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Justice Select Committee

Inquiry into the 2017 General Election and the 2016 Local Elections

Comments from Transparency International New Zealand (TINZ)

Our Expertise on this Topic

Transparency International New Zealand (TINZ) welcomes the opportunity to make a submission on this matter. It fits closely with our objectives, and we are pleased to offer an expert civil society perspective.

We are happy to meet to discuss the submission, if that is useful to you.

In preparing this submission TINZ has relied on its National System Integrity Assessment 2018 update which will be publicly available shortly.

The Justice Committee has resolved to invite further submissions on its Inquiry into the 2017 General Election and 2016 Local Elections. The committee is inviting submissions on the specific issue of how New Zealand can protect its democracy from inappropriate foreign interference, notably on the issues of:

- *the ability of foreign powers to hack the private emails of candidates or parties*
 - *the risk that political campaigns based through social media can be made to appear as though they are domestic but are in fact created or driven by external entities*
 - *the risk that donations to political parties are made by foreign governments or entities.*
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Hacking Emails

1. We do not have any comment on the ability of foreign powers to hack the private emails of candidates or parties, it is outside of our area of expertise.

Fake 'domestic' campaigns

2. On the topic of foreign manipulation or influence over political campaigns, we acknowledge the experience of GCSB and NZSIS for the elections under consideration in this inquiry. Our concern lies more around the inappropriate use of personal data to manipulate social discussion. This has been evident in overseas campaigns, and can be expected to threaten democracy in New Zealand. Our questions are: Who will consider this threat? and How can we bolster our integrity systems to protect our democracy against that sort of influence and to mitigate its impacts?
3. The July 2018 report of the UK Information Commissioner (ICO) into the use of Data analytics in political campaign¹s is highly relevant. This looked, among other things, at the 'invisible processing'

¹ Investigation into the use of data analytics in political campaigns Investigation update 11 July 2018, Information Commissioner's Office, UK.

of people's personal data and micro targeting of political adverts. The ICO considered how data from Facebook could have been misused in the UK referendum on membership of the EU and to target voters during the 2016 American Presidential election process. In its July 2018 report the Commissioner has concluded that:

There are risks in relation to the processing of personal data by many political parties. Particular concerns include: the purchasing of marketing lists and lifestyle information from data brokers without sufficient due diligence, a lack of fair processing, and use of third party data analytics companies with insufficient checks around consent.

4. Several of the recommendations made by the ICO are of relevance to New Zealand and to this inquiry. Three of these were:
 - that political parties work with the appropriate authorities to improve transparency around the use of data all the parties have the right to have and use (eg the electoral register);
 - that online platforms which provide advertising services to political parties and campaigns should have expertise within the sales support team who can provide advice on transparency and accountability in relation to how data is used to target users;
 - and that the government should require the Information Commissioner to create a statutory Code of Practice about the use of personal data in political campaigns.²

How could these recommendations be implemented in New Zealand to strengthen the integrity of the democratic process? Maintaining public confidence in the electoral process is critical to a healthy democracy. Who will address this emerging and powerful risk to our democratic process?

Donations to Political parties by foreign governments or entities

5. Transparency International NZ undertook a National Integrity System Assessment in 2013, and has been updating this assessment throughout 2018. This will be launched on 22 May 2019. In our update we re-iterate comments and recommendations made in the 2013 assessment. Greater transparency is needed of the finances of political parties, including donations.
6. In the 2013 Assessment we recommended consideration of strengthening the electoral legislation to make the lines clearer between legal and illegal activities, and investigating the options for strengthening enforcement in response to complaints. It would be useful to consider extending the time frame for commencement of prosecution after a return has been filed³
7. It is the view of Transparency International New Zealand that there is no justification for foreign donations from overseas organisations or people who are not New Zealand citizens, in the New Zealand electoral process. Two thirds of countries internationally ban foreign political donations including comparable liberal democracies – UK, US and Canada. Australia caps them at A\$100.
8. We also support greater transparency and stronger ethical frameworks around political donations, so that parties are less likely to try to game the system through transfer of overseas funding via New Zealand donors.
9. The 2013 NIS assessment also assessed the extent to which there are regulations in place that require parties to make their financial information publicly available. It stated that while there are

² A full list of the recommendations can be found in the full report and more detail about the policy recommendations can be found in a separate report from the ICO, "Democracy Disrupted? Personal Information and Political Influence"

³ Electoral Act 1993, section 226.

comprehensive regulations that require political parties to make some of their financial information publicly available this does not cover all aspects of party finances, and some provisions contain loopholes.

10. TINZ has one comment in relation to the 2016 local government elections. While tight restrictions exist for general elections regarding third party advertising and negative third-party campaigning, very little exists for local government elections. The 2016 local government election saw at least one third party exploit this loophole, creating and publishing a series of prominent negative campaign advertisements – with little restriction and few avenues for the affected candidates to take action. Parliament should consider an adaption of the rules regarding third party advertising to cover local elections, in order to protect the integrity of these races.

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