

Regulatory Impact Statement: Electoral Amendment Bill – changes to political donations settings

Coversheet

Purpose of Document	
Decision sought:	This analysis was produced for the purpose of informing final Cabinet policy decisions on changes to the political donations provisions in the Electoral Act 1993.
Advising agencies:	Ministry of Justice
Proposing Ministers:	Minister of Justice
Date finalised:	5 April 2022
Problem Definition	
<p>Recent high-profile incidents involving donations to political parties and candidates have raised concerns about the level of transparency in, and complexity of, our political donations framework, as well as parties and candidates' ability to comply. These incidents suggest there are vulnerabilities in the current political donations framework.</p> <p>These incidents have lowered public trust and confidence in party financing, which risks negatively affecting public participation in our democracy.</p>	
Executive Summary	
<p>This Regulatory Impact Statement (RIS) outlines options that have been considered for targeted changes to political donations settings to be in place by the 2023 General Election. More fundamental and long-term changes may be considered by the Independent Review of electoral law, announced on 5 October 2021.</p> <p>The Electoral Act 1993 (the Act) sets out the regulatory framework for the disclosure and reporting of political donations, with different requirements for political parties and candidates. The framework is designed to address the potential for donations to create improper influence by requiring transparency for larger donations only; this reduces the compliance burden and recognises that smaller donations are less likely to be associated with improper influence. While acknowledging the potential for improper influence to undermine our democratic system by privileging the policies favoured by donors at the expense of the wider public interest, this approach also recognises that there is a privacy interest in donors keeping their political affiliations private, up to a point.</p> <p>There have been several incidents in the last few years involving donations to political parties or candidates, which have impacted on public trust and confidence in the current framework. The Minister directed the Ministry to review the current donations settings, particularly in relation to the level of transparency provided, as well as the ability for parties and candidates to comply.</p>	

The Ministry has identified a package of reforms to be in place by the 2023 General Election to improve transparency and compliance, including proposals to lower thresholds for public disclosure of donor identities and to amend reporting requirements. This package should result in benefits to the general public due to the increase in available information, while minimising the costs to political parties, candidates and the Electoral Commission.

Stakeholder views were sought on an initial package of seven proposals. Feedback from academics, civil society organisations, professional bodies, and the general public was generally supportive of the effect the proposed changes would have on improving transparency and openness. Feedback from party secretaries was varied, with some concerns around feasibility as well as the time and costs involved in implementing some proposals. This feedback is reflected in the final form of the proposed changes.

Limitations and Constraints on Analysis

The Minister directed officials to consider changes to the political donations settings that could be made ahead of the 2023 General Election; this has limited the time available to develop and implement any changes. Therefore, changes are targeted (as agreed by Cabinet in July 2021) and any potential changes that may alter fundamental elements of the existing political donations framework were out of scope.

To be in place before the 2023 General Election, any changes need to be enacted and in force by the end of 2022. This is because the annual party donations reporting period starts on 1 January. Time is also required to allow:

- political parties to prepare for any changes and comply with any new requirements; and
- the Electoral Commission to adjust its processes and guidance to support implementation, as necessary.

The Covid-19 lockdown in August and September 2021 delayed planned public and targeted stakeholder consultation. This limited the time available to analyse feedback.

A seven-week consultation period was conducted from December 2021 to January 2022, which included the year-end shutdown period and New Year holiday break. This potentially resulted in reduced engagement by both the general public and stakeholders (including Māori stakeholders) who had been directly approached to provide feedback.

While there will be compliance costs associated with the changes, these could not be quantified with sufficient certainty. This is due to commercial sensitivities limiting the willingness of political parties to share and publicise costs as well as the varying impact on political parties depending on their size, structure and reliance upon volunteers or a paid workforce. However, a qualitative assessment was possible.

The political donations settings are specified in legislation. Therefore, the range of options we have identified in this RIS is limited to the status quo and legislative amendments.

Responsible Manager

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5 April 2022

Quality Assurance (completed by QA panel)

Reviewing Agency:	Ministry of Justice QA panel
Panel Assessment & Comment:	A panel within the Ministry of Justice has reviewed the Regulatory Impact Statement. The panel considers that the information and analysis summarised in the Regulatory Impact Statement partially meets the Quality Assurance criteria. The Statement is complete, clear and concise, and reflects a high level of stakeholder consultation. However, the panel considers that the connection between the problem definition and the proposed options is not always clear. In reaching this conclusion, the panel notes that the options are well-supported by analysis of their effect.

Section 1: Diagnosing the policy problem

What is the context behind the policy problem and how is the status quo expected to develop?

What are the key features of the regulatory system(s) already in place?

