disclosure requirements to candidates may potentially disincentivise such activity. However, we consider they can be seen as reasonable and proportionate measures to promote transparency and public trust in the electoral process.

Amendments relating to the disqualification from registration of persons outside New Zealand

11. Currently New Zealand citizens who are living overseas must have been in New Zealand within the last 3 years to be eligible to vote.¹⁶ Permanent residents must have been in New Zealand within the last 12 months.¹⁷
12. Clause 19 changes the above periods to 6 years for New Zealand citizens and 4 years for permanent residents. This is a temporary measure for the 2023 general election and responds to voters being prevented from returning to New Zealand due to the COVID-19 travel restrictions. Any permanent changes to the eligibility criteria may be considered by the independent review of electoral law, due to report back by the end of 2023.¹⁸

Section 12 electoral rights in relation to amendments to disqualification provisions

13. Section 12 of the Electoral Act provides that every New Zealand citizen who is of

¹⁴ Explanatory note, p 1. For example, proposed amendments to s 210C.

¹⁵ Explanatory note, p 1.

¹⁶ Section 80(1)(a) Electoral Act.

¹⁷ Section 80(1)(b) of the Electoral Act.

¹⁸ Explanatory note at p 2.

or over the age of 18 has the right to vote in parliamentary elections. We have therefore considered whether the temporary nature of the more generous time periods is consistent with s 12 of the Bill of Rights Act. The basis for the current timeframes in the Electoral Act is concern that “(1) such persons have been isolated from information necessary to cast an informed vote and (2) have no immediate stake in the future of the country.”¹⁹ However, commentators have suggested that this justification is open to question.²⁰ We consider that the expansion of the timeframes in light of the restrictions on travel to New Zealand during COVID-19 means the amendments are consistent with the Bill of Rights Act.

Amendments required for the possibility of change in polling day

14. The Electoral Act provides for a regulated period which is a period before an election when expenditure limits and disclosure rules apply. The Act does not currently contemplate a change in polling day once the regulated period has started, as occurred in the lead up to the 2020 general election.²¹ The Bill provides rules explaining when the regulated period begins and ends in such a case.
15. These changes do not raise issues regarding compliance with the Bill of Rights Act.

Amendments relating to financial statements

16. Part 2, sub-part 3 of the Bill contains amendments requiring a party secretary to provide the Electoral Commission with a copy of the party’s annual financial statement²² and a copy of any auditor’s report that is required by an enactment or the party’s constitution to be obtained on the financial statement.²³ The Electoral Commission may publish a party’s annual financial statement in any manner it considers appropriate.²⁴
17. These requirements are part of the set of amendments focused on increasing transparency about a party’s overall financial position.

¹⁹ P Rishworth et al *The New Zealand Bill of Rights Act* Oxford University Press, Melbourne, 2003 at 267.

²⁰ Fn 6 and Butler and Butler, *The New Zealand Bill of Rights Act: A Commentary* Lexis Nexis 2nd Edition, at 12.6.4.

²¹ Explanatory note at p 2.

²² Clause 27, proposed ss 210G.

²³ Clause 27, proposed s 210H.

²⁴ Clause 27, proposed s 210I.

Conclusion

- 18. We conclude that the Bill is not inconsistent with the New Zealand Bill of Rights Act.

Review of this advice

- 19. In accordance with Crown Law's policies, this advice has been peer reviewed by Peter Gunn, Crown Counsel.



Helen Carrad
Crown Counsel
027 838 5599

Noted / Approved / Not Approved



Hon David Parker *Andrew Little*
Attorney-General
24 6 /2022

Encl.

IN CONFIDENCE

Electoral Amendment Bill

Government Bill

Explanatory note

General policy statement

The Electoral Amendment Bill (the **Bill**) makes a number of changes to the Electoral Act 1993 (the **Act**) to support the delivery of, and participation in, elections.

The Bill amends the political donations' framework to increase public confidence in the funding of political parties, and to maintain trust in New Zealand's electoral system. The substantive changes to the donations' framework include—

- lowering the public disclosure threshold for donations and contributions to political parties from \$15,000 to \$5,000;
- amending the reporting requirements for donations by reducing the threshold from \$30,000 to \$20,000, and requiring disclosures of donations above this threshold within 10 working days only within a general election year;
- requiring parties to report donations under \$1,500 that are not made anonymously;
- requiring parties to disclose their financial statements;
- requiring candidates to publicly report on loans received to support their campaign.

Together these changes will increase transparency about the donations received by parties and their overall financial position, while minimising the additional compliance burden on parties.

Currently New Zealand citizens who are living overseas must have been in New Zealand within the last 3 years to be eligible to vote, and permanent residents must have been in New Zealand within the past 12 months. The Bill extends the eligibility period for overseas voters to 6 years for citizens and 4 years for permanent residents in response to voters being prevented from returning to New Zealand due to the COVID-19 travel restrictions. This is a temporary measure for the 2023 General Elec-

tion. Any permanent changes to the eligibility criteria may be considered by the independent review of electoral law, due to report back by the end of 2023.

The Bill clarifies when the regulated period starts if polling day is changed. The regulated period is usually the 3-month period before an election when expenditure limits and disclosure rules apply. The Act does not contemplate a change in polling day once the regulated period has started, as occurred in the lead up to the 2020 General Election.

