

Proposed changes to political donations rules in our electoral law

Summary of submissions

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MINISTRY OF
JUSTICE
Tabu o te Ture

New Zealand Government

Overview of the consultation process

The Ministry of Justice (the Ministry) identified several potential changes to the current rules for political donations in the Electoral Act 1993 which could be made before the 2023 General Election. The changes are intended to improve the overall transparency and openness of political funding, while simplify the administrative complexity of the rules, to help support compliance.

The Ministry consulted publicly on proposed changes to the rules, and also carried out targeted consultation with party secretaries of registered political parties, academics, accounting and legal bodies, and civil society organisations.

The public consultation was carried out on the Ministry's website from 3 December 2021 to 25 January 2022.

The Ministry developed an information sheet to help the public provide feedback. The information sheet contained details about the proposed changes and why they were being proposed. The information sheet has been attached as appendix A to this document. The information sheet was also provided as part of the targeted consultation.

This document summarises the submissions the Ministry received. The references to 'submitters' in this document are to public submitters. Feedback received from the targeted consultation has been separately identified, as appropriate.

What we asked

The Ministry sought feedback from the public on four questions:

1. Do you think the proposed changes to disclosure rules and thresholds would improve transparency and openness? If yes/no, why? (please specify which proposal(s) you are commenting on).
2. Do you think the proposed changes to reporting would help support compliance? If yes/no, why? (please specify which proposal(s) you are commenting on)
3. What factors do you think are most important when considering changes to anonymous donations?
4. Is there any other feedback you would like to provide on these proposed changes?

The consultation questions referred to seven proposed changes, which fell under two broad categories:

Proposed changes to disclosure rules and thresholds (Question 1):

1. Lowering public disclosure threshold for donations to \$1,500 for parties;
2. Increasing frequency of donation reporting;
3. Removing the requirement for parties to publicly disclose, within 10 days, the amount donated, and identity of the donor, in cases where the donor has donated over \$30,000 within the previous 12 months;
4. Introducing requirements for parties and candidates to disclose more details about in-kind donations.

Proposed changes to reporting (Question 2):

1. Introducing reporting requirements for non-anonymous donations under \$1,500;
2. Introducing a requirement on political parties to publicly disclose financial statements;
3. Introducing a requirement to publicly report on candidate loans.

Additionally, feedback was sought on anonymous donations (Question 3).

Profile of submissions

The Ministry received 269 public submissions in total, comprised of 262 individual submissions and seven submissions from organisations.

The Ministry received written submissions from seven organisations and met with several party secretaries, academics, and expert organisations during the targeted consultation.

Question 1: Do you think the proposed changes to disclosure rules and thresholds would improve transparency and openness?

Approximately 80% of public submissions believed the proposed changes would improve transparency and openness.

The majority of submitters supported increasing transparency

Many submitters agreed introducing these proposals would enable the public to better understand how parties are financed and possibly influenced by donors. One submitter noted it would be easier to see whether parties are more motivated to fix business issues or social

and economic issues important to society. Another noted it would give the public and media more opportunity to scrutinise donations closely.

Many submitters believed these proposals would decrease corruption, thus preventing political donations from having an improper influence on electoral outcomes. Submitters generally agreed that increasing transparency is in the interests of an open and robust democracy. Many felt these proposals would make it difficult for larger donations to be anonymised and were particularly interested in the large donations made by special interest groups and wealthy individuals.

There was near-unanimous support for increasing the transparency of in-kind donations. A few submitters were interested in how in-kind donations were valued in monetary terms. A number of submitters observed that this proposal may eliminate any potential loopholes, such as preventing large donations from being masked in the form of services. Some were also of the view that if monetary donations were more heavily regulated, there would be more in-kind donations.

Some submitters supported increasing transparency, but suggested alternative disclosure thresholds

While the majority of submitters were in favour of increasing transparency overall, many believed the proposals could go further. In particular, they believed the disclosure thresholds should be lower.

Party secretaries considered a threshold of \$1,500 was not feasible; they noted that it would significantly increase their administrative burden, and create additional compliance costs. Some party secretaries also noted that it could have an adverse effect on donation revenue.

For proposal 1 where the proposed threshold for disclosing party donations was \$1,500, alternative thresholds generally ranged between \$50 to \$1,000. Many submitters wanted the threshold to be at a level that an “average New Zealander” could reasonably afford. Some academics also suggested the disclosure threshold could potentially be determined by reference to the average amount people donated to charities.

Proposal 3 involved removing the requirement for parties to publicly disclose their amount donated and identities within 10 days if they have made donations over \$30,000 in the previous 12 months. The majority of submitters wished to keep the 10-day requirement, with some considering the threshold should also be lower. Suggested thresholds ranged between \$200 to \$15,000.