1. The Electoral Act 1993 (the Act) sets out the regulatory framework for the disclosure and reporting of political donations. The Act manages political donations by:
 - requiring public disclosure of the amount of donations received in bands; and, for larger donations, requiring the disclosure of the identity of the donor or contributor;
 - limiting the amount that can be donated by anonymous and overseas donors; and
 - only allowing anonymous donations above a certain amount through the protected disclosure framework.¹
2. The political donations provisions recognise that donations constitute a legitimate form of political participation in New Zealand, providing parties and candidates with necessary funding to operate, and participate in election campaigning.
3. An underlying premise of the framework is transparency. The Act addresses the potential for donations to create improper influence (e.g. by placing pressure on parties to pursue policy positions for the benefit of donors) by requiring transparency for larger donations only; this reduces the compliance burden and recognises that smaller donations are less likely to be associated with improper influence. While acknowledging the potential for improper influence to undermine our democratic system by privileging the policies favoured by donors at the expense of the wider public interest, this approach also recognises that there is a privacy interest in donors keeping their political affiliations private, up to a point.
4. The current donations limits and disclosure thresholds for political parties and candidates are summarised in **Table One**.

Table One – Summary of donation limits and disclosure thresholds in the Electoral Act 1993

Threshold or limit	Registered Parties	Candidates
Period	Thresholds apply on a 12-month basis. Disclosure returns required on annual basis	Donation limits and returns required for each electoral campaign cycle
Anonymous donations	Limit of \$1,500 (unless protected disclosure framework applies) ²	Limit of \$1,500
Overseas donations	Limit of \$50	Limit of \$50

¹ Section 208A of the Act allows for donations over \$1,500 to be provided anonymously to political parties through the protected disclosure framework for donations. Donors provide their details and donation directly to the Electoral Commission, which passes the donation to the relevant party secretary. During an election cycle, a party may receive up to 10% of the maximum election expenses it may incur. Individuals may contribute no more than 15% of this number.

² See footnote 1 for more information about the protected disclosure framework.

Threshold or limit	Registered Parties	Candidates
Donations not exceeding \$1,500	Not required to be disclosed (unless donor is anonymous or an overseas person)	Not required to be disclosed (unless donor is anonymous or an overseas person)
Donations and loans exceeding \$1,500	<p>Total amount and number of donations must be publicly disclosed annually, in bands of donations:</p> <ul style="list-style-type: none"> • exceeding \$1,500 but not greater than \$5,000 • exceeding \$5,000 but not greater than \$15,000 <p>Total amount and number of loans must be publicly disclosed annually in a band for loans exceeding \$1,500 but not greater than \$15,000</p>	<p>Identity of donors and amounts donated must be publicly disclosed in the candidate's return after an election (via Electoral Commission website)</p> <p>Candidates are not required to disclose loans</p>
Donations and loans exceeding \$15,000	Identity of donor/lender and amount must be publicly disclosed annually, via Electoral Commission website	
Donations and loans exceeding \$30,000	Identity of donor/lender and amount must be publicly disclosed (via Electoral Commission website) within 10 working days of the donation being received / the loan being entered into	

5. The Electoral Commission (Commission) is the main agency responsible for supporting political parties and candidates to comply with the political donations framework, including ensuring that donation and loan returns are filed (and audited if required).
6. If non-compliance is suspected, the Commission can refer incidents to the New Zealand Police (Police) for investigation. The Police can investigate and prosecute if it determines an offence has been committed, as well as refer incidents to the Serious Fraud Office (SFO) if it considers an offence is serious enough to meet the referral threshold.

What is the current state within which action is proposed?

7. Political parties and candidates use several sources of funding to enable them to participate in the electoral process. Typical sources of electoral finance include:
 - the public funding of the broadcasting allocation;³
 - self-funding (e.g. candidates using their own money);
 - membership dues;

³ Broadcasting Act 1989, [pt 6](#).

- private donations – monetary or in-kind (e.g. goods, services, and fundraising activities);
 - loans; and
 - other income (e.g. capital gains from the sale of shares or physical assets, interest, and rental income).
8. There is consistent media and public interest in how political parties are funded. This interest has grown following recent high-profile incidents involving donations to parties or candidates, some of which have led to criminal prosecutions currently before the courts (outlined further below). This scrutiny encourages the transparency the framework seeks to achieve, as well as accountability.

How is the status quo expected to develop?

9. The impact of the recent incidents, and in particular the current prosecutions, on compliance with the current donations framework is uncertain and partly dependent on the outcomes of the court cases. However, these incidents have generated public and media concerns about trust and confidence in the transparency of, and compliance with, our donations framework.

Are there any other ongoing government work programmes with interdependencies and linkages to this area that might be relevant context from a systems view?