The Act provides for a period of 9 weeks before an election when some election signs and billboards can be erected without the needing to comply with certain Transport Authority or council restrictions. The Bill amends the election advertising rules in the event of a change in election date, and provides a grace period for candidates and parties to remove election signage if the election date is changed.

The Bill also makes a number of minor and technical changes to ensure that the Act is fit for purpose.

Departmental disclosure statement

The Ministry of Justice is required to prepare a disclosure statement to assist with the scrutiny of this Bill. The disclosure statement provides access to information about the policy development of the Bill and identifies any significant or unusual legislative features of the Bill.

A copy of the statement can be found at [PPU to insert URL and link] (if it has been provided for publication).

Or [Counsel to delete the option that does not apply]

A departmental disclosure statement is not required for this Bill.

Regulatory impact statement

The Ministry of Justice produced a regulatory impact statement on 5 April 2022 to help inform the main policy decisions taken by the Government relating to the contents of this Bill.

A copy of this regulatory impact statement can be found at—

- [Insert URL link(s) to the RIS on the agency's/agencies' Internet site(s)]
- <https://treasury.govt.nz/publications/informationreleases/ris>

Clause by clause analysis

Clause 1 is the Title clause.

Clause 2 is the commencement clause and provides that the Bill, except *clauses 6, 19, 20, and 38* and the *Schedule*, comes into force on the day after the date on which it receives the Royal assent. *Clauses 6 and 38* and the *Schedule* (which inserts a transitional provision in Schedule 1AA of the principal Act) come into force on 1 January 2023. This ensures that the current threshold and reporting period for a return of party

donations received from same donor in section 210C continue to apply until the close of 31 December 2022. *Clause 19*, which amends section 80 of the principal Act to extend overseas voter eligibility, comes into force on the later date of 31 March 2023. This is to allow time for the necessary administrative and technological changes to be made to give effect to the amendments. *Clause 20*, which reverses the amendments made to section 80 of the principal Act by *clause 19*, comes into force 1 month after the day appointed as the latest day for the Electoral Commission to return to the Clerk of the House of Representatives the writ for the 2023 general election. This is so that the amendments made by *clause 19* apply only in respect of the 2023 general election.

Clause 3 provides that this bill amends the Electoral Act 1993 (the **principal Act**).

Part 1

Amendments relating to donations and loans

Subpart 1—Amendments relating to donations

Clause 4 amends section 210 of the principal Act, which prescribes the details that must be recorded by a party secretary in an annual return of party donations. The amendments—

- lower the disclosure threshold from \$15,000 to \$5,000, so that a return must set out specified details in respect of donations and contributions received by or on behalf of the same donor or contributor during the year exceeding \$5,000 in sum or value;
- require returns to record the number and total amount of party donations received not exceeding \$1,500 that are not anonymous party donations;
- require disclosure of—
 - the total amount received in respect of each class of party donation specified in section 210(1) of the principal Act; and
 - the aggregate of those totals, with a breakdown of that aggregate showing the total amount of the monetary donations received and total amount of non-monetary donations received;
- provide that an auditor's report is only required to accompany a return if the auditor's report is required to be obtained under section 210A (as amended by *clause 5* below).

Clause 5 amends section 210A of the principal Act to provide that a party secretary is only required to obtain an auditor's report on an annual return of party donations if the return shows that the total amount of donations received for the year exceeds \$50,000 or, regardless of the total amount of donations received for the year, the party has entered into 1 or more loans during the year or has an unpaid balance exceeding \$15,000 on a loan entered into during any previous year.

Clause 6 amends section 210C of the principal Act, which requires a party secretary to file with the Electoral Commission a return in respect of every party donation that exceeds \$30,000, or when aggregated with all previous donations from the same donor in the last 12 months exceeds \$30,000. The amendments—

- reduce the threshold in this section from \$30,000 to \$20,000; and
- provide that a return under this section is only required to be made during a specified period.

The specified period depends on when a general election is held. If a general election is held in the calendar year in which the term of Parliament is due to expire, the specified period commences on the day after the date on which the Prime Minister gives public notice of the day that is to be polling day, or 1 January of that year, whichever date is the earlier. If a general election is held in any other year, the period commences on the day after the day on which public notice is given of the date of polling day. In both cases the specified period ends on the day before polling day.

Subpart 2—Amendments relating to loans

Clause 7 replaces section 211 of the principal Act, which is the application provision for Part 6B (Loans). *New section 211* extends the application of Part 6A to loans entered into by candidates to reflect *new sections 214BA, 214GA, 214GB, and 214GC* (inserted into the principal Act by *clauses 10 and 16* below).

Clause 8 amends section 212 of the principal Act, which defines terms used in Part 6B (Loans) of the principal Act. The definition of loan is replaced with a new definition that defines both loans with respect to parties and loans with respect to candidates. A loan to a candidate means an agreement or arrangement under which a lender lends, or agrees to lend, money for use in the candidate's campaign for election. It does not include any money lent at a commercial interest rate by a registered lender. A registered lender is defined as a lender who is registered as a financial service provider under the Financial Service Providers (Registration and Dispute Resolution) Act 2008. A definition of late period used in section 214G and *new section 214GC* (inserted into the principal Act by *clause 16* below) is also inserted.

Clause 9 amends the heading of section 214B of the principal Act to distinguish this section (which requires a party secretary to keep proper records of loans) from *new section 214BA* (inserted into the principal Act by *clause 10* below) that relates to records of candidate loans.

