

Ministry of Justice

Proactive release of material related to submissions on proposed changes to political donation rules

Date of issue: 23 December 2022

Some information has been withheld on the basis that it would not, if requested under the Official Information Act 1982 (OIA), be released. Where that is the case, the relevant section of the OIA has been noted and no public interest has been identified that would outweigh the reasons for withholding it.

No.	Document	Comments
1	Consultation submission - Proposed changes to political donations rules (National Party)	Released in full.
2	Consultation submission - Proposed changes to political donations rules (Social Credit Party)	Released in full.
3	Consultation submission - Proposed changes to political donations rules (New Conservative Party)	Released in full.
4	Internal File Note – Proposed changes to political donations rules (meeting with Chartered Accountants Australia and New Zealand - CAANZ)	Some information withheld under section 9(2)(a) to protect the privacy of natural persons.
5	Notes from meeting with External Reporting Board (XRB)	Some information withheld under section 9(2)(a) to protect the privacy of natural persons.
6	Internal File Note - Proposed changes to political donations rules (meeting with ACT Party)	Released in full.
7	Internal File Note - Proposed changes to political donations rules (meeting with Green Party of Aotearoa New Zealand - Greens)	Some information withheld under section 9(2)(b)(ii) to protect the commercial position of the company that is the subject of the information.
8	Additional notes from the Green Party of Aotearoa New Zealand - Greens	Released in full.
9	Internal File Note - Proposed changes to political donations rules (meeting with New Zealand Labour Party - Labour)	Some information withheld under section 9(2)(b)(ii) to protect the commercial position of the company that is the subject of the information.
10	Internal File Note – Proposed changes to political donation rules (meeting with New Zealand National Party - National)	Some information withheld under section 9(2)(a) to protect the privacy of natural persons.
11	Internal File Note - Proposed changes to political donations rules (meeting with Sustainable New Zealand - Outdoors and Freedom Party)	Released in full.
12	Internal File Note - Proposed changes to political donations rules (meeting with Sustainable New Zealand - SNZ)	Released in full.
13	Additional notes from Sustainable New Zealand (SNZ)	Released in full.
14	Internal File Note - Proposed changes to political donations rules (meeting with The Opportunities Party - TOP)	Released in full.



25 January 2021

Rajesh Chhana
Deputy Secretary
Ministry of Justice

Via Email – electoral@justice.govt.nz

Dear Rajesh

Thank you for the invitation to submit written feedback on the package of potential changes to political donation settings.

This feedback is submitted on behalf of the National Party and in my capacity as National's Party Secretary - a position I have held for over eleven years. As Party Secretary I have been involved in four General Elections, overseen eleven donation audits and returns, and a significant number of special disclosures. The donations framework is an area I have significant experience in both applying and working with a wide range of volunteer officeholders to ensure the National Party's compliance with.

The National Party is a volunteer-run organisation comprised of 65 electorate entities, numerous special branches, and hundreds of volunteer officeholders across the country. Each electorate, branch, and officeholder, has a role in understanding and complying with the political donation settings and are supported by a small team of paid professionals based at our Service Centre, with 1.5 FTE focused on the finance space.

The volunteer-run nature of our Party makes changes to an already complex donations framework a particular concern for us. We believe a balance must be struck between the need for common-sense regulations that ensure the public has confidence in our democracy with the reality that volunteers are responsible for complying with an already highly technical regulatory framework.

Our view is that the existing donation settings balance this effectively and therefore does not require significant change.

Our feedback on the review's proposals are split into four areas:

- 1) **Concerns on the timeline and appropriateness of reviewing donation settings in isolation.**
- 2) **Concerns on the prospect of proposed changes being made unilaterally.**
- 3) **Reality of implementation.**
- 4) **Detailed feedback on individual proposals.**

This submission contains further detail on the themes raised during our in-person meeting on the 23rd of December 2021 and reiterates our strong recommendation that the review of political donation settings be merged into the announced Independent Review of electoral law.

We struggle to understand why the Ministry has prioritised a review of, and changes to, political donation settings at this time and refute the basis stated by the Ministry that "Recent high-profile incidents involving donations to major political parties or candidates..." justify the proposed changes. The incidents alluded to by the Ministry show that existing donation settings are in-fact working, being enforced effectively by regulating bodies, and are being dealt with in a transparent and judicially prudent manner.

It is important that these incidents are given the opportunity to work their way through the independent judicial process. Pre-empting outcomes while matters are still before the courts does not provide a sound basis for changes to any legal framework, least of all the legal framework that governs our democracy.

Cross-party support and agreement on electoral reform remains critical to public confidence in the integrity and longevity of our electoral system. Cross-party support assures the public that electoral law is derived in the public interest and not the interest of any one governing party.

Thank you again for the opportunity to submit feedback on the review. We look forward to continuing our engagement with the Ministry in this critical area of importance for our democracy.

Regards,



Greg Hamilton

Party Secretary | General Manager

New Zealand National Party

Concerns on the timeline and appropriateness of reviewing donation settings in isolation.

National opposes the Ministry's intent to progress with the specific review of, and changes to, donation settings within the proposed timeline and in isolation from our wider democratic framework. This seems particularly difficult to justify when a holistic review of electoral law has already been announced and is on the near horizon.

We oppose this for two reasons – 1) We do not believe the timeline will enable effective consultation on the existing framework, development of meaningful and sensible changes, or a reasonable window for implementation, and 2) We do not believe donation settings can be considered in isolation from the rest of our democratic framework.

Political parties will begin formally preparing their election campaigns by the middle of this year, 2022, including detailed campaign budgeting. By quarter three of 2022, these preparations will include the selection of candidates, appointment of campaign leaders, and other high-level planning. In earnest, campaigns will take flight in early 2023.

The initial timeline proposed in the Ministry's Cabinet Paper suggests proposed changes will not come into effect until the year of the general election, with implementation beginning just prior to this, or roughly 12 months out from a potential election date. Ministry officials informed us in late 2021 that these dates are likely subject to change given the disruption of COVID-19 on policy development, suggesting they will be further delayed until closer to the election date.

If the intention for delivery of changes to donation settings in time for the 2023 election continues, we are concerned that consultation, detailed proposal development, and implementation will be compromised with a risk that they disrupt parties' ability to operate effectively in the upcoming election. This timeline is insufficient, and unfair to expect volunteer-run organisations to respond and implement complex administrative and regulatory changes in the immediacy of a general election.

This likely timeline also runs counter to the precedent set by the electorate boundary review process that has been determined as too disruptive to run in an election year and therefore must be complete with sufficient time before the beginning of formal campaigns.

It is generally agreed that political parties play an essential role in our democracy – they find and support quality candidates for Parliament, actively uphold their regulatory obligations, hold one another to account and develop and present policies to the public in free and fair elections.

Core to delivering on this role is the ability to effectively raise and spend funds to finance these activities.

The Ministry's proposed changes to donation settings, particularly the proposed changes to disclosure thresholds, will have a significant impact (to a much greater degree than noted in the Ministry's own analysis) on this ability to raise funds. For National, we know the proposals would increase regulatory compliance costs whilst at the same time reducing our ability to raise the funds to meet these.

The consequence of implementing the proposed changes need to be considered alongside the exploration not just of donation laws, but also measures which would reduce parties' costs and regulatory obligations if parties means of administering and upholding them are compromised, or consider alternative funding models for political parties. We note this may on balance present bigger risks to public confidence than current arrangements.

Political donations are a key element of our current democratic system. They are intertwined heavily with parties' ability to fulfil their other democratic functions and the ability of voters to express support through donations. Donation settings must be considered in the wider scheme of electoral law as changes to these settings may have impacts on other components of our democratic system, and vice-versa.

Our concerns with the shortened-timeframe and belief that donation settings should be considered within the wider context of our electoral law, not in isolation, provide basis for this review to be bundled into the announced Independent Review of electoral law. This is an opportunity for a holistic, time-rich, and all-encompassing review of our democratic system, with proposals adequately offset across the system to reduce potential damaging impacts on parties and their ability to meet their democratic responsibilities.

Simple examples of the unintended consequences of completing a review in isolation, and progressing with current proposals, includes making financial donations to registered third parties (that are comparatively less regulated) and individual candidates (with significantly lower expenditure thresholds) relatively more attractive than giving to a political party. These consequences are counter to the intended design of our donation regime that encourages giving to parties, which are relatively less susceptible to influence, given their devolved nature, larger size, and greater expenditure caps.

Concerns on the prospect of proposed changes being made unilaterally.

National believes that at the core of our democratic system must be cross-party support and agreement on the rules that govern our elections. New Zealanders deserve, and expect, a system that is stable and has the longevity to build trust and confidence with the voting public. Implementing a change to donation settings, as a pre-cursor to a wider review, in an election year, is simply inviting the public to dismiss the changes as in the interest of the governing party.

We do not believe building cross-party support has been prioritised by this review which puts at risk the legitimacy, integrity, and longevity of any changes to donation settings. The debate on the Electoral Finance Act 2007 (and its eventual repeal in 2009) provides an example of the consequences of partisan changes to our democratic framework without cross-party consensus and highlights the risk of not placing this consensus at the core of decision-making.

Simply stated, pushing through electoral law without consensus undermines, not enhances, public confidence in the integrity of our elections and risks setting a precedent for future governments to implement new changes or reverse past changes without consensus support.

As you will see in our detailed feedback on the proposed changes, National has concerns with or opposes a majority of the proposals, signifying from the start a lack of cross-party support for their progression.

National is engaging on this topic in good faith. We believe supporting a robust, stable and sufficiently transparent democratic system is critical to building and maintaining public trust in our elections. This is a shared goal across Parliamentary parties, yet the current direction of the review is not enabling this.

Reality of implementation.

We do not believe the Ministry fully understands the significant regulatory burden of the proposals – particularly the lowering of the public disclosure threshold and increasing of donation reporting (particularly if moved to quarterly) – on volunteer-run political parties.

The National Party maintains a small staff (including 1.5 FTE focused on financial matters, including donations) to support and enable a wide range of volunteer officeholders that have significant responsibility for the day-to-day management and operations of the Party. A similar structure is true for all major New Zealand political parties, with smaller parties often having no paid staff and being entirely run by volunteers.

The proposals on public disclosure and regularity of reporting are not offset by significant reductions in other regulatory compliance activities and, as such, will be a large net addition to the workload of volunteer (and more importantly 'amateur') teams. This is an unfair expectation to place on volunteers and will act as a detractor for voters to become involved in political parties due to the burden and legal risk placed upon them.

It is important to keep in mind that volunteer Treasurers, already responsible for complying with existing donation settings, will face the brunt of the increased administrative and regulatory requirements. National sees roughly 50% churn in volunteer Treasurers from year-to-year as individuals shift through the critical, but pressured, complex, and time intensive role. This churn rate makes ongoing training and upskilling difficult to manage and we have concerns that the reviews' proposals would make these roles increasingly untenable for volunteers to manage. Making changes of this significance is particularly high risk in an already busy and complex election year environment.

