

Electoral Amendment Bill (No 2)

Government Bill

Explanatory note

General policy statement

The Bill makes several changes to the Electoral Act 1993 to send a clear signal that only those who are part of New Zealand's democracy, and who live in, or have a strong connection to, this country, should participate in our electoral system.

Ban on donations from overseas persons

The Bill amends the Electoral Act 1993 to restrict donations from overseas persons to political parties and candidates, to reduce the risk of foreign money influencing the election process.

The changes are being applied only to parliamentary elections, not local elections.

The Bill bans candidates and parties from accepting donations over \$50 from an overseas person in any form.

The definition of an overseas person in the Electoral Act 1993 is not being changed. The ban applies to donations from—

- an individual who resides outside New Zealand and is neither a New Zealand citizen nor registered as an elector:
- a body corporate incorporated outside of New Zealand:
- an unincorporated body that has its head office or principal place of business outside New Zealand.

Candidates and party secretaries are required to take all reasonable steps to satisfy themselves that a donation over \$50 is not from an overseas person. Candidates and party secretaries will not be guilty of an illegal practice if they take reasonable steps, in the circumstances of the donation, to ensure that they do not accept or retain a donation over \$50 from an overseas person.

Other minor and technical changes

The Bill introduces 2 further measures to minimise the risk of foreign interference. These are—

- a party secretary, or any person acting in the position of secretary, must live in New Zealand;
- the offence of promoting anonymous advertisements relating to an election is extended so that it applies to all advertising mediums, including online advertising, in order to deter misleading anonymous online advertisements. This provision includes exemptions for online content that represents the personal political views of an individual.

Departmental disclosure statement

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

A copy of the statement can be found at <http://legislation.govt.nz/disclosure.aspx?type=bill&subtype=government&year=2019&no=195>

Regulatory impact assessment

The Ministry of Justice produced a regulatory impact assessment on 17 October 2019 to help inform the main policy decisions taken by the Government relating to the contents of this Bill.

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

- <https://treasury.govt.nz/publications/search>
- <https://www.justice.govt.nz/assets/Documents/Publications/ris-mitigating-foreign-interference-through-parties-and-candidate-donations.pdf>
- <http://www.treasury.govt.nz/publications/informationreleases/ria>

Clause by clause analysis

Clause 1 is the Title clause.

Clause 2 is the commencement clause and provides that the Bill, except *clauses 15 and 16*, comes into force on 1 January 2020. *Clauses 15 and 16* (relating to the definition of party secretary) come into force on 1 April 2020.

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

Part 1

Amendments relating to overseas donations

Clause 4 amends section 204K of the principal Act to update the reference to the provision in which overseas person is defined. The definition of overseas person now appears in section 207(2) (*see clause 5(5)*).

Clause 5 amends section 207 of the principal Act, which is an interpretation provision. Definitions for 2 new terms, New Zealand person and overseas person, are inserted. The definition of overseas person is taken from existing section 207K(1) and is defined for the purposes of subpart 3 to 6 of Part 6A of the principal Act. New Zealand person is defined as a person who is not an overseas person. The definitions of candidate donation and party donation are also amended to distinguish between goods and services provided by a New Zealand person and goods and services provided by an overseas person. Currently, if goods or services are provided to a candidate or party at a value less than their reasonable market value (being a value that exceeds \$300 in the context of a candidate donation or \$1,500 in the context of a party donation) the difference between the 2 values is treated as a donation. The effect of the above distinction is that while the current position will continue to apply to goods and services provided by a New Zealand person, for goods and services provided by an overseas person, the reasonable market value threshold decreases to \$50. This means that only goods or services provided by an overseas person to a candidate or party having a reasonable market value of less than \$50 will be excluded as a candidate donation or party donation. Similarly, goods or services provided by a New Zealand person to a candidate or party free of charge are not a candidate or party donation if their reasonable market value is not greater than \$300 and \$1,500, respectively, but in the case of goods or services provided by an overseas person free of charge to a candidate or party this threshold decreases to \$50.

Clause 6 amends section 207C of the principal Act to require that, in the case of a donation funded from contributions, the donor must identify all contributors who are overseas persons and who are contributing more than \$50 in sum or value. Contributors who are New Zealand persons need only be identified if they contribute more than \$1,500 in sum or value.

Clause 7 replaces section 207I of the principal Act, which deals with anonymous donations. *New section 207I* provides that, if a candidate or party receives an anonymous donation, that donation or its value must be paid to the Electoral Commission less \$50 if the candidate or party believes, or has reasonable grounds to suspect, that the donation was received from an overseas person and the donation exceeds \$50. In any other case, the donation or its value must be paid to the Electoral Commission less \$1,500. All amounts received by the Electoral Commission must be paid into a Crown Bank Account.