Clause 10 inserts *new section 214BA* into the principal Act to require candidates to keep proper records of all loans they enter into. Failure to do so without reasonable excuse is an offence that is punishable, on conviction, by a fine not exceeding \$40,000.

Clause 11 amends the heading of section 214C of the principal Act to distinguish this section (which requires a party secretary to file an annual return of loans) from *new section 214GA* (inserted into the principal Act by *clause 16* below) that relates to returns of candidate loans.

Clause 12 amends section 214D of the principal Act to—

- align the section heading with the requirement that an auditor’s report is required on an annual return of loans filed by a party secretary (so it is clear that an auditor’s report is not required on a return of loans filed by a candidate);
- provide that an auditor’s report is no longer required to be obtained in respect of a nil return of loans filed by a party secretary.

Clause 13 amends the heading of section 214E of the principal Act to distinguish this section (which requires a party secretary to file a nil return if they consider that there are no party loans to disclose under section 214C) from *new section 214GB* (inserted into the principal Act by *clause 16* below), relating to candidate nil returns.

Clause 14 amends section 214F of the principal Act (return of loan provided by same lender exceeding \$30,000) so that it is clear that this section only applies in respect of party loans.

Clause 15 repeals section 214G(5), which defines the term late period. The definition of this term is moved to section 212, which is the interpretation provision for Part 6B. This is done because the term late period is now also used in *new section 214GC* (inserted into the principal Act by *clause 16* below).

Clause 16 inserts *new sections 214GA to 214GC* into the principal Act.

New section 214GA requires a candidate to file with the Electoral Commission a return of loans. A return must be filed by a candidate at the same time as a return of election expenses (under section 205K) and a return of donations (under section 209) and set out the details of any loan entered into to raise funds for use in the candidate’s election campaign.

The return is required to be filed in the form required by the Electoral Commission.

New section 214GB requires a candidate to file a nil return if they consider there is no relevant information to disclose under *new section 214GA*.

New section 214GC creates offences for filing a return under *new section 214GA* late, failing to file a return under *new section 214GA*, or filing a return under *new section 214GA* that is false in any material particular.

Clause 17 amends section 214I of the principal Act to extend the application of this provision to candidates. A candidate must retain records, documents, and accounts that are reasonably necessary to enable returns of loans to be verified. It is an offence to contravene this requirement without reasonable excuse punishable, on conviction, to a fine not exceeding \$40,000.

Clause 18 amends section 214J of the principal Act to extend the application of this provision to returns of candidate loans. The Electoral Commission must publish returns of loans filed by candidates under *new section 214GA* and make them available for public inspection.

Part 2

Other amendments

Subpart 1—Amendments relating to disqualification from registration of persons outside New Zealand

Clause 19 amends section 80 of the principal Act, which lists the classes of persons who are disqualified for registration as electors. Two classes of persons who are disqualified from registration as electors (subject to certain exceptions) are—

- New Zealand citizens who are outside New Zealand and have not been in New Zealand within the last 3 years (section 80(1)(a) of the principal Act);
- permanent residents of New Zealand who are outside New Zealand and have not been in New Zealand within the last 12 months (section 80(1)(b) of the principal Act).

Clause 19 changes the above periods to 6 years and 4 years respectively. This means that a New Zealand citizen who has not returned to New Zealand during the last 6 years, or a permanent resident who has not returned to New Zealand during the last 4 years, is eligible to register as an elector and vote. However, these changes are of a temporary nature as they are reversed by *clause 20* after the 2023 general election.

Clause 20, which comes into force 1 month after the day appointed as the latest day for the Electoral Commission to return the writs for the 2023 general election, reinstates the 3 year and 12 month periods currently in section 80(1)(a) and (b) of the principal Act. This returns section 80 of the principal Act to its current settings after the 2023 general election.

Subpart 2—Amendments required to provide for possibility of change in polling day

Clause 21 amends the definition of regulated period in section 3 of the principal Act to include reference to *new section 3BA* (inserted into the principal Act by *clause 23* below).

Clause 22 amends section 3B of the principal Act, which defines the term regulated period. The amendments—

- recast section 3B so that it defines regulated period only in relation to a general election (*new section 3BA*, inserted into the principal Act by *clause 23* below, defines regulated period in relation to a by-election);
- insert *new subsection (4)*, which provides an alternative definition of regulated period that is to apply in the event that the date of polling day for a general election that has been announced is subsequently changed. In this event the regulated period in relation to a general election means the shorter of the following periods:
 - the period beginning the day after the date on which the new polling day is announced and ending on the day before the new polling day; or

- the period beginning 3 months before the new polling day and ending on the day before the new polling day.

Clause 23 inserts *new section 3BA* into the principal Act, which defines regulated period in relation to a by-election. The definition is carried over from existing section 3B(4) of the principal Act, but also provides an alternative definition that is to apply in the event that the date of polling day for a by-election that has been announced is subsequently changed. In this event, the regulated period in relation to a by-election means the shorter of the following periods:

- the period beginning the day after the date on which the new polling day is announced and ending on the day before the new polling day; or
- the period beginning 3 months before the new polling day and ending on the day before the new polling day.