10. On 12 July 2021, Cabinet agreed the Government’s electoral work programme, including the Independent Review of electoral law (the Independent Review) [CAB-21-MIN-0274 refers]. On 5 October 2021, the Minister of Justice announced Cabinet’s decision to commission the Independent Review.
11. The Independent Review will be undertaken by an independent panel over the next two years and will cover a range of issues including a more fundamental, first-principles assessment of political donations rules (an important component of the broader electoral finance framework), progressing alongside the targeted proposals outlined in this RIS to be in place by the 2023 General Election. The panel will undertake research and analysis as well as engage with Māori, the public, political parties, and other interested stakeholders to identify the types of changes needed and to inform its advice.
12. With one of its goals being maintaining a fit-for-purpose electoral framework for voters, parties and candidates, the Independent Review provides an opportunity to consider all the related components of electoral financing (e.g. donations, loans, public funding of parties and candidates, expenditure and financial disclosure mechanisms).

Te Tiriti o Waitangi implications

13. The Act contains provisions relevant to Te Tiriti, most notably Māori parliamentary representation and electoral participation. The policy options identified in this RIS do not affect these provisions.
14. Equity considerations are also key under Article 3 of Te Tiriti in ensuring Māori can participate equitably in all aspects of the electoral process, including the donations process. None of the identified policy options impinge on equitable treatment of Māori.

15. Additionally, the Waitangi Tribunal has identified that providing support, including funding of Māori representatives, could be regarded as an exercise of tino rangatiratanga.⁴ In this context, the donations framework is currently silent on the role of koha in relation to donations, not explicitly acknowledging it or placing any limit/prohibition or providing an exemption.

What is the policy problem or opportunity?

16. Recent high-profile incidents involving donations to political parties and candidates have raised concerns about the level of transparency in, and complexity of, our donations framework as well as parties and candidates' ability to comply.

17. Several of these incidents have led to formal investigations or prosecutions, including:

- the Police referring Te Paati Māori to the SFO for further investigation, relating to alleged failures to disclose three donations above \$30,000 within the required 10 working day period;⁵
- the SFO filing criminal charges against various donors to the Labour Party, alleging they unlawfully helped a donor who bought art auction items to avoid disclosure of their identity by breaking up donations, so they fell below the \$15,000 threshold for disclosing a donor's identity;⁶
- the SFO filing criminal charges against various donors to the National Party and one of its former Members of Parliament, alleging they unlawfully helped a donor avoid disclosure of their identity by breaking up donations, so they fell below the \$15,000 threshold for disclosing a donor's identity;⁷ and
- the SFO filing criminal charges against two individuals who donated money to the New Zealand First Foundation which was subsequently used to pay the New Zealand First Party's expenses, alleging the individuals unlawfully circumvented the \$15,000 threshold for disclosing a donor's identity by channelling funds through an entity closely connected to the political party.⁸

18. Each incident has been different in nature and received significant media coverage, leading to questions about whether public trust and confidence in our donations settings has been affected. Public trust and confidence matters because it impacts on political participation across society, which is a necessary prerequisite for a healthy democracy.

⁴ Waitangi Tribunal *He Aha I Pērā Ai? The Māori Prisoners' Voting Report* (Wai 2870, 2019) at 32.

⁵ <https://elections.nz/media-and-news/2021/two-referrals-to-police/>;
<https://www.newshub.co.nz/home/politics/2021/04/police-refer-m-ori-party-to-serious-fraud-office-over-donations.html>.

⁶ <https://sfo.govt.nz/media-cases/cases/labour-party-donations/>.

⁷ <https://sfo.govt.nz/media-cases/cases/national-party-donations/>.

⁸ <https://sfo.govt.nz/media-cases/cases/nz-first-foundation-and-others/>.

19. Surveys of the general public suggest there is limited public trust and confidence in how political parties are funded, with almost 70% of respondents indicating they did not have a reasonable amount of trust in party funding.⁹
20. The scope and scale of these incidents suggests there are vulnerabilities in the current settings that warrant further attention, given the potential impact on public trust and confidence as a result of the criminal prosecutions currently underway. Key vulnerabilities within the existing framework are outlined in **Table Two**.

Table Two – Identified vulnerabilities in the current political donation system

Vulnerability	Examples
Misaligned donation thresholds or categories	<ul style="list-style-type: none"> disparity between disclosure thresholds between candidates (currently \$1,500) and parties (currently \$15,000) could incentivise the mis-categorisation of candidate donations as party donations to avoid public disclosure
Incomplete and partial information disclosure	<ul style="list-style-type: none"> making of donations just below the threshold or (possibly) broken up to avoid or circumvent public disclosure exploitation of less stringent reporting requirements through using loans (as opposed to donations) insufficient clarity about the extent to which fundraising activities (e.g. auctions and dinners) contribute to the total amount of donations received by parties
Complex approach to compliance	<ul style="list-style-type: none"> variable party organisational structure, size and capabilities can make it challenging for those legally responsible to have sufficient oversight of all donations complexity of political finance rules and operational practicalities can impact on parties' ability to comply