Clause 8 inserts *new section 207JA* into the principal Act, which imposes a duty on candidates and party secretaries to take all reasonable steps in the circumstances to ascertain whether a donation (not being an anonymous donation) that exceeds \$50 is made by an overseas person, or includes a contribution from an overseas person. If a

candidate or party secretary ascertains that a donation, or contribution to a donation, was made by an overseas person, or that there are reasonable grounds to suspect that a donation or contribution to a donation was made by an overseas person, the candidate or party secretary must comply with section 207K.

Clause 9 amends section 207K of the principal Act to provide that donations from an overseas person may not exceed \$50. Amounts above this threshold must be returned by a candidate or party to the donor or, if this is not possible, paid to the Electoral Commission. If an overseas person contributes more than \$50 to a donation, the total amount of the donation or its value must be returned by a candidate or party to the donor or, if this is not possible, paid to the Electoral Commission.

Clause 10 amends section 207L of the principal Act to provide that if a candidate or party secretary is charged with contravening section 207K, it is a defence to that charge if the candidate or party secretary proves that they took all reasonable steps in the circumstances to ascertain that the donation or contribution was not made by or on behalf of an overseas person, or that there were no reasonable grounds to suspect that the donation or contribution was made by or on behalf of an overseas person.

Clause 11 amends section 208A of the principal Act to provide that an overseas person may not make a donation that is protected from disclosure under subpart 4 of Part 6A of the principal Act.

Clause 12 amends section 208D of the principal Act to provide that if the Electoral Commission believes, or has reasonable grounds to believe, that a donation, or contribution to a donation, is received under section 208A from an overseas person, the Commission must return the donation to the donor or, if this is not possible, pay the amount of the donation into a Crown Bank Account. A donation paid into a Crown Bank Account will be included in the Electoral Commission's report required under section 208G.

Clause 13 amends section 209 of the principal Act relating to returns of candidate donations. Section 209(1)(b), which requires that a return include details of contributors contributing more than \$1,500 to a donation, is amended to clarify that it applies only in respect of contributions made by New Zealand persons. Details of contributions received from overseas persons are required by section 209(1)(e). Section 209(1)(c) is amended to provide that the details required in respect of anonymous donations must separately specify those donations suspected of being received from overseas donors. Section 209(1)(d) and (e), which relates to donations and contributions received from overseas persons, is amended to reduce the \$1,500 threshold to \$50.

Clause 14 amends section 210 of the principal Act relating to the annual returns of party donations. The amendments parallel those made to section 209 (*see clause 13*). Section 210(6A)(b) is also repealed, with the effect that parties will not be required to separately return the number of overseas party donations received of an amount less than \$50, and the total amount of all such donations.

Part 2

Other amendments

Clause 15 amends section 3 of the principal Act to move the definition of party secretary to *new section 3EA* (see *clause 16*).

Clause 16 inserts *new section 3EA* into the principal Act, which defines party secretary. A party secretary is required to live in New Zealand, but otherwise the existing definition is unchanged.

Clause 17 amends section 221A of the principal Act relating to electoral advertisements. The scope of section 221A is broadened to cover publishing and broadcasting in all mediums, including electronic mediums. However, excluded from the scope of this provision are personal political views published in an electronic medium by an individual who does not make or receive a payment in respect of the publication, and also the editorial content of a publication on a news media Internet site.

Hon Andrew Little

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The Parliament of New Zealand enacts as follows:

1 Title

This Act is the Electoral Amendment Act **(No 2) 2019**.

2 Commencement

- (1) This Act, except **sections 15 and 16**, comes into force on **1 January 2020**. 5
- (2) **Sections 15 and 16** come into force on **1 April 2020**.

3 Principal Act

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

Part 1

Amendments relating to overseas donations 10

4 Section 204K amended (Promoters eligible to be registered)

In section 204K(d), replace “section 207K” with “section 207(2)”.

5 Section 207 amended (Interpretation)

- (1) In section 207(2), definition of **candidate donation**, paragraph (a)(i), after “provided”, insert “by a New Zealand person”. 15
- (2) In section 207(2), definition of **candidate donation**, after paragraph (a)(i), insert:
- (ia) where goods or services are provided by an overseas person to a candidate, or to any person on the candidate’s behalf, under a contract or an arrangement at a value less than their reasonable market value, the latter being a value that exceeds \$50, the amount of the difference between the former value and the reasonable market value of those goods and services; and 20
- (3) In section 207(2), definition of **candidate donation**, paragraph (b)(ii), after “provided”, insert “by a New Zealand person”. 25
- (4) In section 207(2), definition of **candidate donation**, after paragraph (b)(ii), insert:

