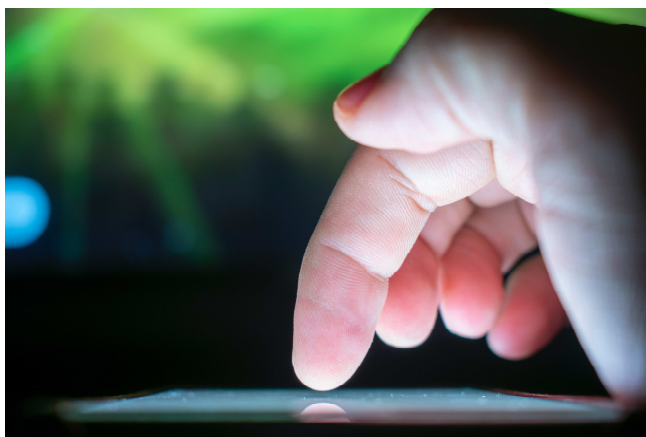


Online Political Campaigning in New Zealand

Joshua Ferrer, October 2020

New Zealand is consistently recognized as a leader in transparency and accountability. According to Transparency International's 2019 Corruption Perceptions Index, New Zealand's public service and judiciary are ranked as the least corrupt in the world (equal with Denmark).¹ However, the regulation of political parties and the transparency of campaign finance continue to be areas of concern.² A rapid increase in online political activity has raised unique



concerns for the maintenance of free and fair elections. While New Zealand has responded with some legislative and procedural improvements in recent years, more must be done to ensure that the country's current and future elections are transparent and that its political actors are held accountable.

This report examines the statutory and behavioural context for online political advertising in New Zealand. The main analysis explores three challenges of digital political campaigning: regulation and enforcement issues, misinformation, and cybersecurity. Four recommendations are identified to improve the level of transparency and accountability in online political campaigning:

¹ Transparency International Corruption Perceptions Index, *Transparency International*, [2019](#).

² Transparency International New Zealand, "New Zealand National Integrity System Assessment – 2018 update", 22 May 2019, 271.

- Parliament should include, in its Select Committee inquiry into the 2020 election, consideration of the passing of legislation requiring those who sell advertisements directly or indirectly online to keep a public, searchable register of published election advertisements targeting New Zealanders, including detailed information on demographic microtargeting, ad reach, cost, and source of payment.
- The Electoral Commission should consider requiring parties, candidates, and third-party promoters to provide more detailed accounts of online ad buys and the medium of expenditure in their expense returns. Parliament should also consider passing legislation requiring itemised expense reports of all Parliamentary Service-funded advertising.
- Parliament should include, in its Select Committee inquiry into the 2020 election, consideration of the enforcement capabilities of the Electoral Commission to investigate electoral expenditure offences and issue penalties.
- Parliament should include, in its Select Committee inquiry into the 2020 election, consideration of the capacity, enforcement power, and scope of the Advertising Standards Authority to ensure its continued ability to address digital election complaints in a timely manner. This should include whether the Advertising Standards Authority should extend its “rapid-response” elections unit to cover the beginning of every election year through polling day.

Context of Online Election Campaigning in New Zealand

New Zealand has a robust definition of “election advertisement” in place that is inclusive of all mediums. According to Section 3A of the Electoral Act 1993, an election advertisement is one that “may reasonably be regarded as encouraging or persuading voters” to vote or not vote for a candidate or party, or type of candidate or party referenced by views they do or do not hold.³ Parliament extended this definition in 2019 to advertisements for referenda.⁴ All election advertisements must include a “promoter statement” clearly indicating the name and address of the person or organization that sponsored the advertisement. Third-party promoters spending over NZ\$100,000 (US\$66,000) and all registered parties and candidates must provide itemised expense reports of expenditures. The Electoral Amendment Act 2019 extended the requirement for “advertisements relating to an election” or referendum to include a promoter statement to online media. These advertisements are paid promotions that relate to an election but do not encourage votes for specific parties, candidates, or

³ Electoral Act 1993, Section 3A, Amended by Electoral (Finance Reform and Advance Voting) Act 2010.

