

## Hon Andrew Little

Minister of Justice

### Proactive release – Government response to the Justice Committee report Inquiry into the 2017 General Election and 2016 Local Elections

Date of issue: 5 June 2020

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

No.	Document	Comments
1	<b>Government response to the Justice Committee report Inquiry into the 2017 General Election and 2016 Local Elections</b> <i>Cabinet paper</i> Office of the Minister of Justice Office of the Minister of Local Government 11 March 2020	Released in full.
2	<b>Government response to the Justice Committee report Inquiry into the 2017 General Election and 2016 Local Elections</b> <i>Cabinet Minute: SWC-20-MIN-0011</i> Cabinet Office Meeting date: 11 March 2020	Released in full.

Office of the Minister of Justice  
Office of the Minister of Local Government

Chair, Cabinet Social Wellbeing Committee

**Government response to the Justice Committee report *Inquiry into the 2017 General Election and 2016 Local Elections***

**Purpose**

1. This paper seeks approval to table the attached government response to the Justice Select Committee's *Inquiry into the 2017 General Election and 2016 Local Elections*.
2. It also seeks Cabinet's in-principle agreement to a comprehensive review of the Electoral Act 1993 ("the comprehensive review"), which is referenced in the government response.

**The Justice Committee has released its report into the 2017 general election and 2016 local elections**

3. In July 2018, the Justice Select Committee initiated an inquiry into the 2017 general election and 2016 local elections. These inquiries are routinely conducted after each set of elections, although are not usually combined. In March 2019, the Committee called for further submissions on the specific issue of how New Zealand can protect its democracy from inappropriate foreign interference. The Committee published its report on 10 December 2019.
4. The Report is divided into three chapters: *Chapter 1: 2017 General Election*, *Chapter 2: 2016 Local Elections*, and *Chapter 3: Foreign interference in New Zealand elections*. Some recommendations are for minor changes, while others would require significant further policy work.
5. The Government response to the Report is due to be tabled in Parliament by 26 March 2020 in accordance with Standing Order 252
6. Three of the Committee's recommendations have already been addressed by the Electoral Amendment Act 2019.

**A comprehensive review of electoral law**

7. The Justice Committee has recommended that the Government consider significant changes to electoral law, such as:
  - 7.1. giving the Electoral Commission investigatory, enforcement and sanction powers
  - 7.2. requiring registered third parties to declare where they get their donations from, and
  - 7.3. prohibiting foreigners from advertising in social media to influence a New Zealand election outcome, and providing appropriate constraints and legal obligations on social media platforms so that this can be enforced.
8. The Minister of Justice proposes that these matters should be considered as part of a comprehensive review of national electoral law. Some parts of the Electoral Act 1993 have been carried over from the 1956 Act and are over sixty years old. A comprehensive review and modernisation is now warranted. The usual process is for the Electoral Act to be reviewed and

amended following each election. This has led to a cycle of minor and piecemeal changes being implemented, because of timing constraints.

9. The Minister of Justice proposes a comprehensive review of electoral law and seeks Cabinet's in-principle agreement to this. Given the constitutional importance of electoral law, it will be important for the review to have a degree of independence from government.
10. The review would begin after the 2020 general election. It would be carried out and implemented over two parliamentary terms to allow sufficient time for changes to be made without interfering with the Electoral Commission's election preparation.
11. If Cabinet agrees, the review would consider, among other issues, the Justice Committee's recommendations for change to the framework for general elections, and this is reflected in the attached draft response.
12. The Minister of Justice will consult further with his Ministerial colleagues as the scope of, and process for, the comprehensive review is developed. If Cabinet agrees in principle to the comprehensive review of electoral law, the Minister of Justice will bring a paper to SWC seeking Cabinet's formal agreement to the scope and process for that review in due course.