- (iii) goods or services provided by an overseas person free of charge to a candidate, or to any person on the candidate's behalf, that have a reasonable market value of \$50 or less
- (5) In section 207(2), insert in their appropriate alphabetical order:
- New Zealand person** means a person who is not an overseas person 5
- overseas person** means—
- (a) an individual who—
- (i) resides outside New Zealand; and
- (ii) is not a New Zealand citizen or registered as an elector; or
- (b) a body corporate incorporated outside New Zealand; or 10
- (c) an unincorporated body that has its head office or principal place of business outside New Zealand
- (6) In section 207(2), definition of **party donation**, paragraph (a)(i), after “provided”, insert “by a New Zealand person”.
- (7) In section 207(2), definition of **party donation**, after paragraph (a)(i), insert: 15
- (ia) where goods or services are provided by an overseas person to a party, or to any person on the party's behalf, under a contract or an arrangement at a value less than their reasonable market value, the latter being a value that exceeds \$50, the amount of the difference between the former value and the reasonable market value of those goods or services; and 20
- (8) In section 207(2), definition of **party donation**, paragraph (b)(ii), after “provided”, insert “by a New Zealand person”.
- (9) In section 207(2), definition of **party donation**, after paragraph (b)(ii), insert:
- (ia) goods or services provided by an overseas person free of charge to a party, or to any person on the party's behalf, that have a reasonable market value of \$50 or less; and 25
- 6 Section 207C amended (Contributors to be identified)**
- (1) Replace section 207C(2)(b) with:
- (b) the details specified in **subsection (3)** in respect of any contribution that, either on its own or when aggregated with other contributions made by or on behalf of the same contributor to the donation, exceeds— 30
- (i) \$1,500 in sum or value in the case of a contributor who is a New Zealand person; or
- (ii) \$50 in sum or value in the case of a contributor who is an overseas person; and 35
- (2) In section 207C(2)(c), replace “paragraph (b)(iv)” with “**paragraph (b)**”.
- (3) After section 207C(2), insert:

- (3) The details referred to in **subsection (2)(b)** are—
- (a) the name of the contributor; and
 - (b) the address of the contributor; and
 - (c) whether the contributor is an overseas person; and
 - (d) the amount of the contribution or, in the case of aggregated contributions, the total amount of the aggregated contributions. 5

7 Section 207I replaced (Anonymous donation may not exceed \$1,500)

Replace section 207I with:

207I Anonymous donations

- (1) If an anonymous candidate donation is received by a candidate, the candidate must, within 20 working days, pay to the Electoral Commission— 10
- (a) the amount of the donation, or its value, less \$50, if—
 - (i) the candidate believes or has reasonable grounds to suspect the donor is an overseas person; and
 - (ii) the donation exceeds \$50; or 15
 - (b) the amount of the donation, or its value, less \$1,500, if—
 - (i) the candidate does not have reasonable grounds to suspect the donor is an overseas person; and
 - (ii) the donation exceeds \$1,500.
- (2) If an anonymous party donation is received by a party secretary, the party secretary must, within 20 working days, pay to the Electoral Commission— 20
- (a) the amount of the donation, or its value, less \$50, if—
 - (i) the party secretary believes or has reasonable grounds to suspect the donor is an overseas person; and
 - (ii) the donation exceeds \$50; or 25
 - (b) the amount of the donation, or its value, less \$1,500, if—
 - (i) the party secretary does not have reasonable grounds to suspect the donor is an overseas person; and
 - (ii) the donation exceeds \$1,500.
- (3) All amounts received by the Electoral Commission under this section must be paid into a Crown Bank Account. 30

8 New section 207JA inserted (Duty to ascertain whether donation from overseas person)

After section 207J, insert:

207JA Duty to ascertain whether donation from overseas person

- (1) A candidate or party secretary who receives a donation (not being an anonymous donation) that exceeds \$50 must take all reasonable steps in the circumstances to ascertain whether—
- (a) the donation was made by or on behalf of an overseas person; or 5
 - (b) any contribution to the donation was made by or on behalf of an overseas person.
- (2) If a candidate or party secretary ascertains that a donation or contribution to a donation was made by an overseas person, or that there are reasonable grounds to suspect that the donation or contribution was made by an overseas person, the candidate or party secretary must comply with section 207K. 10

9 Section 207K amended (Overseas donation or contribution may not exceed \$1,500)

- (1) In the heading to section 207K, replace “\$1,500” with “\$50”. 15
- (2) Repeal section 207K(1).
- (3) In section 207K(2), (2A), and (3), replace “\$1,500” with “\$50” in each place.
- (4) In section 207K(4), replace “subsection (2) or (3)” with “subsection (2), (2A), or (3)”.