Clause 24 amends section 221B of the principal Act, which provides that during the period beginning 9 weeks before polling day an advertisement of a specified kind may be displayed without having to comply with any prohibition or restriction imposed by another enactment, a by-law, or a local authority relating to when the advertisement may be displayed or its content or language. The amendment provides that if during the 9-week period the date of polling day changes, this period ends 7 days after the day on which the date of new polling day is announced and a new period commences for the purposes of the new polling day.

Subpart 3—Amendments relating to annual financial statements

Clause 25 amends section 67 of the principal Act to require the secretary of a registered party to notify the Electoral Commission whether the party is an incorporated society (and, if so, the party's balance date), whether the party's constitution requires the preparation of annual financial statements (and, if so, the party's balance date), and whether the party's financial statements are required to be audited by a qualified auditor. This amendment is necessary to enable the implementation of *new sections 210G and 210H* (inserted into the principal Act by *clause 27* below).

Clause 26 amends the heading to Part 6A, to include reference to annual financial statements. This is because *clause 27* inserts in Part 6A *new subpart 7*, which relates to annual financial statements.

Clause 27 inserts *new subpart 7* in Part 6A of the principal Act (Annual financial statements of parties), comprising *new sections 210G to 210J*.

New section 210G requires that each year the secretary of a registered political party provide the Electoral Commission with a copy of the party's annual financial statement. If the party is an incorporated society, the copy of the party's annual financial statement must be provided to the Electoral Commission when the party's annual financial statement is given to the Registrar of Incorporated Societies, but in any event not later than 6 months after the party's balance date. If the party is not an incorporated society but has a constitution requiring the preparation of annual financial statements, a copy of the party's annual financial statement must be provided to

the Electoral Commission within 6 months of the party's balance date. In any other case, the secretary of the party must provide to the Electoral Commission by 30 September each year a financial statement for the 12-month period ending on the previous 31 March that is prepared in accordance with generally accepted accounting practice and contains certain information.

New section 210H requires a party secretary to provide to the Electoral Commission with the party's annual financial statement a copy of any auditor's report that is required by an enactment or by the party's constitution to be obtained on the financial statement.

New section 210I provides that the Electoral Commission may publish a party's annual financial statement in any manner it considers appropriate.

New section 210J creates offences for failing to send to the Electoral Commission an annual financial statement or sending an annual financial statement late to the Electoral Commission.

Subpart 4—Miscellaneous amendments

Clause 28 amends section 63A of the principal Act to remove an outdated reference to payment by a bank cheque. The fee of \$500 required in respect of an application for registration of an eligible political party must be paid by direct credit to a bank account nominated by the Electoral Commission.

Clause 29 amends section 127A of the principal Act to remove an outdated reference to payment by a bank cheque. The deposit of \$1,000 required to be paid by a party secretary when submitting a list under section 127 of the principal Act (a list of candidates for election) must be paid by direct credit to a bank account nominated by the Electoral Commission.

Clause 30 amends section 128 of the principal Act to correct a cross-reference.

Clause 31 amends section 144 of the principal Act to remove outdated references to payment by a bank draft or bank cheque. The deposit of \$300 required to be paid by a constituency candidate must be paid in cash or by direct credit to a bank account nominated by the Electoral Commission.

Clause 32 amends section 146F of the principal Act to remove an outdated reference to payment by a bank cheque. The deposit of \$300 for each constituency candidate required to be paid by a party secretary when lodging a bulk nomination schedule under section 146D of the principal Act (bulk nomination of constituency candidates) must be paid by direct credit to a bank account nominated by the Electoral Commission.

Clause 33 amends section 146K of the principal Act to remove outdated references to payment by a bank draft or bank cheque. The deposit of \$300 that may be required to be paid by a party secretary when nominating another constituency candidate (in the event that a constituency candidate nominated in a bulk nomination schedule dies or becomes incapacitated before the close of nominations) must be paid in cash or by direct credit to a bank account nominated by the Electoral Commission.

Clause 34 amends section 165 of the principal Act to allow not only issuing officers to communicate with voters in a polling place but other electoral officials who assist voters.

Clause 35 repeals section 183(7) of the principal Act to remove an outdated reference to candidates being able to appoint scrutineers by facsimile transmission.

Clause 36 amends section 208A of the principal Act to remove outdated references to payment by a cheque or bank draft. To protect disclosure of their identity, a person may send a party donation in excess of \$1,500 to the Electoral Commission by paying the amount of the donation by direct credit to a bank account nominated by the Electoral Commission.

Clause 37 amends section 208F of the principal Act to remove an outdated example of processing a cheque.

Subpart 5—Related and consequential amendments

Clause 38 amends Schedule 1AA of the principal Act to insert a transitional provision in relation to the amendment to section 210C of the principal Act (return of party donation received from same donor exceeding \$30,000). Despite the amendments to section 210C (by *clause 6*), that section, as in force prior to 1 January 2023, continues to apply on and after that date in respect of donations received before the close of 31 December 2022.

Clause 39 amends the Electoral (Advertisements of a Specified Kind) Regulations 2005 as a consequence of the amendment made to section 221B (by *clause 24*). The amendment ensures that these regulations also apply in respect of the periods described in *new section 221B(1A)*.

Hon Kris Faafoi

Electoral Amendment Bill

Government Bill

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The Parliament of New Zealand enacts as follows:

1 Title

This Act is the Electoral Amendment Bill **2022**.