⁴ Referendum Framework Act 2019.

issues – for instance, general encouragements for people to enrol to vote. The law was changed specifically to deter misleading anonymous online advertisements.⁵

The inclusion of online political advertisements in New Zealand's regulatory framework recognizes a rapidly evolving environment. Whereas only a few decades ago online political campaigning was practically non-existent, today it is ubiquitous. According to data from the 2017 New Zealand Election Study, 64 per cent of New Zealanders use the internet for information about the election, 44 per cent often or sometimes follow election news on social media, and 25 per cent use social media sites to promote an issue.⁶ An analysis of 2017 Party expenses conducted by Transparency International New Zealand found that at least 19 per cent of all reported party expenditures were used for digital campaigning.⁷

Recent legislative change has increased the amount of public funding for online advertising. The Broadcasting (Election Programmes and Election Advertising) Amendment Act 2017 allows political parties to spend public funds previously earmarked for TV and radio broadcasts on online advertising and eliminates a requirement that a portion of those funds be used for opening and closing addresses.⁸ Parliament increased the broadcasting allocation substantially in 2017, from NZ\$3.3 million (US\$2.2 million) to NZ\$4.1 million (US\$2.7 million).⁹ These amendments have further contributed to the rapid growth of online political advertising in New Zealand. They have not been accompanied with sufficient checks on the system.

Advantages and Challenges of Digital Campaigning

The internet is a promising tool to connect people and politicians, increasing both participation and engagement in the political system. An analysis of the 2014 general election found that use of the internet increases the probability of voting and enhances political participation.¹⁰ A study of the 2011 general election found a small but statistically significant

⁵ New Zealand Ministry of Justice, "Departmental Disclosure Statement: Electoral Amendment Bill (No 2)", 29 November [2019](#), 3.

⁶ New Zealand Election Study, "Results from the 2017 NZES". Additionally, there is widespread use of social media platforms among New Zealand MPs. See: New Zealand Parliament, "New Zealand Parliamentarians and Online Social Media", 15 February [2011](#) and O'Neill, Bonnie, "New Zealand Politicians' use of social media applications: A political social capital perspective", Master of International Communication Thesis, Unitec New Zealand, 2010.

⁷ Transparency International New Zealand Analysis of 2017 Party Expense Returns.

⁸ Broadcasting (Election Programmes and Election Advertising) Amendment Act 2017. See also: Peacock, Colin, "Brace Yourself for Multimedia Political Persuasion", *RNZ*, 30 October [2016](#).

⁹ Electoral Commission, "2020 Broadcasting Allocation Decision", 2020, <https://elections.nz/assets/2020-general-election/Broadcasting-Allocation-Decision-2020-29-May-2020.pdf>.

¹⁰ Tsai et al., "An Analysis of the 2014 New Zealand General Election: Do Internet Use and Online Party Mobilization Matter?", *Political Science*, [2019](#).

effect between votes for a candidate and their number of Facebook and Twitter followers.¹¹ The use of social media for two-way political engagement seems to be underutilised, however. Two recent studies have found that most political social media campaigning in New Zealand has focused on one-way communication rather than dialogue.¹² Online political communication can also act as an equaliser, allowing small parties without substantial resources to communicate with large numbers of people.

There are a great number of challenges involved with the movement of political campaigning to the virtual arena, raising both transparency and accountability issues. This section focuses on three areas of concern: regulation and enforcement, misinformation, and cybersecurity.

Regulation and Enforcement Issues

One of the greatest concerns with online political campaigning is the difficulty of adapting rules and regulations designed for traditional forms of electioneering to the novel realities of the internet.¹³ New Zealand has thus far allowed internet sites to set their own transparency rules, so long as basic compliance with existing rules around the need for a promoter statement and expenditure limits are followed.¹⁴ Each major social media company has taken their own route. Twitter decided to ban political advertising altogether.¹⁵ Google has enacted relatively strong transparency measures,¹⁶ limiting microtargeting options,¹⁷ requiring all advertisers to verify and comply with domestic legal requirements, and providing a Political

¹¹ Cameron et al., "Can Social Media Predict Election Results? Evidence From New Zealand", *Journal of Political Marketing*, 2015. See also: Marett, Alexandra, "Participating Online: The Internet and its Role in Political Participatory Behaviour in the Context of the New Zealand General Election 2008", Master of Arts Thesis, University of Canterbury, 2010.