To offset the impact of the proposed changes National would need to increase expenditure on paid staff and further investment in financial systems to enable compliance in an already complex environment. This is unreasonable

expectation to place on parties that rely on donations to operate and will reduce parties' abilities to run effective campaigns that engage with the voting public as broadly as possible.

Realistically if the proposals were to be progressed, as suggested, the National Party would need to establish a programme of work outside of business-as-usual, including full-time staff resources, to undertake a detailed review of the impacts of the changes, make recommendations on solutions required, implement these into our organisation - and then an ongoing resource commitment to manage increased compliance costs and complexity. This would represent a significant cost and distraction for the Party that cannot be recouped.

The time to review and implement Electoral law changes is at the beginning of an electoral term, not the end.

Detailed feedback on the specific proposals is provided on the following pages

Detailed feedback on individual proposals.

Proposed Change	National Party Feedback
<p>Lower public disclosure threshold for donations to \$1,500 for parties (which is currently set for \$15,000 for parties and \$1,500 for candidates).</p> <p>This would also remove the need to report in bands of up to \$5,000 and \$15,000.</p>	<p>National strongly opposes this proposed change.</p> <p>National believes the appropriate level for public disclosure of donations is the level at which the public could reasonably be concerned that a donation may influence a party or candidate, and therefore should be open to public scrutiny. We do not believe that donations to parties of up to \$15,000, when managed in compliance with existing robust frameworks, represent any such risk. Especially where a party can spend up to \$3m in a campaign, the current party donation threshold represents just 0.5% of total disclosable expenditure.</p> <p>Any requirement for public disclosure below the level that a donation could potentially influence a party is an undue restriction on privacy and democratic freedom, as the public interest argument for the disclosure (i.e., to prevent influence) is not present.</p> <p>In the same vein, we believe it is logical for the candidate disclosure threshold to differ to the party threshold. A \$1,500 donation represents 5.5% of a candidate’s total expenditure cap (\$27,500 in 2020) and agree becomes in the public interest for disclosure. A consequential differential between candidate and party donations is an important feature, not a weakness, of the existing donation settings, as it encourages giving directly to political parties rather than individual candidates. This incentive is crucial as a political party is far less susceptible to potential influence or coercion given its size and relative expenditure allocations. Placing parties, as opposed to candidates, at the centre of our donation framework is an outcome we should strive to achieve, and existing settings help achieve this, whereas proposed changes would eat-away at this and make donations to candidates relatively more attractive.</p> <p>This proposal also makes it relatively more attractive for political donors to provide funds to registered third party organisations that participate in election campaigns. These third-party organisations are comparatively less regulated and by decreasing the disclosure threshold for political parties by 90% to \$1,500 there will be an additional incentive to give funds to these groups to remain politically involved and protect privacy over giving to established, regulated, and more transparent political parties. In exploring such changes, consideration must be given to these types of additional issues, which cannot occur when reviewing donation settings in isolation.</p> <p>We are concerned that the Ministry has under-estimated the aversion of donors to being publicly identified and, therefore, the consequences of the proposals on parties’ incomes and ability to fulfil their democratic functions. We estimate that only a small fraction of donors who currently give between \$1,500 and \$15,000 would still be prepared to do so if their privacy were not protected. This is demonstrated by recent electoral returns, with only 14 donors prepared to give amounts of more than \$15,000 to the National Party in 2020, and 25 to the Labour Party.</p> <p>The chilling effect on donations above \$1,500 should the threshold be lowered will have a significant impact on parties’ ability to support candidates, meet regulatory requirements, and run effective election campaigns, with no alternative funding mechanism proposed or in-place to make up for this loss of income.</p>

	<p>We believe that the funding for political parties should come from those who support and would vote for them, and the shift to a \$1,500 limit would significantly impact the willingness of these individuals to give. Reducing the disclosure limit takes a step towards path dependency for state funding of political parties, which we have serious concerns about, and requires a much broader public conversation.</p> <p>National believes that the current disclosure thresholds are appropriate to prevent non-transparent influence. As such, there is no public interest case for reducing thresholds. Yet privacy and democratic freedom mean that there is a significant public interest case for the status quo. The reality is the existing disclosable threshold of \$15,000 represents 0.6% of National’s disclosed expenditure in the 2020 election.</p> <p>National would argue that given inflation since 2010, there may well be a public interest argument for increasing thresholds as opposed to decreasing them, to ensure we are protecting voters privacy and democratic freedom to support political parties as they see fit.</p> <p>We agree with the Ministry’s assessment that lowering the threshold to \$1,500 could potentially and inadvertently encourage donors to split donations to sit below the donation threshold and remain anonymous. This recognises that there is a general aversion from donors to be publicly known and tied to a particular political party, reinforcing our view that this will significantly reduce overall donation income as many donors previously giving between \$1,500 - \$15,000 would be unwilling to do so.</p> <p>We additionally do not understand why the Ministry has proposed \$1,500 as a new disclosure threshold. There does not appear to be any hard evidence to suggest \$1,500 is a significantly better threshold than other options of say \$5,000, \$10,000 or the status quo of \$15,000, and as discussed above, there is no public benefit in this change. We ask the Ministry to consider the justification for this, provide evidence to support this, and consider whether this lines-up with evidence of effective donation settings. Justification that the disclosure threshold for parties be the same as for candidates is simply not a logical move.</p> <p>These significant and wide-reaching impacts of decreasing the disclosure threshold provides additional reasoning to not review donation settings in a vacuum. The impact of changing disclosure thresholds alone will have wide reaching impacts on political parties’ ability to operate in areas that fall outside the scope of this review and are therefore not considered or accounted for.</p>
<p>Increase frequency of donation reporting (e.g., change from annual reporting to 3-or-6 monthly).</p>	<p>National strongly opposes a shift to 3-monthly reporting and finds 6-monthly a more palatable option.</p> <p>The current annual donation return process takes roughly 3 months from end-to-end, including significant work with over 65 volunteer Treasurers and engagement with external auditors. The result is generally a 30,000+ line donation record, amalgamated from our central database, 65 electorates and a number of special branches. The process is run and managed by volunteer Treasurers across the Party and supported by a one full-time staff member overseeing the return, alongside a large amount of time from the Party’s Chief Financial Officer and Party Secretary.</p> <p>Replicating this process four times over the course of a year (or 12 times in an electoral cycle) would place a significant regulatory and administrative burden on all parties. For National it would require the employment of at least one additional full-time staff member dedicated to overseeing the ongoing process along with negatively impacting the availability of the CFO and Party Secretary to complete other critical initiatives/BAU work programmes. This level of regularity would also significantly increase audit costs for parties.</p>

	<p>An annual donation return provides the same information as a 3-monthly or 6-monthly return process, and as such, we see insufficient benefit of more regular reporting to justify the cost and regulatory burden placed on parties by this proposal. The status-quo should remain, or, if changes are considered essential by other parties, at least not more regularly than 6-monthly.</p>
<p>Remove the requirement that for donations that exceed \$30,000 the identity of donor and amount must be publicly disclosed within 10 days of receipt (via Electoral Commission).</p>	<p>National supports this proposal.</p> <p>We strongly support the recommendation to remove the requirement that for donations exceeding \$30,000 the identity of the donor must be publicly disclosed within 10 days of receipt. The nature of piece-meal donations across a reporting cycle, particularly across different branches of political parties, makes complying with this existing regulation difficult for all parties.</p> <p>We agree with the Ministry that removing this requirement will reduce administrative complexity and risk of inadvertent non-compliance. If this requirement was removed, we would be open to considering an increased reporting threshold for large donations of \$30,000+ in the lead-up to a general election to ensure that voters have knowledge of significant political giving as they make decisions on how to cast their vote. This provides the level of transparency required to maintain confidence in our democratic framework.</p>
<p>Introduce requirements for parties and candidates to disclose more details about in-kind (i.e., non-cash) donations.</p>	<p>National is not opposed to this proposal in principle.</p> <p>Existing donation settings are not entirely clear on how to handle in-kind donations, and parties/candidates rely on advice from the Electoral Commission on how to manage these. As such, they are currently reported on, but operate with less clarity than cash donations.</p> <p>Without a detailed proposal to consider we cannot provide further feedback, however, are not opposed in principle to this being clarified and codified.</p> <p>We further believe that there is opportunity to provide clarity on the handling of event based (e.g., raffles, movie nights, koha, etc) donations by contribution to guide political parties and ensure a consistent approach. This has not been addressed by this review and reinforces our recommendation that consideration of donation settings be included in the broader review of Electoral law.</p>
<p>Require parties and candidates to report on number and total volume of donations under \$1,500 for donations that are not made anonymously.</p>	<p>National is neutral on this proposal in principle.</p> <p>As all donations are amalgamated in the donation return process the data to inform this reporting does exist. However, we do not understand the problem trying to be solved or what the intended public good is of this proposal.</p> <p>We would recommend further investigation through the proposed public consultation during the review of Electoral law.</p>

<p>Require parties to publicly disclose their audited annual financial statements.</p>	<p>National strongly opposes this proposal</p> <p>Each New Zealand political party operates under their own internal set of rules and constitutions. These rules usually spell out audit requirements, and as such, would impact each party differently, making the proposal difficult to implement effectively.</p> <p>For National, this proposal would require consolidation of all electorate and branch financials (70+ groups) and have these audited. This would likely double audit costs to roughly \$100,000 per annum with significant extra work required from the small professional finance team (1.5 FTE) employed by the Party. We do not see a net public good that offsets the increased administrative, regulatory and compliance costs.</p> <p>Fundamentally, there is no need for parties to disclose their audited financial statements as they are already required to disclose their donations and campaign expenditure. Other income for the National Party comes through membership fees and a small amount of interest income. There is already a requirement in National Party rules for such information on annual financial performance to be reported to members. There is also no expectation from donors that, when making their donations, they will see this information.</p>
<p>Introduce requirement for candidates to report on loans.</p>	<p>National is not opposed to this proposal in principle.</p>
<p>Ban on anonymous donations (similar to a ban on overseas donation).</p>	<p>National is not opposed to this proposal in principle.</p> <p>In principle we are not opposed to a ban of this nature given donations protected from disclosure via the Electoral Commission (whereas the donor is not disclosed to the Party they have given to, and their name is not disclosed publicly) remains a viable option for those wishing to give anonymously in a regulated manner.</p> <p>That said, we are concerned that the mechanism to implement and the process to guarantee a ban would be complex and cumbersome. A ban of this nature is likely to add significant regulatory burden and legal risk to political parties, and volunteers, with very little gain or public benefit.</p> <p>We struggle to understand the Ministry's rationale behind the proposal to ban anonymous donations as we have not seen or been presented evidence to show there are widespread problem cases or concerns arising from current settings. This reinforces the view that the change is likely to see limited public benefit and which may not offset the increase in compliance activity that will be required.</p>



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24th January 2022

Mr Rajesh Chhana
Deputy Secretary Policy
Ministry of justice
Wellington

Greetings Rajesh

Thank you for the opportunity to present our party's feedback on the potential options for changes to the donation rules under the Electoral Act.