2 Commencement

- (1) This Act comes into force on the day after the date on which it receives the Royal assent.
- (2) However,—
 - (a) **sections 6 and 38 and the Schedule** come into force on 1 January 2023; and
 - (b) **section 19** comes into force on 31 March 2023; and
 - (c) **section 20** comes into force 1 month after the day appointed as the latest day for the return of the writ for the 2023 general election.

3 Principal Act

This Act amends the Electoral Act 1993 (the **principal Act**).

Part 1

Amendments relating to donations and loans

Subpart 1—Amendments relating to donations

4 Section 210 amended (Annual return of party donations)

- (1) In section 210(1)(a) and (b), replace “\$15,000” with “\$5,000”.
- (2) Replace section 210(6A) with:
 - (6A) The details referred to in subsection (1)(f) are—
 - (a) in respect of anonymous party donations received of an amount not exceeding \$1,500—
 - (i) the number of donations; and
 - (ii) the total amount of the donations; and
 - (b) in respect of all other party donations received of an amount not exceeding \$1,500—
 - (i) the number of donations; and
 - (ii) the total amount of the donations; and
 - (c) in respect of party donations received of an amount exceeding \$1,500, but not exceeding \$5,000—
 - (i) the number of donations; and
 - (ii) the total amount of the donations.
 - (3) After section 210(6A), insert:
 - (6B) A return must also set out—
 - (a) the total amount of all of the party donations disclosed under subsection (1)(a):
 - (b) the total amount of all of the party donations disclosed under subsection (1)(c):
 - (c) the total amount of all of the party donations disclosed under subsection (1)(d):
 - (d) the total amount of all of the party donations disclosed under subsection (1)(e):
 - (e) the total amount of all of the party donations disclosed under subsection (1)(f):
 - (f) the aggregate of the total amounts referred to in **paragraphs (a) to (e)**; and
 - (g) a breakdown of the aggregate referred to in **paragraph (f)** showing the total amount of—
 - (i) party donations received in money; and

- (ii) other party donations received (whether of the equivalent of money or of goods or services).

(4) Replace section 210(7)(c) with:

- (c) be accompanied by an auditor's report, if an auditor's report is required to be obtained under section 210A.

5 Section 210A amended (Auditor's report on annual return of party donations)

Replace section 210A(1) with:

- (1) This section applies if—
 - (a) an annual return of party donations required to be filed under section 210 shows that the total amount of donations received by the party secretary for the year exceeds \$50,000; or
 - (b) an annual return of party donations required to be filed under section 210 shows that the total amount of donations received by the party secretary for the year does not exceed \$50,000, but the annual return of party loans filed by the party secretary under section 214C for the same year discloses that the party has—
 - (i) entered into at least 1 loan during that year; or
 - (ii) an unpaid balance exceeding \$15,000 on a loan entered into during any previous year.
- (1A) A party secretary must obtain from the auditor appointed under section 206J a report on the return of party donations.

6 Section 210C amended (Return of party donation received from same donor exceeding \$30,000)

- (1) In the heading to section 210C, replace “\$30,000” with “\$20,000”.
- (2) Replace section 210C(1) and (2) with:
 - (1) A party secretary must file with the Electoral Commission a return in respect of every party donation received from a donor during the period specified in **subsection (2)** (the **specified period**) that—
 - (a) exceeds \$20,000; or
 - (b) when aggregated with all previous donations received from the donor in the specified period exceeds \$20,000.
 - (2) The specified period is—
 - (a) if a general election is held in the calendar year in which the term of Parliament is due to expire, the period—
 - (i) commencing on the earlier of the following dates:
 - (A) the day after the date on which the Prime Minister gives public notice of the day that is to be polling day; or

- (B) 1 January of that year; and
- (ii) ending on the close of the day before polling day; or
- (b) if a general election is held in a year other than in the calendar year in which the term of Parliament is due to expire, the period—
 - (i) commencing on the day after the date on which the Prime Minister gives public notice of the day that is to be polling day; and
 - (ii) ending on the close of the day before polling day.
- (3) In section 210C(3), replace “subsection (2)” with “**subsection (1)(b)**”.
- (4) In section 210C(4), replace “subsection (1)” with “**subsection (1)(a)**”.
- (5) In section 210C(4)(e), replace “\$30,000” with “\$20,000”.
- (6) In section 210C(5), replace “subsection (2)” with “**subsection (1)(b)**”.
- (7) In section 210C(6), replace “subsection (1) or (2)” with “**subsection (1)(a) or (b)**”.
- (8) After section 210C(6), insert:
- (7) In this section, **give public notice** means issue a media statement.

Subpart 2—Amendments relating to loans

7 Section 211 replaced (Application of this Part)

Replace section 211 with:

211 Application of this Part

This Part applies to loans entered into by—

- (a) a party secretary on behalf of the party:
- (b) a candidate.

8 Section 212 amended (Interpretation)

- (1) In section 212, replace the definition of **loan** with:

loan—

- (a) to a candidate,—
 - (i) means a written or an oral agreement or arrangement under which a lender lends money or agrees to lend money in the future at specified dates or on request or on the occurrence of a particular event for use in the candidate’s campaign for election; but
 - (ii) does not include any money lent by a registered lender at a commercial interest rate
- (b) to a party,—
 - (i) means a written or an oral agreement or arrangement under which a lender lends money or agrees to lend money in the future at spe-

cified dates or on request or on the occurrence of a particular event; but

- (ii) does not include any money lent by a registered bank at a commercial interest rate

- (2) In section 212, insert in their appropriate alphabetical order:

late period, in relation to the filing of a return, means the period commencing on the day after the date on which the return is required to be filed and ending on the day that is 15 working days later

registered lender means a lender who is registered as a financial service provider under the Financial Service Providers (Registration and Dispute Resolution) Act 2008

9 Section 214B amended (Records of loans)

Replace the heading to section 214B with “**Records of loans: parties**”.