Stakeholder views

21. The Ministry led a public and targeted engagement process on proposed reforms to the donations framework in December 2021 and January 2022. The Ministry received 276 submissions; 262 from individuals and 14 from organisations. The Ministry also carried out targeted engagement in May and June 2021.
22. The initial proposals consulted on were:
- lowering the public disclosure threshold for donations to \$1,500 for parties;
 - increasing the frequency of donation reporting;

⁹ Simon Chapple, Cristhian Prieto Duran and Kate Prickett, *Political Donations, Party Funding and Trust in New Zealand: 2016 To 2021*, Working Paper 21/14, Wellington: Institute of Governance and Policy Studies, School of Government, Victoria University of Wellington, November 2021, 13, https://www.wgtn.ac.nz/data/assets/pdf_file/0003/1981641/Trust-2021-WP-21-14.pdf.

- removing the requirement to disclose the identity of donor and amount for donations that exceed \$30,000 (only alongside an increase in the frequency of donation reporting);
- introducing requirements for parties and candidates to disclose more details about in-kind donations;
- introducing reporting requirements for non-anonymous donations under \$1,500;
- introducing a requirement for parties to publicly disclose financial statements; and
- introducing a requirement for candidates to publicly disclose loans.

23. In general, submitters agreed with the problems the Ministry identified relating to the existing framework. They were supportive of increased transparency and openness, and more frequent and detailed reporting of political donations. Submitters also generally supported lower thresholds for anonymous donations, more disclosure of in-kind donations, and public access to parties' financial statements.

24. A general theme from submissions was that the threshold for disclosing donor identities was set too high. These submitters considered that the law does not go far enough in encouraging transparency and compliance, with the majority being supportive of the increased accountability of parties and the balancing of commercial interests with open and honest democracy.

25. Targeted consultation included engagement with interested parties such as party secretaries (of registered parties both in and out of Parliament), academics, accounting and legal bodies, and civil society organisations.

26. Engagement with academics generally focused on openness and transparency. They supported most of the proposals except the proposal to increase frequency of reporting, where they saw little to be gained. Following this stakeholder feedback, the proposal to increase frequency of reporting is not being progressed.

27. Discussions with party secretaries explicitly focused on the administrative feasibility and costs of the proposals. Views among party secretaries varied and the proposal that had the least support was around requiring parties to disclose their financial statements. This was due to concerns about divulging sensitive operational information, public perception, and the costs involved in preparing consolidated statements.

What objectives are sought in relation to the policy problem?

28. The objectives of this work are to improve the openness and transparency of political donations and simplify administrative complexity which, in turn, will support public trust and confidence in the political donations framework and the electoral system as a whole.

Section 2: Deciding upon an option to address the policy problem

What criteria will be used to compare options to the status quo?

29. We have used the following criteria to analyse options for changes to the political donations framework. We note there is the potential for tension between promoting transparency and making implementation easier which can necessitate a balance being struck between the two criteria:

- **Promote transparency and accountability:** Public have access to information to make an informed choice when voting and to scrutinise the interests/motives of participants, encouraging accountability from political parties and candidates to voters;
- **Clear and consistent:** Changes to rules and processes are clear and easy to understand for electoral participants, the public and administrators, and are consistent with the wider electoral law framework;
- **Fairness:** The rules provide, and are perceived to provide, a level playing field for all electoral participants; and
- **Ease of implementation:** The costs of compliance with, and implementation of, the changes for participants and the Commission are proportionate to the benefits and objectives.

What options are being considered, and how do these compare to the status quo?

30. The proposals are cumulative rather than alternative, with separate options considered within each proposal. The proposals are not interdependent, although the preferred options for each proposal do form a 'package'.

31. Following the discussion of each proposal, we have included a table analysing how the options considered compare to the status quo. Option one for all proposals is the status quo. We have not included this option in the tables below.

32. The key for the tables is as follows:

Key:	
++	much better than the status quo
+	better than the status quo
0	about the same as the status quo
-	worse than the status quo
--	much worse than the status quo

Proposal One: Lowering the public disclosure threshold for donations and contributions

Options

Option One – the status quo

33. Currently, parties are required to publicly disclose the identity and amount donated by any donor if they have donated more than \$15,000 annually (with an equivalent threshold for disclosure of contributions).

Option Two – lower the threshold to \$5,000

34. Under this option, parties would be required to publicly disclose the identity and amount donated by any donor if they have donated more than \$5,000 annually.

35. This option improves transparency by increasing the amount of information that is publicly available about party donations.

36. However, this will increase compliance as political parties will be required to disclose more information than is currently the case. Auditing experts estimated the increase in the number of donations disclosed would be between 2-4 times the current amount.