¹² Ross, Karen and Tobias Burger, "Face to Face(book)", *Political Science*, 2017 and Ross et al., "Facing up to Facebook: Politicians, Publics, and the Social Media(ted) Turn in New Zealand", *Media, Culture & Society*, 2014.

¹³ "Voters warned to prepare for dirty politics as battle steps up online a year out from election", *TVNZ 1 News*, 26 August 2020.

¹⁴ New Zealand has expenditure limits during the "regulated period", the three-month period preceding polling day. In the 2020 election, parties contesting all electorates are limited to spending NZ\$3,149,000 (US\$2.1 million), electorate candidates are limited to spending NZ\$27,500 (US\$18,150), and third-party promoters are limited to spending NZ\$330,000 (US\$217,800) for the election and NZ\$330,000 (US\$217,800) for each referendum. There are no expense limits outside of the regulated period. See: New Zealand Parliament, "Limits on election-related spending begin", 2020, <https://www.parliament.nz/mi/visit-and-learn/parliament-in-election-year/limits-on-election-related-spending-begin/>.

¹⁵ Cooke, Henry, "Labour reject Facebook ad transparency tools until National get onboard", *Stuff*, Oct 31 2019.

¹⁶ Google, "Introducing a transparency report for New Zealand's political ads", *New Zealand Blog*, 25 June 2020, <https://newzealand.googleblog.com/2020/06/introducing-transparency-report-for-new.html>.

¹⁷ Google, "Advertising Policies Help: Political content", <https://support.google.com/adspolicy/answer/6014595?hl=en>.

Advertising Transparency Report for New Zealand that includes detailed information about verified advertisers' spending on election ads and a downloadable database of ad spending.¹⁸

Facebook is the largest single source of online advertisement spending, comprising at least 25 per cent according to a TI New Zealand analysis of 2017 party election expense returns.¹⁹ It has shown reluctance to implementing strong transparency and accountability rules. Facebook created an online transparency tool called the Ad Library, which allows the public to track all election and issue-based advertisements on the platform and provides basic information including advertisement cost, reach (what Facebook calls "impressions"), and targeting.²⁰ Last year, Facebook made the tool available for New Zealand parties on a voluntary basis. Only the Green Party initially pledged to sign up.²¹ A period of political gamesmanship ensued, with the Labour Party refusing to sign up for the transparency tool unless the National Party did so as well.²² Under intense media pressure, Labour finally agreed in January 2020 to comply.²³ Facebook changed course in late June, making the Ad Library mandatory for all political and social issue advertisers just three months before New Zealand's general election.²⁴ At the time, National, the largest opposition party, had still not agreed to sign up for the enhanced transparency rules.

This episode raises the concern that voluntary compliance among parties may not be sufficient to provide full transparency for online political spending. It also raises questions about the wisdom of leaving the regulatory decisions to online providers. Facebook's transparency provisions remain inadequate in several respects. The Ad Library Report, a tool that reveals the total amount spent by each entity on political advertising and allows researchers to download a database of all ad spending, is unavailable for New Zealand.²⁵ Additionally, there are major deficiencies with the Facebook Ad Library itself. The cost and impression ranges given are imprecise and the targeting data provided is not nearly as specific as the level of microtargeting employed by advertisers on the platform.²⁶ There are also perverse financial incentives at play among online providers. Facebook and other social media giants enjoy a monopoly of business and are enriched by election advertising revenue

¹⁸ Google, "Political advertising in New Zealand", *Google Transparency Report*, 4 August 2020, <https://transparencyreport.google.com/political-ads/region/NZ>.

¹⁹ TI New Zealand Analysis of 2017 Party Expense Returns.

²⁰ Cooke, Henry, "Facebook ads will dominate the next election – but our politicians don't have to tell us about them", *Stuff*, 23 Aug 2019.

²¹ Peacock, Colin, "Oncoming online onslaught of paid political ads?", *RNZ*, 1 September 2019.

²² Cooke, Henry, "Labour reject Facebook ad transparency...", 2019.

²³ Daalder, Marc, "Online advertising reviewed ahead of 2020 election", *Newsroom*, 6 January 2020 and McCullough, Yvette, "Labour signing up to Facebook tool that tracks political ads", *RNZ*, 23 January 2020.