10 New section 214BA inserted (Records of loans: candidates)

After section 214B, insert:

214BA Records of loans: candidates

- (1) A candidate must keep proper records of all loans they enter into.
- (2) A candidate who fails, without reasonable excuse, to comply with **subsection (1)** commits an offence and is liable on conviction to a fine not exceeding \$40,000.

11 Section 214C amended (Annual return of loans)

Replace the heading to section 214C with “**Annual return of party loans**”.

12 Section 214D amended (Auditor’s report on annual return of loans)

- (1) Replace the heading to section 214D with “**Auditor’s report on annual return of party loans**”.
- (2) Replace section 214D(1) with:
 - (1) This section applies to a return required to be filed under section 214C, not being a nil return filed under section 214E.
 - (1A) A party secretary must obtain a report on the return from the auditor appointed under section 206J.

13 Section 214E amended (Nil return)

Replace the heading to section 214E with “**Nil return: parties**”.

14 Section 214F amended (Return of loan provided by same lender exceeding \$30,000)

- (1) In the heading to section 214F, after “**of**”, insert “**party**”.

- (2) In section 214F(1), after “entered into”, insert “on behalf of the party”.
- (3) In section 214F(2), after “every loan entered into”, insert “on behalf of the party”.
- (4) In section 214F(3), replace “by the party” with “on behalf of the party”.

15 Section 214G amended (Offences relating to return of party loans)

Repeal section 214G(5).

16 New sections 214GA to 214GC inserted

After section 214G, insert:

214GA Return of candidate loans

- (1) A candidate must, at the same time as filing a return of election expenses (under section 205K) and a return of donations (under section 209), file with the Electoral Commission a return setting out the details specified in **subsection (2)** in respect of every loan entered into.
- (2) The details referred to in **subsection (1)** are—
 - (a) the name of the lender; and
 - (b) the address of the lender; and
 - (c) the loan amount; and
 - (d) the date on which the loan was entered into; and
 - (e) the repayment date for the loan, or a statement that there is no repayment date; and
 - (f) the interest rate or rates; and
 - (g) the unpaid balance of the loan amount, if any; and
 - (h) the name and address of any guarantor of the loan; and
 - (i) the details of any security given for the loan; and
 - (j) whether there is any term of the loan agreement or arrangement that enables the lender to reduce or extinguish the loan amount or interest, or both, or grant any concession in respect of repayment of that amount or interest, or both.
- (3) A return must be in the form required by the Electoral Commission.

214GB Nil return: candidates

If a candidate considers that there is no relevant information to disclose under **section 214GA**, the candidate must file a nil return under that section.

214GC Offences relating to return of candidate loans

- (1) A candidate commits an offence and is liable on conviction to a fine not exceeding \$40,000 who, without reasonable excuse, files a return of candidate loans under **section 214GA** during the late period.
- (2) A candidate is guilty of a corrupt practice who, without reasonable excuse,—
 - (a) files a return of candidate loans under **section 214GA** after the late period; or
 - (b) fails to file a return of candidate loans under **section 214GA**.
- (3) A candidate who files a return under **section 214GA** that is false in any material particular is guilty of—
 - (a) a corrupt practice if the candidate filed the return knowing it to be false in any material particular; or
 - (b) an illegal practice in any other case unless the candidate proves that—
 - (i) the candidate had no intention to misstate or conceal the facts; and
 - (ii) the candidate took all reasonable steps in the circumstances to ensure that the information in the return was accurate.
- (4) A candidate charged with an offence against **subsection (3)(a)** may be convicted of an offence against **subsection (3)(b)**.

17 Section 214I amended (Obligation to retain records necessary to verify return of party loans)

- (1) In the heading to section 214I, delete “party”.
- (2) After section 214I(2), insert:
- (3) A candidate must take all reasonable steps to ensure that all records, documents, and accounts that are reasonably necessary to enable returns filed under **section 214GA** to be verified are retained until the expiry of the period within which a prosecution may be commenced under this Act in relation to the returns or in relation to any matter to which the returns relate.
- (4) A candidate who fails, without reasonable excuse, to comply with **subsection (3)** commits an offence and is liable on conviction to a fine not exceeding \$40,000.

18 Section 214J amended (Return of party loans to be publicly available)

- (1) Replace the heading to section 214J with “Returns of loans to be publicly available”.
- (2) After section 214J(1)(c), insert:
 - (d) a return filed under **section 214GA**.

Part 2

Other amendments

Subpart 1—Amendments relating to disqualification from registration of persons outside New Zealand

19 Section 80 amended (Disqualifications for registration)

- (1) In section 80(1)(a), replace “3 years” with “6 years”.
- (2) In section 80(1)(b), replace “12 months” with “4 years”.

20 Section 80 amended (Disqualifications for registration)

- (1) In section 80(1)(a), replace “6 years” with “3 years”.
- (2) In section 80(1)(b), replace “4 years” with “12 months”.