Social Credit made extensive and in-depth submissions to the original investigation in the early 1980s to the proposed changes from First-Past-The-Post to Proportional Representation. A major driver of that change was, of course, the 1981 election result which saw Social Credit gain 20.65% of the nationwide vote. That very large block of voters ending up being represented in parliament by only two MPs because of the un-democratic nature of the FPP system.

Our view has always been that the electoral process, and in particular the funding of it, should be as transparent as possible and be heavily biased towards a regime which delivers the upmost benefit to individual voters as against political parties.

We have dealt with the items as numbered on the proposed changes sheet followed by the other issues and lastly some additional thoughts.

1. We support the proposal to lower the public disclosure threshold to \$1,500 for donations to parties, to align it with that currently set for candidates. We agree that the listed merits are of value and while the change could reduce the amounts donated we do not see that as likely to be significantly. We think people who are of a mind to donate sums of that sort (or larger) will likely do so anyway.

The splitting of donations already takes place and those are required to be aggregated and reported on under current law and that would still be a requirement under the proposed change. We do see an issue where donors may now consider that donations to a party and a number of candidates may be a way of getting around the disclosure rules. Making it an offence to not disclose donations of \$1,500 or more in aggregate to a party and/or its candidates may be a way of countering that possibility.

2 & 3. We support the increase in donation reporting frequency from annually to six monthly, however retaining the requirement to report donations that exceed \$30,000 within 10 days during the election period. The six monthly donation reporting change would increase compliance activity and we suggest that a full audit of donations remain on an annual basis as is currently the case.

We agree that proportionate mechanisms for non-compliance need to be part of any change and those could include a short period of grace in the event of a return not being filed on time, to a financial penalty for failure to comply, up to deregistration following significant and ongoing breaches.

4. We support a move to introduce reporting of in-kind donations to both parties and candidates. This could perhaps be set at the \$1,500 level proposed in number 1.

For example, if an individual or company donated an item for an auction that sold for \$1,500 or greater the name of both the donor and the successful purchaser might need to be disclosed. This could also apply to fundraising dinners or meet the cabinet minister type of events where the ticket price was \$1,500 or greater or where companies purchased a number of tickets that came to \$1,500 or greater. In that case the name of the individual purchaser or the company would need to be disclosed.

We suggest also including the situation where somebody with particular expertise is seconded to work for a political party or candidate but is paid by a company, group, or individual to undertake that role. Where the payment was in total \$1,500 or greater or an accumulated amount under different task headings over the reporting period came to \$1,500 or more the name of the payer would need to be disclosed.

5. We support the suggestion to require parties and candidates to report on the number and total volume of donations as outlined. This would not be a significant burden on reporting requirements.

6. We support the proposal to require parties to publicly disclose their annual financial statement, however this could perhaps be done under review requirements rather than full audit.

This has been a requirement of Social Credit as an incorporated society since 1953. The transparency of financial information being available for public perusal, particularly by voters so inclined, we see as an important component of the democratic system.

7. We support the proposal to require candidates to report on loans. While we accept that this would increase compliance activity, which for smaller parties is often a significant burden, and would likely fall on party secretaries, none-the-less loans to candidates are effectively donations albeit ones that are repayable overtime, but these loans could also be written off by the donor and thus becoming donations by another name.

Other issues.

1. The suggestion of considering a tiered system for annual reports to the Electoral Commission we find has some merit. There is a difficulty in finding independent auditors who are prepared to take on the potential risks involved in auditing the accounts of a political party. This means that especially for the smaller parties there is a significant financial burden involved in having to engage one of the major accounting firms prepared to undertake this task. A tiered approach would address those difficulties.

2. Returning to our point at the beginning of this submission that the electoral process should be biased towards voters, we believe that any group who stands candidates for parliament should be required to comply with the donations rules that apply to registered parties. While overseas influence in our electoral process does not, up to this time, appear to have been a concern, we view it to be an increasing one. Unregistered parties might provide a channel for that influence therefore ensuring compliance with the rules that apply to registered parties is a useful way of assisting transparency.

3. We applaud the consideration of applying accountability to unspent donations received by candidates, although our experience is that, particularly for smaller parties, candidates are most likely to spend all of any money donated. Notwithstanding that however, accountability should be in place and our suggestion is that any unspent funds need to be shown on candidate returns and those unspent funds transferred to the candidates' party headquarters account.

Candidates who are selected for the next subsequent election could apply to the party for the return of those funds in the build up to their next campaign. Those transfers of funds should be shown on both party returns and candidate returns. Any funds transmitted to a party account where the candidate does not subsequently stand again could be retained by the party.

4. We believe that in regards to section 208 of the Electoral Act, if a person or entity has given a non-anonymous donation of \$1,500 or more they should not qualify to then give an anonymous donation of whatever sum.

5. We believe consideration should be given to a situation where an individual makes a donation under the proposed \$1,500 threshold and also has effective control of companies which also give donations. In that situation all those donations should be aggregated and disclosed under whatever aggregation requirements those donations total.

6. We strongly support any move to ban anonymous donations, except as under section 208a of the Electoral Act. A democracy can hardly be considered transparent when anonymous donations are allowed.

If donors are sufficiently motivated to make large donations to political parties then they should be prepared to allow that motivation to be made public. In many cases donors donate to more than one political party so a donation does not automatically indicate who they will vote for on Election Day.

7. We made the point in 2. (above) that while overseas influence in our electoral process, up to this time, appears to be minimal, we view with increasing concern.

We therefore believe there is a need for a statutory declaration process for donations, either one-off or in aggregate, of \$30,000 or more by any individual, company, entity, or group. They should be required to declare that they have not been compensated in any form, financially or otherwise, for those donations by any individual, entity, company, or group domiciled either inside or outside New Zealand.

We thank you for the opportunity to present our views on these issues for your consideration and would be happy to discuss any aspects of them with you as you see fit. We are happy for our views, in this submission or subsequent consultation, to be made public

Yours faithfully

Anne Leitch
Party Secretary

Response ID ANON-VKQE-1UB6-N

Submitted to Proposed changes to political donation rules in our electoral law
Submitted on 2022-01-14 14:28:42

Have your say

Tell us about yourself

What is your full name?

Name:
Grant Meyer

What is your email address?

Email address:
xxxxx.xxxxx@xxxxxxxxxxxxxxxx.xxx.xx

Are you providing feedback as an individual or on behalf of an organisation?

Organisation

What is the name of your organisation?

Organisation:
New Conservative

Disclosure rules and thresholds

Do you think the proposed changes to disclosure rules and thresholds would improve transparency and openness? Why? (Please specify which proposal/s you are commenting on).

Q1:

No.

1; It would increase transparency but at the loss of privacy. So don't think this is warranted. The election process is currently not compromised. \$15,000 is not large anyway, when considering possible undue influence being exerted. Threshold should not be lowered.

2. No other group or charity report more frequently than once a year. All the donations are reported on a yearly basis, so no real improvement in transparency, just in timing, but large increase in costs for parties especially if audits of each report is required. Finding auditors are hard enough at present let alone trying to employ them on a more frequent basis. Increasing frequency is not necessary.

3. Yes, this requirement should be removed. The identity is disclosed during the annual reporting anyway.

4. No change required. if the value is large, it is disclosed in the current process. It would make further work for already over-worked volunteers, with no gain for the party.

Reporting

Do you think the proposed changes to reporting would help support compliance? Why? (Please specify which proposal/s you are commenting on).

Q2:

No.

5. Details are already kept. The value is low and ability to influence party decisions is zero. This sounds like more paperwork for the sake of it. No further reporting is warranted. Also Party volunteer staff are already too busy.

6. Not required as donations and loans are already reported. If full financial accounts were required, the auditing requirement should be similar to charities in that if turnover is low, audits/reviews will not be required. For small parties in particular, this just adds more unnecessary paperwork and consumes more value time of volunteers.

7. Candidate loan disclosure requirements could be similar to those for party loans.

Anonymous donations

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

Q3:

The current threshold for disclosure is satisfactory.

The entire voting system is based on privacy of individuals. ie who we vote for is confidential. Therefore, donations from private citizens should in theory be confidential as well.

The current threshold for disclosure is satisfactory for avoiding any undue influence and providing a balance between privacy and transparency.

Anything else?

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

Q4:

All these potential changes impact the work load and costs to small political parties in particular. But I see no gains at all from them regarding public trust in the electoral system.

The methods of selecting electoral boundaries and vote counting systems are much more likely to impact on public trust.

The 5% threshold for getting into parliament is a serious issue that needs to be addressed to improve public trust.

PROACTIVELY RELEASED

Internal File Note

Author	Avi Singh, Policy Advisor	File reference TBC
Date	1:00pm to 2:00pm, Tuesday 18 January 2022	
Location	Teams	
Subject	Proposed changes to political donations rules (meeting with Chartered Accountants Australia and New Zealand – CAANZ)	
Participants	<u>MoJ / BDO</u> MoJ Craig McKendry, Policy Lead (CM) Avi Singh, Policy Advisor (AS) BDO s9(2)(a)	<u>CAANZ</u> Zowie Pateman, Deputy Leader – Reporting and Assurance (ZP) Amir Ghandar, Leader – Reporting and Assurance (AG)

1. AS, CM, ^{s9(2)(a)} and ^{s9(2)(a)} met with ZP and AG from CAANZ. This internal file note briefly summarises the discussion.
2. The discussion forms part of the Ministry of Justice’s targeted consultation with subject matter experts with specific expertise/interest to discuss the proposed changes to political donations rules, ahead of any potential legislative change in this area.
 - A. Comments on proposal #2 (increasing the frequency of reporting of donations by parties) and proposal #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])**
3. ZP: Not sure about increasing the reporting frequency of donations
 - B. Comments on proposal #4 (requiring more detailed disclosures of in-kind (non-cash) donations)**
4. ZP: Transparency of in-kind donations would be improved by requiring demarcation of reporting on return form

C. Comments on proposal #6 (requiring parties to release their audited annual financial statements, and simplifying the audit requirements to make audit reviews more meaningful)