10 Section 207L amended (Offence relating to contravention of section 207K)

- (1) In section 207L(1) and (2), replace “section 207K(2) or (3)” with “section 207K(2), (2A), or (3)”. 20
- (2) After section 207L(2), insert:
- (3) It is a defence to a charge under subsection (2) if the candidate or party secretary proves that he or she took all reasonable steps in the circumstances to ascertain that— 25
- (a) a donation exceeding \$50, or a contribution exceeding \$50 to a donation, was not made by or on behalf of an overseas person; or
 - (b) there were no reasonable grounds to suspect that a donation exceeding \$50, or a contribution exceeding \$50 to a donation, was made by or on behalf of an overseas person. 30

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

- (1) In section 208A(1), replace “person” with “New Zealand person”.
- (2) Replace section 208A(3) with:
- (3) A donation under subsection (2) must be accompanied by a statement specifying— 35
- (a) the name of the party that is to receive the donation; and

- (b) the full name and address of the donor; and
- (c) whether the donor is a New Zealand person; and
- (d) the matters set out in **paragraphs (a) to (c)** in respect of every person who has contributed in excess of \$1,500 to the donation, if the donation made by the donor includes or comprises contributions from others. 5
- 12 Section 208D amended (Duties of Electoral Commission on receipt of donation)**
- (1) After section 208D(1)(b), insert:
- (c) the Electoral Commission believes or has reasonable grounds to believe that the donation is made by an overseas person, or includes or comprises contributions from an overseas person. 10
- (2) In section 208D(2), replace “subsection (1)(a)” with “subsection (1)(a) or **(c)**”.
- 13 Section 209 amended (Return of candidate donations)**
- (1) In section 209(1)(b), replace “every contribution” with “every contribution received from a New Zealand person”. 15
- (2) Replace section 209(1)(c) with:
- (c) the details specified in subsection (4) in respect of every anonymous candidate donation received by him or her—
- (i) exceeding \$50, in any case where the candidate believes or has reasonable grounds to suspect the donor is an overseas person; or 20
- (ii) exceeding \$1,500 in any other case; and
- (3) In section 209(1)(d) and (e), replace “\$1,500” with “\$50”.
- 14 Section 210 amended (Annual return of party donations)**
- (1) In section 210(1)(b), replace “every contribution” with “every contribution received from a New Zealand person”. 25
- (2) Replace section 210(1)(c) with:
- (c) the details specified in subsection (4) in respect of every anonymous party donation received by him or her—
- (i) exceeding \$50, in any case where the party secretary believes or has reasonable grounds to suspect the donor is an overseas person; or 30
- or
- (ii) exceeding \$1,500 in any other case.
- (3) In section 210(1)(d) and (da), replace “\$1,500” with “\$50”.
- (4) Repeal section 210(6A)(b).

Part 2

Other amendments

15 Section 3 amended (Interpretation)

In section 3(1), replace the definition of **party secretary** with:

party secretary or **secretary** has the meaning given to it by **section 3EA** 5

16 New section 3EA inserted (Meaning of party secretary)

After section 3E, insert:

3EA Meaning of party secretary

(1) In this Act, **party secretary** or **secretary**, in relation to a party, means the person who is responsible for the administration and correspondence of the party and who has been (or is required to be) designated under any of the following provisions as secretary of the party for the purposes of this Act: 10

(a) section 63(2)(c)(iii) or (iv):

(b) section 67(3)(c):

(c) section 67AA(2). 15

(2) The person designated as party secretary must live in New Zealand.

17 Section 221A amended (Electoral advertisements)

(1) Replace section 221A(1) with:

(1) A person must not publish or cause or permit to be published in any medium, or broadcast or cause or permit to be broadcast in any medium, any advertisement relating to an election (not being an election advertisement as defined in section 3A) unless the advertisement includes a statement specifying— 20

(a) the true name of the person for whom or at whose direction it is published or broadcast; and

(b) the address of that person's place of residence or business. 25

(2) In section 221A(2), replace "Subsection (1) shall not apply to any advertisement published or broadcast, or caused or permitted to be published or broadcast" with "**Subsection (1)** does not apply to any advertisement published or broadcast, or caused or permitted to be published or broadcast, in any medium". 30

(3) Replace section 221A(4) with:

(4) Nothing in this section—

(a) restricts the publication or broadcast in any medium of any news or comments relating to an election made in a newspaper or periodical or by a broadcaster (as that term is defined in section 2(1) of the Broadcasting Act 1989); or 35

- (b) applies to the editorial content of a publication on a news media Internet site; or
 - (c) applies to any publication on the Internet, or other electronic medium, of personal political views by an individual who does not make or receive a payment in respect of the publication of those views.
- (5) In this section, **medium** includes the Internet or any other electronic medium.

5