### **The proposed Government response**

13. The draft Government Response is in three parts, corresponding to the chapters in the Committee's report.

#### *Proposed Government response to Chapter 1: 2017 General Election*

14. Most of the recommendations in Part 1 relate to the Electoral Act and would be considered in the proposed comprehensive review of electoral law.
15. This part of the proposed response states that the Government favours a comprehensive review of national electoral law, which would include considering the recommendations in Chapter 1 (and some recommendations in Chapter 3).
16. If Cabinet does not agree in principle to a comprehensive review of electoral law, or does not agree to announce this in the Government response, the Minister of Justice instead proposes a response that signals that the report will inform any further work in this area in the future.

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

17. The Committee made twenty recommendations relating to local election practices. The proposed Government response to Chapter 2 is divided into the following groups:

##### Recommendations that the Government agrees to consider

- 17.1. Some of the recommendations would streamline local election practices, reduce administration, and improve voter turnout and candidate numbers. The proposed response states that overall, the Government agrees to progress consideration of these technical recommendations in the short-term.
- 17.2. The Committee also recommended aligning local election advertising rules with general election advertising rules, and local election overseas voting processes with general election overseas voting processes. Government agrees to progress consideration of aligning the principles of campaign and advertising rules. Modernising some aspects of the campaigning and advertising rules could be progressed in the short-term but

modernising other advertising and campaigning rules is best considered subsequent to the Government's proposed comprehensive review of the Electoral Act.

Recommendations to be considered as other priorities allow

- 17.3. The Committee recommended centralising and standardising local election processes and voting methods respectively. The proposed Government response states that this recommendation has merit and requires further investigation. The Committee's recommendation to align District Health Boundaries with local authority boundaries will be considered in the context of the New Zealand Health and Disability System Review. The Committee's recommendation for the establishment of a funding support model for local elections similar to the Election Access Fund for general elections will be considered by the Government as part of its review of the operation of the fund

Recommendations not to be progressed

- 17.4. The draft Government response does not recommend moving the polling date to avoid school holidays or filling extraordinary vacancies that occur within 12 months after a triennial local body election, with the next highest polling candidate or Single Transferrable Vote.

*Proposed Government Response to Chapter 3: interference in New Zealand elections*

18. The Committee found that there is a real risk of foreign interference in New Zealand elections and made 21 recommendations to mitigate this risk. The proposed Government response to Chapter 3 divides the recommendations into the following groups:

Recommendations already progressed

- 18.1. Last year the Government enacted the Electoral Amendment Act 2019. It provides additional safeguards against foreign interference ahead of the 2020 General Election. The Government Communications Security Bureau and New Zealand Security Intelligence Service have also progressed some recommendations.

Recommendations that the Government agrees to consider

- 18.2. Some recommendations are for changes to electoral finance law. The proposed response states that the Government will consider whether some of the Committee's recommendations would be suitable for progressing through an Electoral Amendment Bill ahead of the 2023 general election. Electoral finance law, including the Committee's recommendations will also be considered as part of the comprehensive review. Recommendations relating to agencies' funding for their activities in reducing or raising awareness of foreign interference risks will be taken into account when determining agency resources.

The proposed comprehensive review of electoral law will consider electoral advertising on social media and whether there is a need for greater transparency. Broader work on the regulation of social media platforms could be considered as part of a review of media content regulation being scoped by the Department of Internal Affairs and the Ministry for Culture and Heritage. Work on lobbying transparency will be prioritised alongside other Government priorities.

Recommendations not to be progressed

- 18.3. The draft response does not recommend progressing the Committee's recommendations relating to media ownership. The Government is already introducing new tools to manage

risks associated with foreign control of media entities through the Phase Two reform of the Overseas Investment Act 2005.

### Consultation

19. The Ministry of Justice and Department of Internal Affairs have consulted with the following agencies in preparing the proposed Government response: the Department of the Prime Minister and Cabinet, the Electoral Commission, the Government Communications Security Bureau, the Ministry of Business, Innovation and Employment (including CERT NZ) the Ministry of Foreign Affairs and Trade, the Ministry for Culture and Heritage, New Zealand Police, the Serious Fraud Office, the New Zealand Security Intelligence Service, the Office for Disability Issues and the Treasury.