Subpart 2—Amendments required to provide for possibility of change in polling day

21 Section 3 amended (Interpretation)

In section 3, replace the definition of **regulated period** with:

regulated period has the meaning given to it by—

- (a) section 3B, in relation to a general election:
- (b) **section 3BA**, in relation to a by-election

22 Section 3B amended (Meaning of regulated period)

- (1) Replace the heading to section 3B with “**Meaning of regulated period: general election**”.
- (2) Replace section 3B(1) with:
 - (1) In this Act, **regulated period**, in relation to a general election, has the meaning given to it by—
 - (a) subsections (2) and (3), if the Prime Minister gives public notice of the day that is to be polling day for the general election and that day is not subsequently changed to a later day; or
 - (b) **subsection (4)**, if the Prime Minister gives public notice of the day that is to be polling day for the general election and that day is subsequently changed to a later day.
 - (3) Replace section 3B(4) with:
 - (4) If at any time after giving public notice of the day that is to be polling day (**day A**) the Prime Minister gives public notice that day A is changed to a later day (**day B**), the regulated period is the shorter of the following periods:
 - (a) the period—

- (i) commencing on the day after the date on which the Prime Minister gives public notice of day B; and
- (ii) ending on the close of the day before day B; or
- (b) the period—
 - (i) commencing 3 months before day B; and
 - (ii) ending on the close of the day before day B.

23 New section 3BA inserted (Meaning of regulated period: by-election)

After regulation 3B, insert:

3BA Meaning of regulated period: by-election

- (1) In this Act, **regulated period**, in relation to a by-election, has the meaning given to it by—
 - (a) **subsection (2)**, if the Prime Minister gives public notice of the day that is to be polling day for the by-election and that day is not subsequently changed to a later day; or
 - (b) **subsection (3)**, if the Prime Minister gives public notice of the day that is to be polling day for the by-election and that day is subsequently changed to a later day.
- (2) **Regulated period** means the period that—
 - (a) commences on the day after the notice of the vacancy to be filled by the by-election is published under section 129(1); and
 - (b) ends with the close of the day before polling day.
- (3) **Regulated period** means the shorter of the following periods:
 - (a) the period—
 - (i) commencing on the day after the date on which the Prime Minister gives public notice of the later day that is to be polling day for the by-election (**day B**); and
 - (ii) ending on the close of the day before day B; or
 - (b) the period—
 - (i) commencing 3 months before day B; and
 - (ii) ending on the close of the day before day B.
- (4) In this section, **give public notice** means issue a media statement.

24 Section 221B amended (Display of advertisement of a specified kind)

After section 221B(1), insert:

- (1A) Despite subsection (1), if at any time after the 9-week period referred to in that subsection has commenced the date appointed for polling day (**date A**) is changed to a later date (**date B**),—

- (a) the period that began 9 weeks before date A ends at the close of 7 days after the date on which public notice is given of date B by the issue of a media statement; and
- (b) an additional period applies for the purposes of subsection (1) in respect of the later polling day that is the shorter of the following periods:
 - (i) the period beginning 9 weeks before polling day and ending with the close of the day before polling day:
 - (ii) the period beginning on the day after the day on which the period in **paragraph (a)** closes and ending with the close of the day before polling day.

Subpart 3—Amendments relating to annual financial statements

25 Section 67 amended (Registration)

- (1) After section 67(3)(d), insert:

- (da) to notify the Electoral Commission—
 - (i) whether the party is an incorporated society and, if so, the party’s balance date:
 - (ii) if the party is not an incorporated society, whether the party’s constitution requires the preparation of annual financial statements and, if so, the party’s balance date:
 - (iii) whether the party’s annual financial statements prepared in accordance with any other enactment or the party’s constitution are required to be audited by a qualified auditor:
 - (iv) of any subsequent change to the matters notified under **subparagraphs (i) to (iii)**; and

- (2) In section 67(3)(e), delete “subject to subsection (4)”.

26 Part 6A heading replaced

Replace the Part 6A heading with:

Part 6A

Election expenses, donations, and annual financial statements

27 New subpart 7 of Part 6A inserted

After section 210F, insert:

Subpart 7—Annual financial statements of parties

210G Annual financial statement of party to be provided to Electoral Commission

- (1) The secretary of a party that is an incorporated society must provide a copy of the party's annual financial statement to the Electoral Commission—
 - (a) on the same date as the date on which the party's annual financial statement is given to the Registrar of Incorporated Societies; but
 - (b) in any event, not later than 6 months after the party's balance date.
- (2) The secretary of a party that is not an incorporated society, but which has a constitution requiring the preparation of an annual financial statement for the party, must provide to the Electoral Commission each year, within 6 months of the party's balance date, a copy of the party's annual financial statement.
- (3) The secretary of a party that is not an incorporated society and does not have a constitution requiring the preparation of an annual financial statement for the party must provide to the Electoral Commission each year, within 6 months of the most recent default balance date, a financial statement for the previous 12-month period ending on that default balance date prepared in accordance with generally accepted accounting practice and containing the following information:
 - (a) details of the income and expenditure, or receipts and payments, of the party during the previous financial year; and
 - (b) details of the assets and liabilities of the party at the close of the previous financial year; and
 - (c) details of all mortgages, charges, and other security interests of any description affecting any of the property of the party at the close of the previous financial year.