²⁴ AEIdeas, "Facebook's New Election Project in New Zealand is a Test Case For Securing Democracy", *The National Interest*, 22 June 2020.

²⁵ Facebook, "Facebook Ad Library Report", <https://www.facebook.com/ads/library/report>.

²⁶ Interview of Nicola Brown, Policy Advisor, InternetNZ, with author, August 2, 2020

yet play an outsized role in determining the level of openness in New Zealand's democracy. Strong transparency interventions threaten Facebook's advertising revenue, thus making the company reluctant to make necessary changes.²⁷ It is timely for New Zealand regulators and legislators to consider implementing stricter measures and ensuring accountability.

The Electoral Commission, New Zealand's electoral management body (EMB), currently acts reactively to complaints about rule infringements rather than proactively to ensure compliance.²⁸ While compliance with campaign rules generally remains high, few complaints result in referral to the police and even fewer result in prosecution. In New Zealand's 2017 general election, the commission received thirty-five complaints concerning failure to include a promoter statement on advertising, three other advertising-related complaints, three complaints involving false or misleading statements in the two days before polling day and two complaints involving improper donations. None of these were referred to the Police for follow-up.²⁹ The commission also received fifty-two complaints regarding the use of social media on Election Day, only four of which resulted in referral to the police. Once referred, the most likely outcome is a warning. Only one case in the past decade has resulted in court prosecution.³⁰ The commission lacks any enforcement powers to issue penalties. It generally works with promoters and candidates/parties to remedy breaches with the law that do exist, only referring serious breaches or repeat offenders to the police.³¹

All political parties and electoral candidates and third-party promoters spending over NZ\$100,000 (US\$66,000) are required to submit expense returns after the election.³² Parties and candidates are also required to submit donation returns.³³ Party returns must be reviewed by a licensed independent auditor.³⁴ Many of these audits result in "qualified opinions" due to the inability to verify that all expenditures and donations made were reported.³⁵ The Electoral Commission checks to ensure that proper recordkeeping procedures have been followed, that the required details for each donation are listed, and that audits do not raise any compliance or recordkeeping concerns.³⁶ However, the

²⁷ Interview of Nicola Brown, Policy Advisor, InternetNZ, with author, August 2, 2020

²⁸ Transparency International New Zealand, 2019: 226.

²⁹ Electoral Commission, "Report of the Electoral Commission on the 2017 General Election", April [2018](#), 30–31.

³⁰ Interview of Dean Shirley, Senior Advisor, Legal, Electoral Commission with author, August 3, 2020. The case involved someone who voted 11 times in the same election. Even in this instance, the offender was convicted but not sentenced or fined. See: Bayer, Kurt, "Christchurch man admits voting 11 times in last year's General Election", *NZ Herald*, 14 November [2018](#). The New Zealand Police have recently referred to matters relating to party donations to the Serious Fraud Office for investigation.

³¹ Interview of Dean Shirley, Senior Advisor, Legal, Electoral Commission with author, August 3, 2020.

³² Electoral Act 1993 Section 205K, 206I–IA and 206ZC.

³³ Electoral Act 1993 Section 209 and 210.

³⁴ Electoral Act 1993 Section 206J–LA and 210A.

³⁵ TI New Zealand Analysis of 2017 Party Expense Returns.

³⁶ Interview of Dean Shirley, Senior Advisor, Legal, Electoral Commission with author, August 3, 2020.

commission does not have legal powers of investigation, limiting its ability to detect unreported online political expenditures.

Deficiencies in reporting requirements dovetail with the inability of the Electoral Commission to fully investigate election expenditures. These became apparent in a TI New Zealand analysis of 2017 general election party expense returns.³⁷ There is no uniform level of itemization required on expense reports, with some parties grouping all online ad spending together under one line item and others individually listing out ad buys.³⁸ Parties are not required to specify the medium of paid advertisements, nor for online ads the internet sites used, the demographic targets employed, or the number of people reached.