### Financial Implications

20. There are no immediate financial implications from tabling the proposed government response. A comprehensive review of electoral law would have financial implications. If Cabinet agrees in principle to a comprehensive review, the Minister of Justice will address the financial implications when he reports back to Cabinet with the detail of the proposal.

21. Most recommendations that the proposed government response *agrees to consider* for local elections, are technical changes that could be progressed in the short-term within Department of Internal Affairs' existing appropriations. However, more fundamental work is needed to address known issues with the voting system, achieve the desired civil engagement and governance outcomes, and address the risk of the postal voting system failing. The Minister of Local Government will seek funding for additional policy resources to begin this work through Budget 2020.

### Legislative implications

22. There are no legislative implications arising directly from this paper. However, further work on the Committee's recommendations, including as part of a proposed comprehensive review of electoral law, would result in legislative change.

23. Most of the technical recommendations in respect of local elections that *Government agrees to consider* could be progressed in the short-term through the programmed review of the Local Electoral Regulations 2001 in 2020/21. There are a small number of technical recommendations that would be progressed through a Local Electoral Amendment Bill in 2021.

24. The recommendation that Government will *consider as other priorities allow* could likely result in major amendments or replacement of Local Electoral Act 2001, subject to Cabinet approval.

### Impact Analysis

25. The Impact Analysis requirements do not apply to this paper as it does not consider regulatory options.

### Human Rights

26. There are no human rights implications arising directly from this paper. However, some of the Committee's recommendations that will be considered as part of future work have human rights implications. The need to accommodate human rights, such as the right to freedom of expression and the right to vote, will form part of any future work.

### Disability perspective

27. The Justice Committee recommended that the Government consider the matters raised by Blind Citizens NZ and Deaf Action New Zealand, which relate to making electoral processes more accessible (recommendation nine). As noted in the proposed government response, accessibility of electoral processes will be considered as part of the comprehensive review of electoral law but not all of the matters raised need to await that review. For example, the Electoral Commission advises that it plans to have secure video interpreter services available in polling booths for the 2020 General Election. The intention is for those services to be offered in one voting place in every electorate.
28. The Justice Committee recommended that the Government ensure that local election information is provided in accessible formats. The Government is engaging with advocacy groups about how local election information can be more accessible and will share this with the local government sector to support efforts to improve accessibility of election information for the 2022 Local Elections.

### Publicity and proactive release

29. We intend to proactively release this Cabinet paper with appropriate redactions on the Ministry of Justice and Department of Internal Affairs websites, as soon as practicable after the Government response is tabled on 26 March 2020.
30. As the government response will be tabled in the House of Representatives, it will be a public document.
31. We expect there will be some public interest in the government response, and in the announcement of a comprehensive review of the Electoral Act 1993.

### Recommendations

The Ministers of Justice and Local Government recommend that the Committee:

1. **note** that the Justice Select Committee initiated an inquiry into the 2017 General Election and 2016 Local Elections in July 2018;
2. **note** that in March 2019, the Committee called for further submissions on the specific issue of how New Zealand can protect its democracy from inappropriate foreign interference;
3. **note** that the Committee has released its report *Inquiry into the 2017 General Election and 2016 Local Elections*;
4. **note** the Government's response to the inquiry report is due to be tabled in Parliament by 26 March 2020 in accordance with Standing Order 252;
5. **note** the proposed government response to the Committee's report, attached to this paper as Attachment 1;
6. **EITHER**
  - a. **agree** in principle to a comprehensive review of national electoral law, subject to the report back to Cabinet referred to in recommendation 8 below on the scope and process for the review and the financial implications;

**AND**

I N C O N F I D E N C E

- b. **agree** to respond to those parts of the inquiry report that relate to electoral law for general elections by stating that the Government will consider them in a proposed comprehensive review of electoral law that will commence following the next general election;