*Option Three – lower the threshold to \$1,500 (*this option was included in the public consultation)*

37. Under this option, parties would be required to publicly disclose the identity and amount donated by any donor if they have donated more than \$1,500 annually.

38. This option improves transparency by increasing the amount of information that is publicly available about party donations. It would align the threshold for disclosure of party donations with the threshold for disclosure of candidate donations.

39. However, in addition to increasing the compliance burden more than Option Two, this option would likely increase the cost of the donations audit and could lead to an overload of information (with the larger parties likely to disclose an additional 500 to 2,000 items on their returns). Auditing experts estimated the increase in the number of donations disclosed would be between 5-10 times the current amount.

40. There is also the risk of an adverse effect on donation revenue if donors elect to donate below the new threshold to avoid disclosing their identity, limiting parties' ability to contest elections and express their views to the voting public.

Stakeholder views

41. Party secretaries considered that the \$1,500 threshold would have an adverse effect on their donation revenue. Based on their experience, they considered that current or potential future donors would reduce the size of the amount they donated over the course of a year in order to avoid the disclosure threshold.

42. Some party secretaries noted that, for some donors, the reluctance to be publicly identified or associated with certain parties was due to perceived risks to the safety of their family and employment or business interests. Some also cited, anecdotally, the concern from some donors' perspective that being publicly associated with a particular party could adversely impact their ability to secure government contracts.

43. Party secretaries were more comfortable with a \$5,000 threshold than a \$1,500 threshold, although some believed the status quo should be retained.

44. Other stakeholders were generally in favour of lowering the threshold because this would improve transparency, with support for both the \$5,000 and \$1,500 thresholds (although some submitters acknowledged the greater compliance burden the \$1,500 threshold would impose).

Analysis of Proposal 1: Lowering the public disclosure threshold

	Promote transparency and accountability	Clear and consistent	Fairness	Ease of implementation
Option 2 - \$5,000 threshold (preferred)	++	+	+	++
Option 3 - \$1,500 threshold	++	+	+	+

Proposal Two: Amendments to the 10-working days reporting requirements

Options

Option One – the status quo

- 45. Parties must currently report, within 10 working days, donations from a donor exceeding \$30,000 received within a rolling 12-month period.
- 46. This requirement ensures large donations are promptly disclosed to the public, so they can make their own assessment about the influence of these donations on parties. This is more important during election years, so the public can take this information into account when they vote.
- 47. However, this requirement imposes a significant compliance burden on party secretaries because it is not consistent with the other reporting requirements in the Act, which are on a calendar year basis. This requires increased manual checking by parties, which increases administrative complexity and the risk of inadvertent non-compliance.

Option Two – reducing the current disclosure threshold to \$20,000, making disclosures within 10-working days only within a general election year, and calculating the donation period from the start of the election year

- 48. Under this option, parties would be required, within 10 working days, to publicly disclose the identity and amount donated by any donor if they have donated more than \$20,000 annually, but only in election years with the \$20,000 threshold calculated from the start of the election year.
- 49. This change will help maintain relativity with the proposal to lower the annual donor disclosure threshold from amounts exceeding \$15,000 to amounts exceeding \$5,000, while reducing the administrative burden by only requiring this rule to be observed in election years. Moving away from the rolling 12-month period as a determinant of whether the threshold has been reached will make compliance easier.
- 50. However, this option would require no immediate disclosure of similar transactions in non-election years, marginally reducing transparency. Instead, this information would only be disclosed as part of the annual returns, which are not required to be filed until the April following the year end. However, we consider this is outweighed by the increase in

disclosures required during election years, when this information is likely to be most important to voters and the public.

Option Three – remove this disclosure requirement completely

51. Under this option, the current requirement to report, within 10 working days, donations from a donor totalling over \$30,000 received within a rolling 12-month period would be removed completely. This option was included in the public consultation, but coupled with an option to increase the frequency of all donations reporting from an annual to a six-monthly or quarterly reporting schedule. However, increasing the frequency of all donations reporting is not being proposed, as the implementation costs would significantly outweigh any marginal benefits in terms of transparency.
52. Whilst simply removing the 10-day rule would reduce the compliance burden for parties, this would also reduce timely transparency of large donations, particularly in election years when this information is particularly important.

Stakeholder views

53. Party secretaries indicated they can find the current 10-working day rule administratively challenging, but recognised the importance of timely access to this information in election years. They were supportive of changes that would reduce the administrative complexity associated with this rule while retaining a focus on transparency.
54. Other stakeholders were also against removal of this rule, noting its importance in aiding accountability, but were open to changes to simplify the rule’s application.