Parliamentary Service funding of online political advertisements is opaque.³⁹ Parties receive generous state funding for party operations including support staff, travel, research and communication.⁴⁰ This funding can be used for online political advertisements, so long as they do not explicitly tell the public to do certain things.⁴¹ It can also be used outside of the “regulated” election advertising period (the three months prior to polling day) to describe party policies and attack opponent policies.⁴² The amount of parliamentary funding is enormous compared to the relatively tight expenditure limits.⁴³ For the 52nd Parliament, NZ\$64.2 million (US\$42.4 million) was allocated to National, NZ\$43.3 million (US\$28.6 million) to Labour, NZ\$6.2 million (US\$4.1 million) to New Zealand First, NZ\$5.8 million (US\$3.8 million) to the Greens and NZ\$1.5 million (US\$1 million) to the ACT Party.⁴⁴ None of this spending requires public disclosure. It is in addition to the publicly funded broadcasting allocation, which can be used for any election advertisements during the regulated period and is disproportionately distributed to the largest political parties.⁴⁵ A review of the Facebook Ad Library showcases how extensive parliamentary service funding is for online

³⁷ TI New Zealand Analysis of 2017 Party Expense Returns.

³⁸ Ibid.

³⁹ Transparency International New Zealand, 2019: 276–81.

⁴⁰ Edwards, Bryce, “State funding of parties is bad for democracy”, *Newsroom*, 25 October [2018](#). See also: New Zealand Treasury, “The Estimates of Appropriations for the Government of New Zealand for the Year Ending 30 June 2021– Finance and Government Administration Sector B.5 Vol.5: Vote Parliamentary Service”, 14 May [2020](#).

⁴¹ Geddis, Andrew, *Electoral Law in New Zealand: Practice and Policy*, 2nd edition (Wellington: LexisNexis NZ, 2014), Chapter 9.

⁴² During the regulated period, parties effectively must preclear their advertisements with the Electoral Commission to ensure they are not considered “election advertisements.” In the 2017 election cycle, the commission issued 711 advisory opinions on 1,121 separate advertisements. See: Electoral Commission, 2018: 50.

⁴³ Edwards, 2018.

⁴⁴ New Zealand Treasury, 2019: 5–7.

⁴⁵ Transparency International New Zealand, 2019: 221. For the 2020 general election, National and Labour received a combined 60 per cent of the total broadcasting allocation. The remaining funds were divided between 17 parties. See: Braae, Alex, “Minor Parties furious at low allocation from TV and radio campaigning”, *The Spinoff*, 9 June [2020](#).

political advertising in New Zealand.⁴⁶ From the beginning of the year through 1 August 2020, Labour has placed 892 Facebook ads, with 860 of them paid for by Parliamentary Service funding. National has placed 61 ads, 20 of which were paid for by the Parliamentary Service. And the Greens have placed 72 ads, with all 72 of them paid for by the Parliamentary Service. In other words, 33 per cent of National's, 96 per cent of Labour's and 100 per cent of the Greens' Facebook ads were paid for by opaque public funds. Without the Facebook Ad Library, these expenditures would be completely untraceable.

Finally, the monetary threshold limits in place were not designed for an era of online campaigning. Facebook advertisements can cost less than NZ\$100 (US\$66) but reach hundreds of thousands or even millions of people. Third party promoters – individuals or groups not directly contesting an election but that spend money to influence its outcome – can spend up to NZ\$13,600 (US\$8,980) without having to register with the Electoral Commission and up to NZ\$100,000 (US\$66,000) without having to submit a post-election expense report.⁴⁷ Similarly, parties only must itemise donations received over NZ\$15,000 (US\$9,900) and do not have to report donations under NZ\$30,000 (US\$19,800) until after the election.⁴⁸ Considering the wide reach of promoted Facebook advertisements with relatively small expenditures, there needs to be consideration of lowering these thresholds substantially, to reflect the new realities of online political advertising.⁴⁹

Misinformation

Online political campaigning can allow misleading or untrue statements to disseminate rapidly and widely. New Zealand has one unique tool to help regulate the truthfulness of political content: an Advertising Standards Authority (ASA) that handles complaints against political advertisements.⁵⁰ The ASA is an industry-funded voluntary organization that enjoys cross-partisan respect, credibility, and a high level of compliance.⁵¹ It accepts complaints from any individual or party about advertisements that violate its Code of Practices around truthful presentation and social responsibility.⁵² The ASA normally takes about three weeks to render decisions on election complaints, but uses a 'fast-track' process for election

⁴⁶ TI New Zealand Analysis of 2020 Party Advertisements in Facebook Ad Library.