- (4) In this section,—

default balance date means 31 March in any year

financial year means a period of 12 months commencing on 1 April and ending with 31 March

generally accepted accounting practice has the same meaning as in section 8 of the Financial Reporting Act 2013

incorporated society means an incorporated society registered under the Incorporated Societies Act 1908 or the Incorporated Societies Act 2022.

210H Auditor's report on annual financial statements

- (1) This section applies if an auditor's report is required to be obtained on a party's annual financial statement by—
 - (a) any enactment; or

- (b) the party's constitution.
- (2) When providing a copy of the party's annual financial statement to the Electoral Commission in accordance with **section 210G** the party secretary must also provide to the Electoral Commission a copy of the auditor's report obtained on the statement.

210I Publication of annual financial statements

The Electoral Commission may publish, in any manner that the Electoral Commission considers appropriate, an annual financial statement received under **section 210G**.

210J Offences relating to annual financial statements

- (1) A party secretary commits an offence and is liable on conviction to a fine not exceeding \$40,000 who, without reasonable excuse, provides the Electoral Commission with an annual financial statement during the late period.
- (2) A party secretary is guilty of corrupt practice who, without reasonable excuse,—
 - (a) provides the Electoral Commission with an annual financial statement after the late period; or
 - (b) fails to provide the Electoral Commission with an annual financial statement.
- (3) In this section, **late period**, in relation to providing an annual financial statement, means the period commencing on the day after the date on which the statement is required to be provided to the Electoral Commission and ending on the day that is 15 working days later.

Subpart 4—Miscellaneous amendments

28 Section 63A amended (Application fee)

Replace section 63A(2) with:

- (2) The fee must be paid by direct credit to a bank account nominated by the Electoral Commission.

29 Section 127A amended (Deposit by party secretary)

Replace section 127A(2) with:

- (2) The deposit must be paid by direct credit to a bank account nominated by the Electoral Commission.

30 Section 128 amended (Acceptance or rejection of lists by Electoral Commission)

Replace section 128(1)(d) with:

- (d) if the list does not contain the declaration required by section 127(2)(c);
or

31 Section 144 amended (Deposit by candidate)

Replace section 144(2) with:

- (2) The deposit must be paid—
- (a) in cash; or
 - (b) by direct credit to a bank account nominated by the Electoral Commission.

32 Section 146F amended (Deposit payable in respect of bulk nomination schedule)

Replace section 146F(2) with:

- (2) The deposit must be paid in 1 lump sum by direct credit to a bank account nominated by the Electoral Commission.

33 Section 146K amended (Replacement nomination if earlier nomination withdrawn or lapses)

In section 146K(1)(c), replace “(in the form of money, a bank draft, or a bank cheque)” with “(in cash or by direct credit to a bank account nominated by the Electoral Commission)”.

34 Section 165 amended (Voters not to be communicated with in polling place)

Replace section 165(1) with:

- (1) No person other than an electoral official may communicate with a voter in a polling place, either before or after the voter has voted.
- (1A) An electoral official (with an interpreter if necessary) may only ask the questions the electoral official is authorised to put, and give such general directions as may assist any voter, and in particular may, on request, inform a voter orally of the names of—
- (a) all the constituency candidates in alphabetical order with their party designations; and
 - (b) all the parties in alphabetical order who have submitted a party list, and the names of the candidates on each list in the order of preference submitted by the party in accordance with section 127.

35 Section 183 amended (Scrutineers for recounts and allocation of list seats)

Repeal section 183(7).

36 Section 208A amended (Method of making donation protected from disclosure)

Replace section 208A(2) with:

- (2) A person to whom this section applies may send a donation in excess of \$1,500 to the Electoral Commission by paying the amount of the donation by direct credit to a bank account nominated by the Electoral Commission.

37 Section 208F amended (Offence of prohibited disclosure)

Replace section 208F(3)(c) with:

- (c) any other person to whom the identifying details must be supplied to enable the donation to be made:

Subpart 5—Related and consequential amendments

38 Schedule 1AA amended

In Schedule 1AA,—

- (a) insert the Part set out in the **Schedule** of this Act as the last Part; and
(b) make all necessary consequential amendments.

39 Amendment to Electoral (Advertisements of a Specified Kind) Regulations 2005

- (1) This section amends the Electoral (Advertisements of a Specified Kind) Regulations 2005.
- (2) In regulation 3, insert in its appropriate alphabetical order:
Act means the Electoral Act 1993
- (3) Replace regulation 4(b) with:
(b) regulations 5 to 9 apply only during the specified period.
- (4) In regulation 4(d), replace “Electoral Act 1993” with “Act”.
- (5) In regulation 4, insert as subclause (2):
(2) In this regulation, **specified period** means whichever of the following applies:
(a) the period specified in section 221B(1) of the Act; or
(b) both of the periods specified in section 221B(1A) of the Act.
- (6) In regulation 8(3)(a) and (b), replace “Electoral Act 1993” with “Act”.

Schedule
New Part 3 inserted into Schedule 1AA

s 38

Part
Provision relating to Electoral Amendment Act 2022

5 Transitional provision relating to party donations received from same donor over \$30,000

Despite section 6 of the Electoral Amendment Act **2022**, section 210C as in force immediately before 1 January 2023 continues to apply on and after that date in respect of all party donations received before the close of 31 December 2022.