Analysis of Proposal 2: 10-working days reporting requirements

	Promote transparency and accountability	Clear and consistent	Fairness	Ease of implementation
Option 2 - lower threshold to \$20,000, only require disclosure within 10 working days during election years, and calculate threshold from start of election year (preferred)	+	+	+	+
Option 3 - remove existing requirement completely	--	+	0	++

Proposal Three: Reporting on all donations up to \$1,500

Options

Option One – the status quo

55. Currently, there is no requirement for parties to disclose any information about non-anonymous donations up to \$1,500 they have received.

Option Two – introduce a requirement for parties to disclose the volume and total dollar amount of non-anonymous donations up to \$1,500

- 56. Under this option, parties would be required to publicly disclose the volume and total dollar amount of non-anonymous donations up to \$1,500 annually. This aligns with existing requirements for parties to disclose the volume and total dollar amount of anonymous donations, and the volume and amounts of donations in a band for amounts exceeding \$1,500 but not greater than \$5,000.
- 57. This option improves transparency by providing the full picture of the amount of donations a political party receives in total. Since parties already hold this information, the cost of complying with this requirement should not be significant.

Stakeholder views

- 58. There was near-unanimous support for introducing this requirement amongst all stakeholders.

Analysis of Proposal 3: Reporting on all donations up to \$1,500

	Promote transparency and accountability	Clear and consistent	Fairness	Ease of implementation
Option 2 - disclose volume and total dollar amount of non-anonymous donations up to \$1,500 (preferred)	++	++	+	++

Proposal Four: Reporting in-kind donations

Options

Option One – the status quo

- 59. Currently, parties are not required to disclose specific information about in-kind donations (although they must be included in the overall annual donation return).
- 60. This has led to public concerns about transparency, because parties receiving in-kind donations through fundraising dinners and auctions opens up additional avenues for donors to, for example, directly influence senior party members.

Option Two – require parties to report the sum total value of donations separately as monetary and in-kind donations in their annual returns

- 61. Under this option, the sum total value of donations would need to be reported separately as monetary and in-kind donations in parties’ annual returns.
- 62. This option is an incremental move towards greater transparency that is achievable by the 2023 General Election, by identifying the extent to which in-kind donations are received by parties (although not requiring individual donations to be itemised). Limited additional administrative work will be required by parties.

Option Three – require parties to disclose specific details of in-kind donations in their annual returns

63. This option would require parties to separately detail each in-kind donation in their annual return, individually listing the amount of any in-kind donation and the donor’s identity if the donation was above the disclosure threshold (applicable to both in-kind and monetary donations).
64. This option would improve transparency, but would also significantly add to parties’ compliance burden. Additionally, this option raises questions around definitions and valuation methodology of in-kind donations which require further analysis and would likely not be settled before 2023.

Stakeholder views

65. Party secretaries were generally not opposed to introducing some basic requirements relating to disclosing details about in-kind donations, but some expressed concerns about difficulties in identifying:
- whether individual donations came under the definition of an ‘in-kind’ donation; and
 - the names of donors due to privacy considerations.
66. Option Two addresses those concerns by only requiring disclosure of in-kind donations at an aggregate level.
67. Other stakeholders supported any step towards increasing transparency relating to in-kind donations.

Analysis of Proposal 4: Reporting on all donations under \$1,500

	Promote transparency and accountability	Clear and consistent	Fairness	Ease of implementation
Option 2 - report sum total value of donations separately as monetary and in-kind donations (preferred)	+	+	+	+
Option 3 - specific details about individual in-kind donations	++	-	+	--

Proposal Five: Disclosure of annual financial statements

Options

Option One – the status quo

68. Currently, parties are not required to release their financial statements unless required to do so under other legislation, such as the Incorporated Societies Act 1908 for parties who are registered as incorporated societies.

69. Combined with other factors, this non-disclosure has contributed to low public trust and confidence in our electoral finance framework. Consequently, there is overwhelming support among the general public (around 85%) for political party finances to be disclosed annually.¹⁰

Option Two – require parties to release annual financial statements

70. This option introduces a requirement for registered political parties to publicly disclose, via the Commission’s website, their financial statements each year. Most, if not all, parties currently prepare financial statements, either as required under the Incorporated Societies Act 1908 or under the party’s rules. This option would require parties to either make public the financial statements they already produce, or begin producing and publishing financial statements if they do not already do so.

71. Adopting this option would increase the general openness and transparency of parties’ financial affairs by disclosing information about all income sources received by parties, including membership fees, merchandising and donations, key expenditure categories, and their capital/asset base. This would provide voters with access to relevant information which they may use to help hold parties accountable (and have indicated they wish to see). Since most, if not all, parties are already preparing some form of financial statement, any compliance costs should be relatively low.

Option Three – require parties to release audited annual financial statements

72. This option is the same as Option Two, but would also require any financial statements to be audited. Some parties will already be preparing audited statements per their internal rules (and so will provide these audited statements under proposal 2 anyway), but this proposal would impose a standard requirement on all parties.