Regular disclosure of donation reporting was strongly supported

Some submitters believed disclosing information on a regular basis is important in the interests of increased transparency, such as the current 10-day reporting requirement referred to in proposal 3. One submitter believed this would enable big donations to be reported by the media in a timely manner. A few submitters felt regular donation reporting would be particularly beneficial during the election campaign rather than after the election, so

the public can understand the potential financial influences on political parties and candidates in a timely manner.

While most submitters were in favour of regular public disclosure, some were open to the idea of a reasonable period longer than the current 10-day requirement referred to in proposal 3. Alternative deadlines generally ranged from thirty days to six months. On the other hand, some submitters believed that disclosure of large donations should be immediate, weekly, or kept at 10 days as a matter of public interest and transparency. One submitter was of the view that the 10-day reporting requirement should remain because parties should have capacity to file such returns.

Academics generally supported the proposals relating to openness and transparency, except the proposal to increase frequency of reporting, where they saw little to be gained.

Some submitters considered compliance costs would be increased

Party secretaries noted that aspects of the 10-working day requirement, and in particular the 12-month rolling basis for calculating whether a donor is at the threshold, can be administratively challenging, particularly for smaller parties. They noted that lowering the disclosure threshold would increase the number of donations captured by this requirement, and therefore could increase this administrative burden.

Party secretaries and accounting experts submitted that more frequent reporting would significantly increase compliance costs. This could be particularly burdensome for smaller parties with only a small paid or a mostly volunteer workforce.

Question 2: Do you think the proposed changes to reporting would help support compliance? If yes/no, why?

Approximately 85% of submitters believed the proposed changes on reporting would support compliance.

The majority of submitters favoured increasing transparency

Most submitters agreed introducing these requirements would increase transparency. Many believed these proposals would enhance compliance and make it more difficult to use deceptive practices to hide influence.

A few submissions believed it would be useful if public reporting was live particularly during the election periods, and not after elections have already happened.

Many submitters believed the proposal requiring political parties to disclose more information such as their financial statements would promote public confidence that parties are meeting their compliance obligations.

Generally, the feedback from party secretaries did not favour the proposal relating to disclosing annual financial statements, due to concerns about divulging sensitive operational

information, public perception and the impact on political discourse, and the costs involved in preparing consolidated statements.

Submitters had different views on non-anonymous donations

Submitters had wide-ranging views on the reporting requirement for non-anonymous donations not exceeding \$1,500. A few submitters expressed that the threshold was not low enough, and that donations of \$100 or more should be subject to reporting requirements. Some other submitters expressed indifference with this requirement regardless of the threshold, because the proposed amounts were relatively small and inconsequential.

Party secretaries indicated that their parties already hold information about these donors, but there may be some additional work to collate this information centrally to include it in their annual donation returns.

More reporting requirements may create additional administrative work

A few submitters acknowledged that introducing more reporting requirements would create additional administrative work but believed this would likely be a temporary problem which would be fixed over time. Some submitters were concerned that more administrative work may incur additional costs for the parties, may decrease compliance and therefore integrity in reporting. One submitter suggested additional resources should be provided to candidates and parties to help support compliance.

Some submitters raised privacy concerns about the disclosure of candidates' financial positions

In relation to the disclosure of candidate loans, some submitters raised privacy concerns around the candidate's financial position being publicly disclosed. A few submitters felt this proposal could potentially be restrictive as they were not sure what type of loans were included, and whether they included personal loans and mortgages.

Question 3: What factors do you think are most important when considering changes to anonymous donations?

Approximately 95% of submitters supported a ban on anonymous donations.

Many submitters were against anonymous donations, but acknowledge potential privacy concerns

Many submitters considered there could be no legitimate reason for concealing one's identity when donating to a party, and that anonymous donations allowed for vulnerabilities in our democracy. At the same time, one submitter also pointed out that banning anonymous

donations could lead to fewer donations as donors would not want their privacy to be compromised.

Some submitters raised privacy concerns as donors could be discriminated against if their donation activity was disclosed.

Party secretaries had varied views about anonymous donations. Some supported a ban while others would allow them up to a certain limit or allow them only if they were made through the Electoral Commission's protected disclosure regime.

Academics expressed diverse views about anonymous donations, including that banning anonymous donations would affect money raised from raffles and bake sales, that revealing the identity of donors under \$1,500 was not particularly important, and that the anonymous donations threshold should be lowered to align with the overseas donations threshold (\$50).