5. ZP: Likely to be micro-entity exemption for incorporated societies to prepare general purpose financial statements (could cover 40% of incorporated societies)
 - a. ZP: Micro-entity likely to be under \$30,000 revenue
6. ^{s9(2)(a)}: Should political parties have to follow Public Benefit Entity (PBE) accounting reporting standards and Generally Accepted Accounting Practice (GAAP) going forward?
7. ZP: For reporting purposes, do parties prepare general purpose or special purpose statements?
 - a. ^{s9(2)(a)}: There is a mix; some parties specifically refer to the type of statements they will produce, but others do not
8. ZP: For charities, need to go through a process of consolidation to determine whether they fall into the Tier 4 (low-level payments around \$140,000) reporting category
9. AG: In Australia, parties follow a returns system with the Australian Electoral Commission (AEC)
 - a. AG: This is common across OECD countries
10. AG: Hard to get around the completeness of audit of donations returns issue through the reporting framework
11. ZP: Special purpose statements designed for specific users
12. ^{s9(2)(a)}: Need a common framework for financial statements for comparability; otherwise not necessarily achieving transparency objective
13. ^{s9(2)(a)}: Would negative assurance report help?
 - a. ^{s9(2)(a)}: Standard on Assurance Engagements (SAE) 3100 is the current standard for assurance reports
 - b. ZP: Electoral Commission does not specify if the assurance should be reasonable or limited
14. AG: Need to try and improve party procedures in terms of accounting controls etc. to have some better review reports
 - a. AG: But should not overpromise and then undermine trust and confidence when promises do not eventuate
15. ZP: Hard to see quick wins within this timeframe
 - a. ZP: Independent Review the main form to consider broader changes

BDO notes from meeting with Anthony Heffernan – External Reporting Board (XRB)
3.15pm – 4.15pm, Wednesday 26 January 2022 via Microsoft Teams

Attendees:

BDO

s9(2)(a)

MOJ

Craig McKendry, Policy Lead

XRB

Anthony Heffernan, Director Accounting Standards

Key takeaways we got from that meeting used to support our report were:

- Agreed with general purpose financial statements rather than special purpose
- In favour of financial statements being public and audited
- Expected there would need to be a 3-4 year transition period and suggested to look at the incorporated societies changes as an example
- Noted that if there was a requirement for political parties to comply with XRB standards that would then give the XRB scope to look at the standards to see if any changes are needed for donation disclosures. We have noted this in our report
- They agreed with the changes we were suggesting to the audit reports and made some suggestions which helped form what we have outlined in our report around the review and agreed upon procedures (AUP) options

Internal File Note

Author	Keeshonn Watene, Policy Advisor	File reference TBC
Date	4:00pm to 5:00pm, Wednesday 2 February 2022	
Location	Zoom	
Subject	Proposed changes to political donations rules (meeting with the ACT Party)	
Participants	<u>MoJ</u> Hayley Denoual, Acting Policy Manager (HD) Craig McKendry, Policy Lead (CM) Keeshonn Watene, Policy Advisor (KW)	<u>ACT New Zealand Party</u> Danae Smith, Party Secretary (DS) Styan Barron, Legal Advisor (SB) Tim Jago, President (TJ)

1. KW, CM and HD met with DS, SB and TJ from the ACT New Zealand Party (ACT). This internal file note briefly summarises the discussion.
2. The discussion forms part of the Ministry of Justice's targeted consultation with the party secretaries of registered political parties to discuss the proposed changes to political donations rules, ahead of any potential legislative change in this area.

A. Introductory/general comments

3. CM introduced MOJ and discussed the scope and structure of the meeting – looking at political donations from a party perspective, and timeframe to make changes to the electoral system.
4. Looking at the existing mechanism and making incremental changes rather than large constitutional changes. Donations returns as they stand now and the impact of potential changes.
5. ACT Party reps then started generally started talking about issues that relate across the proposals.
6. TJ and DS: Compliance with the current settings is huge. A lot of time is required to go over party information but also have it double checked. Huge cost involved.
7. Getting accounts audited takes a lot of time and manpower a lot of back and forth between auditor and members to double check things.
8. TJ and DS: Auditing accounts cost between 15k-20k per occasion. The Party has fixed cost between 45k-60 per annum with a full-time employee under current settings. If frequency of reporting was increased this may need to add another employee adding more cost.

9. TJ and DS: Noted that a lot of the cost are fixed cost and that this doesn't change depending on how much donations come in. some election cycles they may get a lot of donations others it might be significantly less.

B. Comments on proposal #1 (lowering the threshold for political parties to disclose the identity of donors from \$15,000 to \$1,500)

10. DS, TJ and SB: raised the following points on this proposal:
- a. They disagree with lowering the threshold, this would require too much work to comply with new thresholds. They suggested that the current bands work well.
 - b. They also questioned why the 1,500 thresholds. Their view was that the threshold does not need to be consistent with Candidate thresholds as you are dealing with very different scales in terms of the number of and value of donations received.
 - c. They were concerned about the potential impact of the lower disclosure threshold for party donations on people's desire to donate (anonymously or otherwise) given the general aversion to public disclosure of political affiliation in New Zealand, what impact this could have government contracts for businesses that donate.
 - d. There is no guarantee that people won't be affected through the increased risk of public disclosure.
 - e. The lower threshold would be huge work for a party while also looking over candidates' ones.

C. Comments on proposal #2 (increasing the frequency of reporting of donations by parties)

11. DS: don't agree with this option. Planning for the year is set up around reporting. Auditing takes approximately three months, involves a lot of back and forth. Increased cost as they wouldn't want volunteers involved with this process and having to do it more frequently.
12. Ensuring multiple amounts received from the same donor are aggregated correctly will be very difficult with 3-monthly reporting

D. Comments on proposal #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])

13. DS: No problems with this proposal.

E. Comments on proposal #4 (requiring more detailed disclosures of in-kind (non-cash) donations)

14. DS: Okay with proposal if it's not too complex. Don't do much in this space e.g. around dinners to meet members.

F. Comments on proposal #6 (requiring parties to release their audited annual financial statements, and simplifying the audit requirements to make audit reviews more meaningful)

15. DS, TJ and SB: Do not support this proposal. Do not see the benefit for the public with this being released to them. Small parties may have higher cost associated with leasing building over owning them. The income streams are narrow.

G. Comments on proposal #7 (introducing a requirement for candidates to disclose loans)

16. DS: No problem with this proposal they don't have them and don't accept them.

H. Other issues

17. DS, TJ and SB: Unspent donations are not an issue as donations are made to the party and are held by the party. Candidates ask donors to donate to the party. Accounting is done centrally with no electorate accounting. Recognise this may be a bigger issue for the larger parties.
18. Raised questions around parties receiving contributions by third parties and people who contribute to those third parties not knowing that this is being passed on to political parties. How are joint contributions ring fenced?

Internal File Note

Author	Avi Singh, Policy Advisor	File reference TBC
Date	3:00pm to 4:00pm, Monday 20 December 2021	
Location	Ministry of Justice	
Subject	Proposed changes to political donations rules (meeting with Green Party of Aotearoa New Zealand - Greens)	
Participants	<u>MoJ</u> Rajesh Chhana, Deputy Secretary Policy (RC) Craig McKendry, Policy Lead (CM) Avi Singh, Policy Advisor (AS)	<u>Greens</u> Miriam Ross, Party Secretary (MR)

- AS, CM and RC met with MR, Party Secretary for the Green Party of Aotearoa New Zealand (Greens). This internal file note briefly summarises the discussion.
- The discussion forms part of the Ministry of Justice's targeted consultation with the party secretaries of registered political parties to discuss the proposed changes to political donations rules, ahead of any potential legislative change in this area.

A. Introductory/general comments

- RC: The purpose of consulting with parties before the Select Committee process is to obtain operational views at an earlier stage of the policy process
- MR: Greens generally supportive of increased transparency being the policy objective in relation to the political donations regime
- MR: But there is a need to be aware of the burden on small parties, particularly those outside Parliament; the Greens are a medium-sized party so can see both sides of this argument

B. Comments on proposal #1 (lowering the threshold for political parties to disclose the identity of donors from \$15,000 to \$1,500)

- MR: Concerns about privacy in terms of what donor details could be disclosed (e.g. residential address)
- MR: Greens use s9(2)(b)(ii) used by many non-profit organisations to track fundraising activity; is an old, clunky system which may make it hard to extract information for increased disclosure and reporting requirements and thereby create a big compliance burden

8. MR: s9(2)(b)(ii) (accounting software used by Greens) do not integrate with each other, so sufficient advance notice needed to adapt systems to any new (particularly increased) reporting requirements
9. MR: Concerned about the form in which reporting would be required e.g. can an exported file or copy-pasted information be provided, or does it need to be manually entered with details presented differently from what the software systems generate?
10. MR: Greens receive lots of donations by automatic payment, so reporting several small donations in aggregate will be easier than every individual transaction
11. MR: Do not want to see inadvertent errors punished e.g. donor changed their address without informing the party, which leaves the party in breach

C. Comments on proposal #2 (increasing the frequency of reporting of donations by parties)

12. MR: Greens want clarity on whether three-monthly reporting would mean reporting for the previous rolling 12-month period every time, or from the beginning of the calendar year, or only for the specific three-month period concerned?
13. MR: Greens process approximately 100 small donation transactions per month
14. MR: Increased reporting frequency also creates a cost concern if this leads to increased auditing requirements

[see paragraphs 15 and 22 for other comments related to this proposal]

D. Comments on proposal #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])

15. MR: Greens in favour of keeping the 10-day rule alongside the annual donations reporting period
16. MR: The 10-day rule is needed during the regulated pre-election period
17. MR: Greens would support lowering the disclosure threshold under the 10-day rule to \$10,000

E. Comments on proposal #4 (requiring more detailed disclosures of in-kind (non-cash) donations)

18. MR: Support this proposal in principle but hard to fully quantify, requiring estimates which are necessarily malleable
19. MR: Greens National Office helps organise donation returns for all candidates as well as all party branches to help facilitate regulatory compliance

F. Comments on proposal #5 (requiring disclosure of the volume and total dollar amount of donations under \$1,500)

20. MR: In principle, Greens do not accept anonymous donations and are happy to provide this information to the Electoral Commission

G. Comments on proposal #6 (requiring parties to release their audited annual financial statements, and simplifying the audit requirements to make audit reviews more meaningful)

21. MR: Greens support this proposal in principle, but would prefer for a partial financial review to be the audit standard rather than a full audit as this would be very expensive
22. MR: Could audit for donations return and audit for financial statements happen simultaneously? As this has practical implications for dates for reporting to party AGM and publishing financial statements

[see paragraph 14 for other comments related to this proposal]