73. While this option would increase transparency and the quality of information available, it would also increase compliance costs substantially due to the costs of obtaining an audit, particularly for smaller parties. There would also be feasibility issues with implementing this option by 2023, given the need to analyse the accounting and auditing standards the financial statements would be prepared and assessed against.

Stakeholder views

74. Although publishing parties’ financial statements was generally supported by public submitters and academics, some party secretaries noted concerns about the potential implications of releasing this information. These concerns related to how the public perception of parties may be negatively affected by media coverage of their accounts (e.g. in high-profile areas such as advertising) and the impact these negative perceptions may have on the political discourse. It is not possible to quantify the likelihood of these concerns occurring or their impact.

75. Other concerns raised by party secretaries related to the costs involved in preparing consolidated statements, and how financial statements would not be comparable across parties without a requirement to follow the same set of accounting standards.

¹⁰ Chapple, Duran and Prickett, *Political Donations, Party Funding and Trust in New Zealand: 2016 To 2021*, 10-11.

Analysis of Proposal 5: Disclosure of annual financial statements

	Promote transparency and accountability	Clear and consistent	Fairness	Ease of implementation
Option 2 - disclose annual financial statements (preferred)	+	+	+	+
Option 3 - disclose audited annual financial statements	+	+	0	-

Proposal Six: Removing the audit requirements for low value returns

Options

Option One – the status quo

76. Currently, all party donation and loan returns must be audited at each party's expense.

Option Two – remove the audit requirements for parties' annual returns where total donations are less than \$50,000 and there are no loans

77. Under this option, the audit requirement for annual returns would be removed where total donations are less than \$50,000 and there are no loans. Based on 2020 return information, four parties (representing over 25% of registered parties) would have been eligible under this option to file an unaudited return.

78. This option will significantly reduce the compliance burden on smaller parties, particularly relating to the disproportionate costs of an audit, while having almost no effect on transparency because the amounts involved are low (particularly in the broader context of the donations framework).

Stakeholder views

79. While the Ministry did not consult on this specific option, general feedback from party secretaries noted the audits cost significant amounts of time and money and were of limited utility, because the audits were unlikely to provide the level of assurance the public would be seeking regarding the accuracy of party donation returns.

Analysis of Proposal 6: Removing the audit requirements for low value returns

	Promote transparency and accountability	Clear and consistent	Fairness	Ease of implementation
Option 2 - remove audit requirements for returns where total donations are less than \$50,000 and there are no loans (preferred)	0	+	+	++

Proposal Seven: Require candidates to publicly report on loans received to support their campaign

Options

Option One – the status quo

80. Currently, candidates are not required to disclose loans received for the purpose of funding their campaigns.

Option Two – require candidates to disclose loans received to support their campaign (from non-registered lenders only)

81. This option would introduce a new requirement for candidates to publicly report on loans received to support their campaign from non-registered lenders, such as family members and local businesses in their constituencies. This is because non-registered lenders are more likely to be lending to show political support and could have a greater perceived influence over candidates (with registered lenders more likely to be lending for reasons arising in the course of ordinary business).

82. Transparency would be improved under this option as candidates would now be subject to loan disclosure requirements as parties currently are. Only requiring loans from non-registered lenders to be disclosed also acknowledges a legitimate privacy interest since candidates would not have to disclose bank mortgages and personal debt such as credit cards.

Option Three – Require candidates to disclose all loans received to support their campaign

83. This option would introduce a new requirement for candidates to publicly report on all loans received to support their campaign.

84. This option is the same as Option Two, but runs the risk of loans likely to be for primarily personal, rather than campaign, purposes (e.g. personal bank overdraft which may be partly used to help pay for a campaign expense) requiring disclosure. This option is not preferred since such loans are likely to be from registered lenders, who are unlikely to be lending for the purpose of influencing a political candidate.

Stakeholder views

85. Most party secretaries consulted did not have any concerns with the proposal for candidate loans to be publicly reported, as they indicated that their party rules do not allow candidate loans.

86. Other stakeholders were in favour of introducing some form of disclosure of loans to candidates. We note, however, that consultation did not directly seek feedback from previous or potential candidates, particularly those standing independently outside of a party structure, who are more likely to be self-funding aspects of their campaign.

Analysis of Proposal 7: Public reporting of candidates' loans

	Promote transparency and accountability	Clear and consistent	Fairness	Ease of implementation
Option 2 - disclose loans from non-registered lenders (preferred)	+	+	+	+
Option 3 - disclose all loans	+	+	+	-

What option is likely to best address the problem, meet the policy objectives, and deliver the highest net benefits?