7. **OR**

- a. **invite** the Minister of Justice to amend the attached proposed government response, to respond to those parts of the report that relate to electoral law by signalling that the report will inform any further work in this area in the future;
8. **note** that if Cabinet agrees in principle to recommendation 6 (a comprehensive review of electoral law), the Minister of Justice will report back to SWC with detail on the scope and process for the review and the financial implications in due course;
9. **note** that the Minister of Local Government will, regarding local elections, undertake further work on the recommendations that Government *agrees to consider and will consider as other priorities allow*;
10. **note** that the Minister of Local Government will return to Cabinet to seek policy approval for the outcome of the further work in due course;
11. **approve** the content of the proposed Government response to the Committee's report, attached to this paper as Attachment 1;
12. **authorise** the Minister of Justice to table the attached proposed Government response in Parliament;
13. **note** that the Minister of Justice intends to proactively release this Cabinet paper, on the Ministry of Justice website, subject to any redactions justified in accordance with the Official Information Act 1982.

Authorised for lodgement

Hon Andrew Little  
**Minister of Justice**

Hon Nanaia Mahuta  
**Minister of Local Government**

I N C O N F I D E N C E



# Cabinet Social Wellbeing Committee

## Minute of Decision

*This document contains information for the New Zealand Cabinet. It must be treated in confidence and handled in accordance with any security classification, or other endorsement. The information can only be released, including under the Official Information Act 1982, by persons with the appropriate authority.*

### Justice Committee Report Inquiry into the 2017 General Election and 2016 Local Elections: Government Response

Portfolios                      Justice / Local Government

On 11 March 2020, the Cabinet Social Wellbeing Committee (SWC):

- 1        **noted** that the Justice Select Committee (the Committee) initiated an inquiry into the 2017 General Election and 2016 Local Elections in July 2018;
- 2        **noted** that in March 2019, the Committee called for further submissions on the specific issue of how New Zealand can protect its democracy from inappropriate foreign interference;
- 3        **noted** that the Committee has released its report Inquiry into the 2017 General Election and 2016 Local Elections;
- 4        **noted** the Government Response to the inquiry report is due to be presented in Parliament by 26 March 2020 in accordance with Standing Order 252;
- 5        **noted** the proposed Government Response to the Committee's report (the Government Response), attached to the paper under SWC-20-SUB-0011 as Attachment 1;
- 6        **agreed** in principle to a comprehensive review of national electoral law, subject to the report back to SWC referred to in paragraph 8 below on the scope and process for the review and the financial implications;
- 7        **agreed** to respond to those parts of the inquiry report that relate to electoral law for general elections by stating that the government will consider them in a proposed comprehensive review of electoral law that will commence following the next general election;
- 8        **noted** that the Minister of Justice will report back to the Cabinet Social Wellbeing Committee with detail on the scope and process for the review, including the terms of reference for the review, and the financial implications in due course;
- 9        **noted** that the Minister of Local Government will, regarding local elections, undertake further work on the recommendations that government agrees to consider and will consider as other priorities allow;
- 10       **noted** that the Minister of Local Government will return to Cabinet to seek policy approval for the outcome of the further work in due course;

- 11 **approved** the content of the Government Response;
- 12 **invited** the Minister of Justice to present the Government Response in Parliament.

Vivien Meek  
Committee Secretary

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**Present:**

Rt Hon Jacinda Ardern  
Rt Hon Winston Peters  
Hon Grant Robertson  
Hon Dr Megan Woods  
Hon Chris Hipkins  
Hon Andrew Little  
Hon Carmel Sepuloni (Chair)  
Hon Nanaia Mahuta  
Hon Tracey Martin  
Hon Willie Jackson  
Hon Aupito William Sio  
Hon Poto Williams  
Jan Logie, MP

**Hard-copy distribution:**

Minister of Justice  
Minister of Local Government

**Officials present from:**

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

RELEASED BY THE MINISTER OF JUSTICE