H. Comments on proposal #7 (introducing a requirement for candidates to disclose loans)

23. MR: Greens support this proposal

I. General comments

24. MR: Registered political parties should be able to retain unspent donations since the party has the power under its constitution to collect donations generally for operational purposes, and also because it can be hard to sometimes distinguish between a donation specifically for an election campaign and a donation generally to the party as these may be intermingled
25. MR: Support prohibition of anonymous donations
26. RC: How many staff do you have?
- a. MR: 13 non-parliamentary staff (including 2 part-time staff) at the National Office, supported by other party staff where possible
 - b. MR: Post-election reporting requirements can break staff and volunteers, particularly since they have also had to manage candidate nominations processes before and during the election campaign in addition to running the election
27. MR: Excessive focus on the pre-election period (despite a big increase in donations during election years) as the Greens see themselves as a three-year rolling entity, and it is good to consider the wider three-year period to make sure there is no deliberate avoidance of donation rules by parties



Miriam Ross
 Party Secretary and General Manager
 Level 1, 17 Garrett St, Wellington

20 Dec 2021

	Ministry of Justice proposals	Green Party response
1	Lower public disclosure threshold for donations to \$1,500 for parties (which is currently set at \$15,000 for parties and \$1,500 for candidates). This would also remove the need to report in bands of up to \$5,000 and \$15,000	We support the intention behind this, but there are a few administrative issues which will need to be carefully worked through. We would need sufficient lead-in time (minimum of 2 months) so we can change our reporting systems. We do have concerns about privacy (will the full name and address of every donor be published on the EC site?) and administration (will we need to provide more than a name and address?; will we need to itemize each donation or can they be collated?; do we need to cut and paste data into the EC documents/portal or can we provide a cvs file exported from our database?; will there be a provision for minor incorrect data such as an out-of-date postal address?)
2	Increase frequency of donation reporting (e.g. change from annual reporting to 3- or 6-monthly)	We have concerns about this because we believe it will create unnecessary administrative burdens and costs. If each donation return needs to be audited (as is the case right now) this will be prohibitive for small parties to operate. Will it be an accumulative total that we report each time and will that be accumulating since the beginning of the calendar year or in the previous 12 months? Our preference, as noted below, is to retain the rolling disclosure scheme.
3	[Along with proposal 2] Remove the requirement that for donations that exceed \$30,000 the identity of donor and amount must be publicly disclosed within 10 days of receipt (via Electoral Commission)	We think it is important to retain the 10 day disclosure as it prevents donors from donating large amounts a few months out from an election (which would still be possible under proposal 2) and not having the disclosure made until after the election. Our preference would be to reduce the threshold to \$10,000, retain the 10 day disclosure, and keep the frequency of further donation reporting to once annually. Most important to us is that quick disclosure requirements around elections are retained.
4	Introduce requirements for parties and candidates to disclose more details about in-kind (i.e. non-cash) donations	We fully support greater transparency in this area but general disclosure of in-kind donations (assuming this would also include volunteer labour) would be administratively impossible. Our preference would be for disclosure around very specific in-kind donations, e.g. auctions, dinners and raffle prizes.
5	Require parties and candidates to report on number and total volume of donations under \$1,500 for donations that are not made anonymously	We already provide this information to the EC and are happy to continue to do so.

6	Require parties to publicly disclose their audited annual financial statements	We already do this on the Companies website and are happy to provide this information for other sites. Currently we provide a financial review rather than a full audit and our preference would be for this to continue as a full audit would be prohibitively expensive. We also provide this information after the end of the financial year and would want a sufficient timeline from the end of the financial year to the reporting date to be in place so that there is sufficient time for the review/audit.
7	Introduce requirement for candidates to report on loans	We do not currently have candidates loan money to themselves and would support reporting on this.
	The effectiveness, efficiency and appropriateness of the current audit approach, including whether or not the system should be 'tiered' for audit purposes (taking into account differing risk profiles and mitigations);	We agree with the current audit approach and feel a tiered system would include an unmanageable administrative cost.
	Issues arising from the absence of accountability rules relating to 'unspent' donations received by candidates, or unregistered parties.	We would support regulations relating to unspent donations received by candidates or unregistered parties but not for registered parties. Our incorporated society rules allow us to collect donations (including during the election period) for a wide range of activities relating to the Party.
	Green Party Other Considerations	<p>Going forward beyond the current considerations, we support:</p> <ul style="list-style-type: none"> ● exploring whether only allowing named-persons to donate would increase transparency i.e. the removal of the ability to donate via trusts; ● a cap on the overall amount someone can donate or loan to a party in a given year; ● the Electoral Commission's recent recommendations for an over-arching "anti-collusion" provision, adding a "failure to transmit" offence, and strengthening the Commission's investigatory, enforcement and sanction powers; ● prohibiting anonymous donations; ● greater public financing for political parties to meet the administrative costs of greater donation transparency

Internal File Note

Author	Avi Singh, Policy Advisor	File reference TBC
Date	10:00am to 11:00am, Tuesday 18 January 2022	
Location	Ministry of Justice	
Subject	Proposed changes to political donations rules (meeting with New Zealand Labour Party - Labour)	
Participants	<u>MoJ</u> Rajesh Chhana, Deputy Secretary Policy (RC) Hayley Denoual, Acting Policy Manager (HD) Craig McKendry, Policy Lead (CM) Avi Singh, Policy Advisor (AS)	<u>Labour</u> Rob Salmond, Party Secretary (RS)

- AS, CM, HD and RC met with RS, Party Secretary for the New Zealand Labour Party (Labour). This internal file note briefly summarises the discussion.
- The discussion forms part of the Ministry of Justice's targeted consultation with the party secretaries of registered political parties to discuss the proposed changes to political donations rules, ahead of any potential legislative change in this area.

A. Introductory/general comments

- RC: The purpose of consulting with parties before the Select Committee process is to obtain operational views at an earlier stage of the policy process
- RS: Labour's operational arm supports the proposed changes to political donations rules, noting it already prepares audited financial statements and collects the information relating to the volume and total dollar amount of donations under \$1,500 that would be disclosed under proposal #5
- RS: Proposals #1 and #4 are of the most interest

B. Comments on proposal #1 (lowering the threshold for political parties to disclose the identity of donors from \$15,000 to \$1,500)

- RS: Support aligning political party and candidate donation thresholds to avoid funnelling of candidate donations through parties
 - RS: But consideration could be given as to whether the aligned thresholds could be higher - \$3,000? \$4,000? \$5,000?

7. RS: Some people want to donate only up to the point where they retain their privacy
 - a. RS: Some people have asked us what the threshold is, so there is a chance some people will reduce their donations in proportion to a lower threshold
8. RS: Lower donations make it harder for parties to run election campaigns
9. RS: The Electoral Commission's protected disclosure regime is very difficult for Labour to manage practically, because parties don't know where the money comes from and donors don't usually know about the protected disclosure regime
 - a. RS: Conversations with donors about the protected disclosure regime would be awkward, because they could be viewed as an attempt to circumvent the intended anonymity of the regime and a potential attempt to make a prohibited disclosure¹
10. RS: Could top up the broadcasting allocation² with money lost because of lower donations thresholds?
11. RS: Some donors don't like being publicly associated with a party and their politics
 - a. RS: Some donors note fear of their identity being disclosed is a key factor in reducing their donation
12. RS: Need to ensure parties can still legitimately raise donations to run election campaigns
13. RS: Labour uses s9(2)(b)(ii) to track donations, alongside s9(2)(b)(ii) as accounting software
14. RS: Labour Head Office asks branches to report donations to them in advance of any reporting to the Electoral Commission
 - a. RS: Head Office can view accounts for almost all branches, but reliant on branches for information about donations from raffle tickets and bake sales etc.
15. RS: To set the aligned thresholds for donations to political parties and candidates, test the National Party's approach by viewing their flyers which communicate the best way to help candidates is to donate to the National Party
16. RS: If money goes straight to a candidate, Labour treat this as a candidate donation and treat money going straight to the party as a party donation
 - a. RS: But a Local Electorate Committee's donation to a candidate through bake sale income etc. could be viewed as similar to someone who gives a party \$5,000 to give to a candidate
17. RS: Labour asks candidates to send candidate donation returns to the party before submitting them to the Electoral Commission to help align the returns

¹ Section 208F of the Electoral Act 1993 sets out the offence of prohibited disclosure relating to the Electoral Commission's protected disclosure regime.

² See Part 6, Broadcasting Act 1989.

18. RS: Party secretaries could take on responsibility under the Electoral Act 1993 for preparing and filing candidate donation returns only if the candidate is also still responsible for these tasks

C. Comments on proposal #2 (increasing the frequency of reporting of donations by parties)

19. RS: Three-month reporting hard for volunteers at branches
- a. RS: Volunteers will try to comply, but compliance levels and quality of information provided may be lower than they are now
20. RS: Labour receives most donations directly, but Head Office still needs branch co-operation

D. Comments on proposal #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])

21. RS: The 10-day rule can continue to be managed by Labour Head Office staff in addition to greater reporting requirements, because Labour do not receive many donations over \$30,000 in a 12-month period

E. Comments on proposal #4 (requiring more detailed disclosures of in-kind (non-cash) donations)

22. RS: Artists usually gift artwork that Labour auctions for sale to raise funds
23. RS: Person who loses value is the donor
24. RS: Labour believes the artist is the donor if the artist gifts a painting worth \$10,000 to the party which the party sells for \$10,000
25. RS: Labour hires two independent valuers who give a range for the market value of each piece of artwork donated to the party
- a. RS: Labour uses the independent valuers' ranges as the basis to estimate the reasonable market value of each piece of artwork
26. RC: Since the people attending a political party's art auction know where the money is going, should the buyer of an artwork be recorded even if there is no gain for them?
- a. RS: Preferably the buyer is not recorded unless they paid an amount above reasonable market value
27. HD: Money aside, in-kind donations are about two parties to a transaction that could potentially influence political parties
- a. RS: Agreed, but it is hard to understand what the market value connection is with each party in some of those transactions

28. RS: Labour's other ways of raising money have included organising a business conference where the ticket price was \$1,800, and a dinner where the ticket price was \$600 but the food cost s9(2)(b)(ii)
- a. RS: Labour treated funds received from these events as market income, not donations, because GST was paid and profit-making is required
29. RS: Labour considers sale of merchandise to be market income
30. RS: Raffles are not recorded that well because of their nature
31. RS: Transparency makes sense, but don't want to inappropriately make someone a donor when they have not donated anything of value
32. RS: Minimum Labour Party membership fee is \$5 for non-wage earners and \$20 for wage earners
- a. RS: This creates a potential issue for GST and tax purposes if a person decides to donate \$100: what recording is required? (e.g. \$20 membership fee, \$80 GST taxable income?)
- b. RS: This is possible to manage in the accounting system, but is complex and Labour usually over-reports its tax obligation to be safe

F. Comments on proposal #7 (introducing a requirement for candidates to disclose loans)

33. RS: Labour's position is that candidate campaign funds are for the campaign, not the candidate personally, so should pass to the next candidate campaign if unspent

G. General comments

34. RS: Public interest in knowing who funds politics outweighs misaligned spending caps because the amounts involved are still proportionally significant in the context of New Zealand political spending
35. RS: Small parties less in danger of spending cap breaches, but for the Labour party secretary, it is hard to get visibility over all branch and candidate activity
36. RS: Labour have a full-time finance person
37. RS: Small parties will struggle with compliance and audit cost of the proposals

Internal File Note

Author	Avi Singh, Policy Advisor	File reference TBC
Date	9:00am to 10:00am, Thursday 23 December 2021	
Location	Ministry of Justice	
Subject	Proposed changes to political donations rules (meeting with New Zealand National Party - National)	
Participants	<u>MoJ</u> Rajesh Chhana, Deputy Secretary Policy (RC) Hayley Denoual, Acting Policy Manager (HD) Craig McKendry, Policy Lead (CM) Avi Singh, Policy Advisor (AS)	<u>National</u> Greg Hamilton, Party Secretary (GH) s9(2)(a), Strategy and Capability Manager (SS)

- AS, CM, HD and RC met with GH, Party Secretary for the New Zealand National Party (National), and SS. This internal file note briefly summarises the discussion.
- The discussion forms part of the Ministry of Justice's targeted consultation with the party secretaries of registered political parties to discuss the proposed changes to political donations rules, ahead of any potential legislative change in this area.