Submitters believe a ban on anonymous donations will increase transparency and minimise the risk of undue influence

Submitters believed a ban will assist with reducing fraud, corruption, and the risk of undue overseas influence. One submitter thought a ban would reduce the perception that political influence may be purchased. Some submitters also expressed concern that local organisations influenced by overseas interests may still be able to donate.

Additionally, some submitters felt a ban would prevent large donations from being split into several, smaller anonymous donations.

One submitter also suggested banning donations during the voting period, together with live reporting of donations during and before the election period.

Some submitters suggested alternatives to an outright ban

A number of submitters supported a ban on anonymous donations with certain caveats. Many wanted to lower the threshold for anonymous donations, so that a donor's identity could only be concealed if it was a very low donation. The examples given were generally between \$100 and \$1,500. One submitter felt a significant number of New Zealanders are less likely to be able to afford to donate large sums and would therefore have legitimate privacy expectations for a small donation. Submitters were primarily concerned with those who make donations large enough to potentially influence a party.

Another suggestion was that a donor or organisation could remain anonymous if they had not previously made a donation.

Some submitters also provided other suggestions about banning anonymous donations

A small number of submitters also provided suggestions on the implementation of a ban that include proof of identity of donors' names, a declaration that donors have not made other

donations to the same party, and providing education to promote understanding of why anonymous donations are no longer allowed. One submitter observed that the current donations regime permits donations to be sent anonymously to the Electoral Commission, which then passes the donation on to the intended political party. The same submitter suggested that donations of any amount could potentially be allowed if channelled in an anonymous manner, but this system could be abused if donors privately disclosed details of their donations to a party.

Question 4: Is there any other feedback you would like to provide on these proposed changes?

The Ministry received a range of other feedback on the proposed changes not covered by the earlier questions.

A few submitters think the Electoral Commission should impose more checks

A few submitters felt the Electoral Commission should carry out additional inspections to ensure compliance with the proposed changes. These included:

- random audits of parties' accounts
- imposing checks on donations in line with the Anti-Money Laundering regime.

A few submitters believe in harsher penalties for failure to comply with disclosure rules

One concern raised by many submitters was that increased disclosure rules alone would not increase compliance. Some proposed imposing harsher sanctions for non-compliance with the proposed changes. Several submitters believed the changes would increase transparency, but also felt higher penalties for non-compliance would be needed to encourage compliance. A few expressed the need to have either the Electoral Commission or an independent third party ensure compliance and enforce penalties for any failure to comply. A small number of submitters suggested penalties which included candidate or MP dismissal, party disqualification, fines, and imprisonment. One submitter also suggested the penalty be proportional to the amount donated.

Many submitters suggested publicly funding elections

Several submitters suggested publicly funded elections could remove the need for donations, with some also suggesting equal allocation of funds to parties for campaigning or funds being allocated proportionally to parties based on the number of members per party. A few submitters also suggested funding should be provided to newly established parties so they can get a head start. One submitter believed publicly funded elections may provide reassurance the government are making decisions with the community and future

generations in mind. Another submitter also felt that publicly funded elections could potentially promote all parties receiving an equal share of the broadcasting allocation.

Submitters had varied views on who should and should not be allowed to donate

Many submitters had a range of views on who should or should not be allowed to donate. One common suggestion was to ban special interest groups including corporations, trusts, and churches from making donations. Some submitters also suggested an alternative to an outright ban, where donations made by special interest groups should be fully disclosed. Another alternative suggestion was to clarify rules relating to donations made by trusts, so potential loopholes could be eliminated.

A few submitters cited the need for equality, where everyone should have equal influence on government decisions regardless of their individual wealth. One submitter expressed this would protect Māori against disenfranchisement.

A few submitters also felt only registered voters should be allowed to make donations to political parties.

Some submitters supported full disclosure

A few submitters expressed the need for full disclosure of donations regardless of the amount. For in-kind donations, the same sentiment was also applied. This included a suggestion that a real-time register of all donations be publicly accessible. Another suggestion involved requiring donors to declare an intention to make in-kind donations before the donation is made.

A cap on donations with a lower disclosure threshold was also suggested

While several submitters felt the donation disclosure threshold for parties was not low enough and proposed alternative thresholds, many also suggested a cap on donations with a lower disclosure threshold in place. Proposed caps generally ranged from \$300 to \$10,000 per year.

Submitters made other suggestions about the donations regime

Some submitters made further suggestions about the political donations framework. Suggestions included:

- disclosure of donors' backgrounds and political affiliations
- making parties' bank accounts publicly viewable
- candidates being required to declare their sources of funding are legitimate

Some submitters were not supportive of the changes

A small number of submitters did not support the changes for various reasons. There was a sentiment in some submissions that no amount of changes to donation disclosure rules would stop corruption and political influence.