87. The Ministry considers that the following options are preferred as they best meet the assessment criteria, and will improve transparency within the existing donations framework:

Proposal	Preferred option
1. Lowering the public disclosure threshold for donations and contributions	Option 2 - \$5,000 threshold
2. Amendments to the 10-working days reporting requirements	Option 2 - lower threshold to \$20,000, only require disclosure within 10 working days during election years, and calculate threshold from start of election year
3. Reporting on all donations up to \$1,500	Option 2 - disclose volume and total dollar amount of non-anonymous donations up to \$1,500
4. Reporting in-kind donations	Option 2 - report sum total value of donations separately as monetary and in-kind donations
5. Disclosure of annual financial statements	Option 2 - disclose annual financial statements
6. Removing the audit requirements for low value returns	Option 2 - remove audit requirements for returns where total donations are less than \$50,000 and there are no loans
7. Require candidates to publicly report on loans received to support their campaign	Option 2 - disclose loans from non-registered lenders

What are the marginal costs and benefits of the preferred options?

Affected groups	Comment	Impact	Evidence Certainty
Additional costs of the preferred options compared to taking no action			
Political parties	<ul style="list-style-type: none"> • Greater reporting and disclosure obligations, particularly during election years • Disclosure of other financial information in financial statements (and cost of preparing financial statements if not currently prepared) • Potential adverse effect of further donation information disclosure on public perception of parties • Potential loss of donation revenue 	Medium	Medium
Candidates	New loan disclosure obligation	Medium	Low
Political donors	Reduced privacy, particularly during election years	Medium	Medium
Electoral Commission	<p>Implementation costs (approximately \$10,000) of updating guidance to parties and candidates, updating web content, amending donation return form, and modifying forms to include candidate loan disclosure</p> <p><i>(these costs will be met from existing baseline funding)</i></p>	\$10,000	Medium
General public	Reduced visibility of large donations in non-election years	Low	Medium
Total monetised costs		\$10,000	Medium
Non-monetised costs		Medium	Medium
Additional benefits of the preferred options compared to taking no action			
Political parties	<ul style="list-style-type: none"> • No 10-day disclosure obligation during non-election years, and simpler start-of-year calculation (rather than rolling annual period) in election year • Reduced cost of audit and compliance for parties with annual donations under \$50,000 and no loans 	Medium	Medium

General public	<ul style="list-style-type: none"> • Increased ability to access information and hold parties accountable • Increased visibility of large donations in election years as well as potential influence of loans on candidates 	Medium	Medium
Total monetised benefits		N/A	N/A
Non-monetised benefits		Medium	Medium

Other impacts of the proposed approach

New Zealand Bill of Rights Act implications

88. The policy options proposed could impact on the rights to freedom of expression and association affirmed in sections 14 and 17 of the New Zealand Bill of Rights Act 1990 (NZBORA), to the extent that the making and receiving of donations is regarded as a freedom of expression and freedom of association issue.
89. While some of the options could be viewed as a factor in limiting donations given (because donors do not want their names publicly disclosed), and therefore citizens' ability to express their support for (and associate with) a particular party, the options can also be viewed as enhancing freedom of expression by improving the ability of citizens to seek and receive relevant information. The public may then take this information into account when exercising their right to vote under section 12 of NZBORA.

Section 3: Delivering an option

How will the new arrangements be implemented?

90. The proposed changes are expected to occur through an Electoral Amendment Bill. They are expected to take effect from 1 January 2023 (the start of parties' annual donations return year).
91. The Commission will be responsible for implementing the changes to political donations settings. This will involve updating their guidance to parties and candidates to reflect the new reporting obligations, as well as updating return forms and reporting processes (including how donations and loans information is published on its website).
92. Using the communication channels established as part of its existing relationships with registered parties, the Commission will provide information prior to the changes coming into effect to ensure that registered parties can continue to meet their ongoing reporting obligations. The Commission will also be responsible for managing compliance with the new rules.
93. The cost of implementing and administering the changes to the framework for political donations and loans (approximately \$10,000) will be met from the Commission's existing funding.

How will the new arrangements be monitored, evaluated, and reviewed?

Monitoring

94. The Commission will continue to publish candidates' and parties' annual donations returns for the general public to view on its website.

Evaluation and Review

95. The Independent Review of electoral law will have the opportunity to consider stakeholder feedback, including on how the new political donations arrangements have functioned to date. Stakeholder feedback is likely to form part of a more holistic assessment of the broader electoral finance framework by the Independent Review (e.g. donations, loans, public funding of parties and candidates, expenditure and financial disclosure mechanisms).
96. In addition, aspects of the electoral system are regularly reviewed. The Commission and the Justice Committee complete a triennial review and inquiry respectively after each general election, which could include further review of the political donations arrangements. The public and other stakeholders have an opportunity to submit to the Justice Committee's inquiry. The Government's Response to the Justice Committee's recommendations is then tabled in the House of Representatives.