A. Introductory/general comments

- RC: Thank you for meeting with the Ministry for the second time to discuss this topic
- GH: These proposed changes are not a small piece of work and should be considered as part of the wider electoral law review, not consulted on separately over the Christmas period
- GH: Not sure the proposals will address the issues caused by the 'high-profile incidents' referred to in the Ministerial briefing – and in any case, National has only had two such incidents in the 11 years GH has been party secretary

B. Comments on proposal #1 (lowering the threshold for political parties to disclose the identity of donors from \$15,000 to \$1,500)

- GH: Concerned about the potential impact of the lower disclosure threshold for party donations on people's desire to donate (anonymously or otherwise) given the general aversion to public disclosure of political affiliation in New Zealand
 - GH: Threshold needs to consider public interest in transparency against the private interest in freedom of association and freedom of speech/expression

- b. GH: \$1,500 represents less than 1% of the election spending cap, so cannot possibly unduly influence the party receiving it
 - c. GH: The increased likelihood of inadvertent non-compliance due to the increased regulatory burden will only further negatively affect, rather than improve, public confidence in the donations regime
 - d. GH: Quite easy for ordinary party members to end up donating over \$1,500 through attending various events
 - e. GH: Absence of state funding or other mechanism to compensate for lost donations due to lower disclosure thresholds will create financial and operational issues for political parties
7. GH: Disagree with aligning candidate and party donation disclosure thresholds given the different election spending caps for candidates and parties, because the current \$1,500 threshold for candidates constitutes approximately 5-6% of the election spending cap for candidates, while lowering the threshold to \$1,500 for parties would constitute no more than approximately 0.01-0.6% of the party election spending cap
- a. GH: Lack of clarity about the period within which you can donate to candidates could affect extent to which there are unspent donations
8. SS: The high proportion of volunteers across the party branches will make it very difficult to corral all the information proposal #1 would require disclosure of

C. Comments on proposal #2 (increasing the frequency of reporting of donations by parties)

9. GH: Changing fundamental components of the donations regime in an election year such as reporting frequency would be dangerous, and lead to major difficulties with operational compliance in the same manner as those caused by late changes to electorate boundaries
10. SS: Hard to explain regulatory changes to volunteers – approximately 50% of time at National Office spent on ensuring compliance
11. GH: Currently, National's focus on compliance begins when donations of over \$5,000 are received, but lowering the disclosure threshold would change the level National's focus begins at to the \$500 mark, increasing compliance efforts significantly
12. GH: Worried about 3-monthly reporting as currently it takes the equivalent of one full-time staff member 3 months to compile the annual donations return and a further month working with the auditor
- a. GH: Ensuring multiple amounts received from the same donor are aggregated correctly will be very difficult with 3-monthly reporting
13. GH: Six-monthly reporting more possible

14. GH: Noted in confidence that National spends approximately \$50,000 each year on auditing the annual donations return with the total amount being approximately \$2 million, so more frequent reporting would be hard if this meant equally frequent auditing
15. GH: Need to be able to audit annual donations return and financial statements simultaneously as is currently the case for National
16. GH: A financial review could work better than the current audit approach, which leads to qualified audit opinions of limited value
17. SS: National informs donors who are near the current \$15,000 disclosure threshold so they are aware their name may become public if they donate over the threshold

[see paragraph 25 for other comments related to this proposal]

D. Comments on proposal #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])

18. GH: National supports removal of the 10-day rule, except in election years

E. Comments on proposal #4 (requiring more detailed disclosures of in-kind (non-cash) donations)

19. GH: The current rules are clear relating to auctions, and this proposal could add another layer of complexity
20. GH: National has a donations recording template with instructions on how to process auction items, covering the name of the person buying the item(s), how much they paid for the item(s) and what event(s) they attended
21. GH: The current rules are vague about the dollar threshold at which individual raffle donors' names need to be disclosed
22. GH: Dinners are hard to quantify aside from the costs incurred that can be expensed e.g. how much is the party leader speaking at a dinner worth?
23. GH: Difficult to retain treasurers at branch level (approximately 50% turnover annually) and requiring them to make these kinds of interpretations may increase that turnover level, particularly with volunteers who are not trained accountants

F. Comments on proposal #6 (requiring parties to release their audited annual financial statements, and simplifying the audit requirements to make audit reviews more meaningful)

24. GH: Concerned about how this would work in practice given that National does not prepare a consolidated set of accounts covering all its branches (which it is not required to do as an unincorporated society) – only consolidates accounts down to electorate level

25. GH: Cost of audits would skyrocket
26. GH: What is the public interest in seeing the profit and loss statements of political parties?
- a. GH: Fears this information could be misused in the competitive environment the political 'marketplace' operates in
 - b. SS: Political parties are still private, small-to-medium sized entities so should not need to disclose this information; already face significantly greater media scrutiny which would only intensify
 - c. GH: These two factors make parties different from the majority of incorporated societies (such as local bowls clubs) that publicly disclose their financial statements (which are not necessarily audited)
27. GH: National's most detailed accounts sit at the Board level in terms of visibility
28. GH: Perhaps the Electoral Commission should be able to view the audited accounts of political parties?
- a. GH: However, public disclosure would negatively affect operations given other parties and the media could view their expenditure in detail
 - b. GH: Public disclosure may lead to inconsistency around what is disclosed given parties operate differently and may prepare their annual statements differently

[see paragraphs 14, 15 and 16 for other comments related to this proposal]

G. Comments on proposal #7 (introducing a requirement for candidates to disclose loans)

29. GH: No reason why this proposal could not be introduced
- a. GH: Ideally the disclosure threshold would match the requirements for the pecuniary interest register all Members of Parliament (MPs) must complete
30. GH: In general, the party should be raising money rather than the candidate as often the candidate is not actually confirmed as standing until close to an election
- a. SS: National supports candidates and MPs not being at the centre of soliciting donations, with the party performing this role instead

H. General comments

31. SS: National would need to hire a full-time staff member to run a project to implement these proposed changes and to train all the volunteers across National's 70 branches
- a. SS: would prefer these changes are considered as part of the wider electoral law review, and then there would only need to be one project to implement all the changes arising from that review (instead of the potential need for two projects, one

to implement this package of changes and one to implement electoral law review changes)

32. GH: Need to be putting enduring arrangements in place rather than piecemeal tweaks
 - a. GH: Electoral matters should not be used to play politics, but should instead be the subject of cross-party support
 - b. SS: Bipartisanship on electoral matters is important for the public to trust and have confidence in the system
33. GH: The election campaign is six months in practice, even if the regulated pre-election period is officially three months
 - a. GH: Election year is very busy already with managing candidate nominations etc., so adding these changes would be hard operationally
 - b. GH: Springing these changes on donors who have been used to the current rules for a decade would also be difficult

Internal File Note

Author	Braedyn Freebairn, Casual Advisor	File reference TBC
Date	2:00pm to 3:00pm, Monday 31 January 2022	
Location	Via telephone	
Subject	Proposed changes to political donations rules (meeting with NZ Outdoors Party)	
Participants	<u>MOJ</u> Craig McKendry, Policy Lead (CM) Keeshonn Watene, Policy Advisor (KW) Braedyn Freebairn, Casual Advisor (BF)	<u>NZ Outdoors Party</u> Alan Simmons, President and Co-Leader (AS) Sue Grey, Co-Leader (SG) Jenn Haakma, Party Secretary (JH)

1. This meeting is between MOJ advisors Craig McKendry, Braedyn Freebairn and Keeshonn Watene, and NZ Outdoors Party co-leaders Alan Simmons and Sue Grey and secretary Jenn Haakma. This internal file note briefly summarises the discussion.
2. The discussion forms part of the Ministry of Justice's targeted consultation with the party secretaries of registered political parties to discuss the proposed changes to political donations rules, ahead of any potential legislative change in this area.

A. Introductory/general comments

CM introduced MOJ and discussed the scope and structure of the meeting – looking at political donations from a party perspective, and timeframe to make changes to the electoral system.

Looking at the existing mechanism and making incremental changes rather than large constitutional changes. Donations returns as they stand now and the impact of potential changes.

Issue of disproportionate funding in disparity of which party gets publicly funded – not in scope.

Return as it stands

AS: The current situation doesn't affect us much because we don't get big donations so it's not a huge task.

In your proposal, it would mean more reporting for us. We agree with your statements on transparency because manipulating of funding is rife. We're interested in that question.

SG: Are you asking how we prepare our returns or something else?

CM: The amount of effort for you to do.

SG: Electoral returns are a nightmare because most of our candidates haven't done it before and the form is confusing.

We had a group campaigning on our behalf and none of the options included that. Jenn had candidates that were confused and didn't want to do it again because of the nightmarish process.

CM: And the actual party return?

SG: The party return wasn't as bad. I just filled it in with our figures. We didn't have a lot to declare.

We still had the problem that each candidate had to allocate which amount was party and which was electoral. The candidates didn't know they had to do that at the start so they didn't think about it. But most didn't need to declare much.

AS: We're not professionals and we don't have a big team.

JH: I had to go in and do everyone's again. The best way to do it is to do the figures myself and send it to all the candidates to sign.

Trying to get the system to do things was a bit frustrating. Sometimes it wouldn't accept and I had to call the office and explain so they could talk me through it. The electoral people were amazing.

CM: Let's talk about the audit side of things. How much does that cost you?

AS: Too much.