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Possible changes to political donation rules in the Electoral Act

Introduction

There is a clear public interest in understanding the potential financial influences on political parties and candidates. The rules around political financing – especially donations – are important to maintain public trust in the integrity of our electoral system.

The rules must balance the needs of public transparency and democratic participation.

The Ministry of Justice has identified several potential changes to the current rules that could be made before the 2023 General Election.

Together, these changes are intended to improve the overall transparency and openness of political funding without unduly restricting donors' ability to donate, or parties' and candidates' ability to raise the funds they need.

The proposed changes are also seeking to simplify the administrative complexity of the rules, to help support compliance. The changes would work best as a package but are not mutually dependent.

The Government is considering whether changes should be made to the rules that apply to political donations in New Zealand before the next General Election in 2023.

We want your feedback

We are seeking your feedback on four questions:

1. Do you think the proposed changes to **disclosure rules and thresholds** would improve transparency and openness?
 - If yes/no, why? (please specify which proposal(s) you are commenting on)
2. Do you think the proposed changes to **reporting** would help support compliance?
 - If yes/no, why? (please specify which proposal(s) you are commenting on)
3. What factors do you think are most important when considering changes to anonymous donations?
4. Is there any other feedback you would like to provide on these proposed changes?

To send us your feedback on the questions above, you can:

- [Complete an online questionnaire](#)
- Email your feedback to electoral@justice.govt.nz.

For us to consider your feedback, we need to receive it by **5pm on Tuesday, 25 January 2022**.

Te Tāhū o te Ture – the Ministry of Justice is leading the project because it administers the Electoral Act 1993. This is the Act that sets the rules for political donations in New Zealand.

Background information

What are the current rules for political donation settings?

The Electoral Act 1993 includes rules that determine how political donations can be made, how much donors can contribute, and how these contributions are reported on once they are received.

[These rules are summarised on the Electoral Commission website.](#)

What are the changes being considered?

The seven specific changes being considered include:

1. Lowering the thresholds for political parties to disclose the identity of donors from \$15,000 to \$1,500 (to align with the disclosure threshold for donations to candidates)
2. Increasing the frequency of reporting of donations by parties
3. Removing the requirement that the identity of donors making donations over \$30,000 must be reported to the Electoral Commission *within 10 days* (alongside proposal 2)
4. Requiring more detailed disclosures of in-kind (non-cash) donations
5. Requiring disclosure of the volume and total dollar amount of donations under \$1,500
6. Requiring parties to release their annual financial statements, and simplifying the audit requirements to make audit reviews more meaningful
7. Introducing a requirement for candidates to disclose loans.

A ban on anonymous donations is also being considered. If introduced, such a ban would impact on a number of parts of the Electoral Act.

Why are these changes being proposed?

Regulation of political donations needs to weigh up competing factors such as:

- preventing political donations from having an improper influence on electoral outcomes
- preserving freedom of political expression (i.e. freedom to support any eligible candidate or party one chooses) and association and supporting donors' privacy (where there is no public interest in disclosing personal information)
- ensuring political parties can access financial support to play a robust role within an MMP system

- the need for rules to be efficient and practical for participants (e.g. candidates, parties and promoters) and the Electoral Commission.

The size and scope of potential issues within the system are difficult to determine. This is due, in part, to the [rules](#) around what information candidates and parties are required to provide to the Electoral Commission.

This lack of visibility can contribute to a sense of public confusion and concern about who is funding political parties; confusion that can affect public trust and confidence in the donation regime and, by extension, in the political parties themselves.

Recent incidents involving donations to political parties or candidates have raised public concerns about the level of transparency in, and complexity of, our donations regime.

Each incident has been different in nature and this suggests there may be a number of vulnerabilities in the current settings that warrant further attention.

Public concerns relating to fundraising activities (e.g. dinners and auctions) and in-kind donations (which can include goods, services and expertise donated free-of-charge) suggest further transparency could help reduce any vulnerability in these areas.

Why is a ban on anonymous donations being considered?

The issue of anonymous donations is often raised in the public debate around the transparency of political donations because it seems counter-intuitive to be able to donate anonymously in a system that aims to promote transparency and openness.

Banning anonymous donations (similar to the existing ban on overseas donations) could be a significant and principled shift towards transparency.

The counter argument to this is the need to protect donor privacy in respect of political affiliations (consistent with the secrecy of the ballot) and the potential dampening effect a ban could have on donor participation for those who value anonymity above this form of political participation.

There is a provision in the law (Section 208A of the Electoral Act 1993) which enables New Zealand persons to maintain their anonymity (in relation to both the party and the public) by donating to the party via the Electoral Commission.

This provision is separate from other settings relating to anonymous donations.