SG: Over \$2k. Most of it was because I would submit it and he would fix it and come back to me with it all wrong. There was no way for me to dictate it. Alan was trying to do it again and it cost us too much money for the mess we got.

AS: We got quoted \$6k. For a small party that's a big chunk. To have to do that maybe twice a year is quite a lot. We don't have big donations. When people donate, it's \$50-100. It's not \$30k.

SG: The big companies donate to big parties so they can influence them at some point. They don't donate to us because we won't get in so they don't see us as important.,

A lot of voters don't have the money – a lot of rural Maori who don't have high income and struggle to pay the subscription.

It would be good if there was an auditor that the govt employs and they know what to do and what's required and that's part of the cost of the electoral system. We didn't know we would have to do that, and it was quite a hassle raising the funds. We'd spent all our money.

SG: Our auditor had never done a party before, so Sue's suggestion that there be an auditor appointed within the system actually makes a lot of sense

Proposal to make publicly available financial statements
Are you an incorporated society?

SG: No, we're unincorporated.

CM: So your financial statements wouldn't be publicly available? Is it in your constitution?

AS: No, we haven't thought about that. We have recently discussed becoming an incorporated society. But we have mixed feelings about disclosure of our statements. It would be useful to have big parties disclose their statements but not sure about us.

SG: It should be transparent and everyone should know.

JH: I don't understand why it would be needed. The EC should know what's going on – but why the public? I don't know how it will help us.

SG: We know that big donors find ways to make donations to parties that they can influence the most and get the most benefits. But changing the rules doesn't fix it – if they don't do it through a bank they put it in a brown envelope. If they want to do something, they do it. Big entities can influence political parties. Fishing entities thought it was more cost effective to employ a politician than a lawyer – they made monthly donations to NZ First and other parties and if they needed an MP for a question or a meeting with a Minister, they had an MP that could set it up.

CM: In-kind donations – is that something that changes between big and small parties? Do you get mostly financial donations?

SG: Are you talking about someone helping us with our IT?

CM: No, the bigger events like dinner or auctions.

SG: We don't really have anything like that. I am curious if somebody's already an MP how they can charge to have dinner with them. I thought that was part of the job.

AS: We're keen to see more transparency around this sort of stuff.

SG: Need to make it easier to engage with democracy but also making the paperwork not harder than it needs to be. There should be someone in the government who can do that

rather than external person. Maybe bigger parties don't want that but for a smaller party like us it would be a huge advantage.

AS: Unregistered parties that took money from the public and transferred them into registered party

Advance NZ and NZ First having trusts that funnel money into the main party

Clarity around what's allowed and why

Including under 1.5k returns

CM: Is that something you have on hand or is that a whole new data collection hassle?

SG: We do record it.

AS: They are there. There's no problem reporting them. The issue is knowing that you have to report them to make the records easier. This writing out two cheques for \$15k is ridiculous.

SG: You could just look at the cumulative donations from one source rather than each individual donation. Our system records all the donations but it doesn't report to us what each one is. You'd have to count it – it's just the total, not the individual donation.

AS: I think we agree with changing the limit to 1.5k.

The rationale for the change is to align it with candidate spending. But the difference between spending for candidates and for parties is huge. There's an argument for not going down that low – reducing it down to something higher than 1.5K, maybe from 15k to 10k.

SG: Most of our donations are small. There might be a few generous people that donate 1k. There is one that we can think of that donates 10k. If it's over 1k it doesn't really make a difference to us.

AS: Our concerns are anonymous donations. We don't think there should be donations that are anonymous from anyone.

SG: Also donations should be from voters. A company shouldn't be able to donate because they can't vote. Corporations are the ones that have the big money.

We're supportive of them actually have to disclose who they are.

We think there should be a cap on anonymous donations – maybe 15k. Because there's no reason to have an anonymous donation under that.

Internal File Note

Author	Avi Singh, Policy Advisor	File reference TBC
Date	11:00am to 12:00pm, Tuesday 14 December 2021	
Location	Zoom	
Subject	Proposed changes to political donations rules (meeting with Sustainable New Zealand - SNZ)	
Participants	<u>MoJ</u> Craig McKendry, Policy Lead (CM) Avi Singh, Policy Advisor (AS)	<u>SNZ</u> Vernon Tava, Party Secretary (VT)

- AS and CM met with VT, Party Secretary for Sustainable New Zealand (SNZ). This internal file note briefly summarises the discussion.
- The discussion forms part of the Ministry of Justice's targeted consultation with the party secretaries of registered political parties to discuss the proposed changes to political donations rules, ahead of any potential legislative change in this area.

A. Introductory/general comments

- VT: party secretary a daunting job given the legal liabilities that can arise from inadvertent non-compliance, which is worth bearing in mind when proposing to increase their legal obligations; but the Electoral Commission (EC) are very helpful and reasonable
- VT: SNZ a new party registered in December 2019 with 11 electorate candidates (10 of whom stood on the party list)
- VT: Believes in the right of a donor to a certain level of privacy
- VT: Any legislative reform in this area comes up against the tension between transparency and the compliance burden, especially for small, volunteer parties; a tiered audit approach is needed
- VT: an audit requirement for financial statements could lead to 'fudged' headings for accounts (such as 'contractors') to avoid disclosing specific details that other political parties would be aware of
- VT: None of the current court cases appear to be inadvertent, but instead appear to be more due to more deliberate actions; there is a risk of a political response where something needs to be seen to be done

B. Comments on proposal #1 (lowering the threshold for political parties to disclose the identity of donors from \$15,000 to \$1,500)

9. VT: \$1,500 disclosure threshold sensible and proportionate in the candidate context, but making this the disclosure threshold for party donations could be distorting; it is a challenge for a new party to attract donors and this proposal would exacerbate those challenges; some donors may not have given money to SNZ if this proposal had been in force for the last general election
10. VT: SNZ spent approximately \$180,000 on its 2020 general election campaign, but it needed to spend at least \$1 million to gain enough traction to potentially enter Parliament
11. VT: SNZ content and marketing advisor said the engagement with SNZ content was good, but a bigger budget is needed to expand the content's reach to sufficiently have a chance of reaching the 5% party vote threshold
12. VT: A \$15,000 donation to a party is not big in the context of that level of election spending
13. VT: Confidentiality a big reason for donors to give money to small parties
14. VT: \$1,500 disclosure threshold for party donations is too low and will place small, emerging parties at a further disadvantage than what they already face

C. Comments on proposal #2 (increasing the frequency of reporting of donations by parties)

15. VT: Annual cost of donations return audit is approximately \$1,500; this is a non-trivial amount for a small party
16. VT: Because that \$1,500 is a fixed fee, if the frequency of reporting tripled, the cost of audits would also triple; this cost would be hard to cover in non-election years and would result in party funds being depleted purely to cover compliance costs before any opportunity to spend on reaching voters; this would be very hard for small parties
17. VT: A review of the current audit approach is worth looking at, but not sure what the levels/tiers could be
18. VT: Audit quality only as good as the information provided to the auditor, so fraudulent conduct is difficult to pick up in an audit; this means the audit has a negligible practical effect
19. VT: Party income is lumpy and generally comes in late in an election year (1-2 months before an election); if more frequent reporting came into force, there could be gaming by donors to avoid donating within reporting periods due immediately before an election

[see paragraphs 6 and 26 for other comments related to this proposal]

D. Comments on proposal #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])

20. VT: EC make this requirement very clear, although it can be difficult to keep track if a series of donations over a longer time period add up cumulatively to \$30,000
21. VT: Last-minute spending can dramatically affect undecided/swing voters, so relatively quick disclosure makes sense; but requirement is onerous and hard to manage; perhaps make it a 30-day reporting requirement instead of 10 days?
22. VT: None of the proposed changes address deliberate non-compliance but will increase burden on small parties

E. Comments on proposal #4 (requiring more detailed disclosures of in-kind (non-cash) donations)

23. VT: Neutral on this issue as it only affects big parties who run fundraisers and auctions etc.

F. Comments on proposal #5 (requiring disclosure of the volume and total dollar amount of donations under \$1,500)

24. VT: Neutral on this issue as well as this information is already collected, so as long as the reporting timeframe is reasonable, we have no issues

G. Comments on proposal #6 (requiring parties to release their audited annual financial statements, and simplifying the audit requirements to make audit reviews more meaningful)

25. VT: This requirement crosses over into parties disclosing commercial information
26. VT: An audit of financial statements will cost approximately \$3,000; add this to potentially more frequent donations reporting requiring audits along with the existing donations return audit and audit fees look likely to reach approximately \$10,000; this cost is likely to force the closure of small parties

[see paragraph 7 for other comments related to this proposal]

H. Comments on proposal #7 (introducing a requirement for candidates to disclose loans)

27. VT: Candidate loans can be quite personal, but should be disclosed on the Register of Pecuniary Interests for candidates who are elected to Parliament as MPs
28. VT: Loans to candidates who were not elected to Parliament are nobody else's business
29. VT: Most small parties have to focus on the party vote in any case given the unlikelihood of one of their candidates winning an electorate seat

I. General comments

30. VT: In the table attached to the Ministry's letter to party secretaries, under the 'Merits' column for Proposal #6, it states this proposal "aligns with similar obligations of other entities, such as charities and non-incorporated societies"; presumably this is a typo and is meant to refer to incorporated societies, rather than non-incorporated societies?
- a. AS: Agreed this appears to be a typo and is intended to refer to incorporated societies

Submissions of the Sustainable New Zealand Party (SNZP) on Proposed Electoral Donations and Loans Rule Changes

1. *Introduction*

- 1.1. The Sustainable New Zealand Party (SNZP) was registered with the Electoral Commission on 4 December 2019. The party stood 11 candidates in the 2020 election.
- 1.2. Assuming the role of party secretary for a New Zealand political party is a daunting prospect. The obligations are significant and the liabilities for a secretary under the Electoral Act 1993 can be serious.
- 1.3. There is a clear public interest in improving transparency of donations and loans but this must be balanced against freedom of political expression, freedom of association and donors' right to privacy unless there is a clear public interest in disclosing their personal information.
- 1.4. As with all legislative reform in New Zealand care must be taken that rule changes aimed at the small number of major players in any realm do not create unsupportable obligations for the many smaller players. Some distinction between the compliance requirements for parties based on size and/or income, risk profiles, mitigations, etc. may be necessary.
- 1.5. The high-profile incidents referred to at paragraph 20 of the ministerial briefing paper of 5 August 2021 are either instances of a deliberate subversion of the existing rules or a failure to comply with the existing rules. Increasing the burden of compliance and requiring greater disclosure and audit will do little to capture those who are willing to falsify records to obtain their ends.
- 1.6. Specific submissions on the proposals are set out below:

2. *Lower public disclosure threshold for donations to \$1,500 for parties*

- 2.1. Start-up parties find it very difficult to attract substantial funding. Anonymity is highly important to donors.
- 2.2. In our own experience many larger donors (i.e. contributing between \$1,500-\$15,000) valued confidentiality. This is understandable when the media will seize upon any perceived connections between parties. Significant donors are likely to also donate to one of the major parties and unfair inferences may be drawn that the new party is therefore a 'prop' to the party with which they have a donor in common. These assertions are easy to make, impossible to counter and unfairly damaging.

- 2.3. A minor party, particularly a new one, will attract donations to the party rather than to individual candidates. Given that the rational strategy for a party that is unlikely to win an electorate is to focus on the party vote this makes the distinction between party and candidate contributions largely academic.
- 2.4. The ambiguity, possible incentives and need to interpret whether a donation is intended for a party or their candidate can be easily resolved by a party secretary or their agent.
- 2.5. The different disclosure thresholds for donations to candidates and parties have not caused significant confusion for SNZP. For most parties the distinction is not meaningful as the rational approach for a small party in an MMP system is generally to focus on the party vote. It is worth considering why the differential limits were set in the first place. The amounts of \$1,500 and \$15,000 are broadly equivalent in their context. A donation to a party is spent in a national context; a donation to candidate is spent only in their electorate. In terms of the relative impact (hence presumed influence of a donor) a donation and corresponding spend on candidate promotion of over \$1,500 in an electorate could be significant. In the context of a national party vote campaign \$1,500 is a small contribution.

3. *Increase frequency of donation reporting (e.g. from annual to 3- or 6-monthly)*

- 3.1. Donation reporting is already a significant obligation in terms of cost and effort expended.
- 3.2. For a small party the cost of auditing is a non-trivial proportion of its operating expenses. Notwithstanding the (generally) unpaid work within the party of collating information, the annual audit cost is ~\$1,500 for an audit. The professional fees for this work are a fixed cost that will not vary by the number of audits per year. The number of audits will simply multiply the audit fees per year. If a set of audited returns were required 4 times per year (i.e. every 3 months), the annual cost of audit would increase from \$1,500 to \$6,000. In a non-election year it is thus entirely possible that the cost of compliance will exceed donations received.
- 3.3. We echo the feedback of other party secretaries that the audit process needs to be analysed in terms of effectiveness, efficiency and appropriateness. As with any legislative reform a balance needs to be struck between the demands that can reasonably be placed on large parties with paid staff and sophisticated infrastructure and small entities run by volunteers dealing with much smaller amounts of money.
- 3.4. A sensible way to do this could be to have different return requirements for differently sized parties based on a party's total donations and loans in the last general election period. For instance, for National and Labour every 3

months, for ACT and the Greens every 6 months, for all other parties every 12 months. This would take account of their respective abilities to absorb the cost of audits and workload of compliance as well as corresponding to the relative public interest in transparency as between the parties. For a party like TOP that would be likely to raise a lot less in an election year compared to their last election year, provision could be made to apply to the Electoral Commission for a change in intervals based on a projection of income.

- 3.5. Ultimately, an audit is only as good as the information provided to the auditors. If the officials of a party are willing to commit deliberate breaches of electoral rules these are unlikely to be picked up in an audit as the same people will be providing the information to the auditor.
- 3.6. More frequent intervals of reporting will create a new set of incentives for donors wishing to avoid closer scrutiny to donate in the period closest to the election and that will not be disclosed until after polling day. Given that the regulated period is 3 months before polling day, that the bulk of expenditure happens in the 1–2 months prior to an election, and that a large proportion of donations are received close to polling day in any event, this measure will do little to achieve the desired improvement in transparency while significantly increasing compliance effort and expense.

4. *Remove the requirement that for donations that exceed \$30,000 the identity of the donor amount must be publicly disclosed within 10 days of receipt*

- 4.1. This did not present an issue for the party in the lead-up to the 2020 election. We had a donation that exceeded \$30,000 and had no difficulty complying with the 10-day reporting requirement.
- 4.2. However, in cases when multiple donations added up to exceed the limit inadvertently exceed the limit would be better dealt with by extending the reporting period. It is not clear why 10 days is meaningfully better than 30 days, for instance, which would make a significant difference in likelihood of avoiding inadvertent non-disclosure by allowing a more reasonable period for internal cross-checks.
- 4.3. The splitting or channeling of donations to avoid disclosure is already prohibited under the Electoral Act 1993.

5. *Introduce requirements for parties and candidates to disclose more details about in-kind (i.e. non-cash) donations*

- 5.1. We are neutral on this proposal.

6. *Require parties and candidates to report on number and total volume of donations under \$1,500 for donations that are not made anonymously*

6.1. We are neutral on this proposal as the information is already collected and easily collated.

7. *Require parties to publicly disclose their audited annual financial statements*

7.1. This proposal goes well beyond the purported goal of these reforms of improving transparency of donations and loans and crosses into requiring the party to divulge detailed operational information.

7.2. Table 3 states that this will align parties with similar obligations of other entities such as charities and non-incorporated societies. This raises two issues:

(a) surely the reference is meant to be to incorporated societies as non-incorporated societies have no obligations outside those in their own rules whereas incorporated societies must comply with the requirements of the Incorporated Societies Act 1908 and – while section 23 requires that an annual financial statement is delivered to the Registrar of Incorporated Societies – the Act does not require that these statements are independently audited. Many incorporated societies have a provision in their rules not to require an audit of their financial statements on a vote of the members at a general meeting.

(b) The special legal status and tax-deductible status of donations to charities justify increased scrutiny. It is unclear how this analogy with political parties is justifiable.

7.3. The cost of audit is non-trivial. In concert with the increased costs of compliance discussed at 3.2 above, assuming costs of audit of between \$1,500 and \$3,000, a party could be expected to outlay in the vicinity of \$7,500–\$9,000 a year to meet bare compliance requirements. In a non-election year it is thus entirely possible that the cost of compliance will substantially exceed donations received. Some small parties may not be in a position to comply due to lack of funds.

8. *Introduce requirement for candidates to report on loans*

8.1. Loans taken by a candidate are a personal matter that they may not wish to be publicly disclosed.

8.2. In an MMP system the loans made to a party are of greater significance than loans made to an electorate candidate, warranting a higher standard of public disclosure.

Internal File Note

Author	Avi Singh, Policy Advisor	File reference TBC
Date	3:00pm to 4:00pm, Monday 13 December 2021	
Location	Microsoft Teams	
Subject	Proposed changes to political donations rules (meeting with The Opportunities Party – TOP)	
Participants	<u>MoJ</u> Craig McKendry, Policy Lead (CM) Avi Singh, Policy Advisor (AS)	<u>TOP</u> Ray McKeown, Party Secretary (RM)

- AS and CM met with RM, Party Secretary for The Opportunities Party (TOP). This internal file note briefly summarises the discussion.
- The discussion forms part of the Ministry of Justice's targeted consultation with the party secretaries of registered political parties to discuss the proposed changes to political donations rules, ahead of any potential legislative change in this area.

A. Introductory comments

- RM: Takes me around 40 hours to generate info from TOP's systems to prepare annual donations return (noted he works full-time so all time spent on this preparation is done voluntarily in the evenings)
- RM: I was an accountant and an auditor in a past life, so understand how those processes work
- RM: Audits of annual donations returns are a waste of time because qualified opinions are provided which add no economic, legal or democratic benefit; party secretaries are already on the hook legally anyway so qualified opinions do little
- RM: Audit of annual donations return currently costs ~\$3,500 - \$4,000 + GST, and this cost would increase substantially if more frequent donations reporting was required
- RM: Audited annual financial statements would be an even greater cost on top of the existing (pointless) audit requirements for annual donations returns
- RM: TOP uses a Customer Relationship Management (CRM) system which contains information about members and donors but has limited filtering ability; so a manual process is required to accurately assess the origin and total amount of donations received, and then report the required information in the format requested by the Electoral Commission (EC)

9. RM: At the moment, the donations TOP receives are too small to get close to most of the legal thresholds for disclosure

B. Comments on proposal #1 (lowering the threshold for political parties to disclose the identity of donors from \$15,000 to \$1,500)

10. RM: Proposal #1 makes sense from TOP perspective since they have to collect and calculate this information anyway to check what needs to be reported as a matter of law

C. Comments on proposal #2 (increasing the frequency of reporting of donations by parties)

11. RM: Estimates he would need to spend around 30 hours every quarter on donations reporting if reporting frequency became quarterly, so TOP would be worried about the significant increase in time required to achieve compliance

D. Comments on proposal #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])

12. RM: Makes sense to remove this requirement if proposal #2 went ahead; not sure about keeping the requirement only during the lead-up to a general election as he would not recommend having two separate reporting systems in place

13. RM: Removal of this requirement unlikely to be gamed since bad publicity afterwards would be big – but conversely, a party may have won an election by then so gaming the system could have significant consequences

14. RM: If keeping this requirement only for the lead-up to a general election, recommend increasing threshold for disclosure to \$50,000

E. Comments on proposal #4 (requiring more detailed disclosures of in-kind (non-cash) donations)

15. RM: Considers this a big problem – the amount disclosed should be the amount paid, and the name of both the buyer and the donor of the in-kind item should be disclosed

16. RM: Small parties are exposed in this regard e.g. if a hall is hired for a meeting at a local level and someone pays for the cost of renting it, it is very hard for the party secretary to know about all these little things that may be going on

F. Comments on proposal #5 (requiring disclosure of the volume and total dollar amount of donations under \$1,500)

17. RM: This is easy to implement as TOP collects this information already

G. Comments on proposal #6 (requiring parties to release their audited annual financial statements, and simplifying the audit requirements to make audit reviews more meaningful)

18. RM: We would be interested in what other parties do regarding audits

[see paragraph 7 for other comments related to this proposal]

H. Comments on proposal #7 (introducing a requirement for candidates to disclose loans)

19. RM: Never had to deal with this as most candidates personally pay their election expenses

I. Unspent donations

20. RM: This is not an issue for TOP

J. Anonymous donations

21. RM: Hard to assess if anonymous donations are from overseas or not; the issue from a public perspective is because anonymous donations can go to parties directly, rather than having to go through the EC

22. RM: Anonymous donations only being made through the EC protected disclosure channel would mean any risk of undue influence would dissipate since parties would not know the identity of the donor, and whether they were overseas or not wouldn't matter

23. RM: Would like to see thresholds for maximum donation amounts for overseas (\$50) and anonymous (\$1,500) donations aligned as the disparity makes it difficult to know if compliance is being achieved

24. RM: TOP has to manually try and match email addresses with names of people in its CRM system to ascertain donor identities since most donations are made online

K. General comments

25. RM: Feels like changes are being made to existing regime but what is the underlying problem? Are these proposed solutions actually going to solve the underlying issues?