⁴⁷ Electoral Act 1993 Section 204B(1)(d) and 206ZC(1). Furthermore, this report does not have to be audited; see: Electoral Act 1993 Section 206ZD.

⁴⁸ Electoral Act 1993 Section 210 and 210C.

⁴⁹ Interview of Nicola Brown, Policy Advisor, InternetNZ, with author, August 2, 2020

⁵⁰ Interview of Hilary Souter, Chief Executive, Advertising Standards Authority with author, July 28, 2020.

⁵¹ Ibid. and Renwick, Alan and Michela Palese, "Doing Democracy Better: How Can Information and Discourse in Election and Referendum Campaigns in the UK Be Improved?", University College London, March 2019, 37–8.

⁵² Advertising Standards Authority, "ASA Guide on Election and Referenda Advertising 2020", March 2020.

advertisements during the regulated period, allowing most complaints to be settled in three or four days.⁵³

The ASA is certainly an asset in the fight against political misinformation, but it is not without limitations. An increase in the number of complaints driven by the rise in online campaign advertising has strained the financial resources of the ASA.⁵⁴ There are concerns that the fast-track process is still not quick enough considering the rapid ability for misinformation to spread.⁵⁵ A misleading online advertisement posted for only a few days can receive hundreds of thousands of views before being taken down. Some have also called for the fast-track process to cover a longer period to reflect the realities of an internet-driven “permanent campaign”, with parties spending large sums of money on boosted Facebook ads year-round.⁵⁶ While the ASA generally receives a high rate of compliance, this was tested last year when National initially refused to take down an advertisement about Labour’s vehicle efficiency feebate scheme that the ASA ruled was “likely to confuse or deceive consumers”.⁵⁷ National’s leader at the time, Simon Bridges, said “one person’s misinformation is another person’s fact”,⁵⁸ while Deputy Leader Paula Bennett declined to commit to taking down misleading ads within a certain time frame.⁵⁹ Giving the ASA statutory power to enforce its decisions is not an ideal solution, as it is likely to make the process more complex, costly and lengthy.⁶⁰

Finally, there are questions around the overall efficacy of the ASA’s complaints process. Relatively few complaints of online political advertisements are sustained. Over the past five years, 82 complaints have concerned online political advertising. Fourteen of these have been settled or upheld, a success rate of 17 per cent.⁶¹ The ASA walks a difficult line between unnecessarily fettering free speech vital to democracy and fighting against the promotion of untrue or misleading political advertisements.⁶² It errs on the side of free speech – leading

⁵³ Peacock, 2019.

⁵⁴ Interview of Hilary Souter, Chief Executive, Advertising Standards Authority with author, July 28, 2020.

⁵⁵ Cooke, Henry, “Stopping viral misinformation in the next election will be a task for all of us”, *Stuff*, 24 August 2019.

⁵⁶ *Ibid.*

⁵⁷ Manning, Selwyn, “Bryce Edward’s Political Roundup: Electioneering on Facebook under scrutiny”, *Evening Report NZ*, 16 September 2019.

⁵⁸ “Voters warned to prepare...”, 2019.

⁵⁹ Morning Report, “National Party still deciding on whether to join Facebook Ad Reports Library – Bennett”, *RNZ*, 22 January 2020.

⁶⁰ Interview of Hilary Souter, Chief Executive, Advertising Standards Authority with author, July 28, 2020.

⁶¹ TI New Zealand Analysis of Advertising Standards Authority Complaints.

⁶² Interview of Hilary Souter, Chief Executive, Advertising Standards Authority with author, July 28, 2020.

politics blogger David Farrar to comment that “the work of the ASA has little overall effect on campaign discourse.”⁶³

New Zealand has one other protection against online political misinformation. Section 199A of the Electoral Act bans on polling day and in the two days preceding the publishing of knowingly false statements made with the intention of influencing the votes of any elector.⁶⁴ The high legal standard involved means that the section has had virtually no impact. In fact, most politicians and journalists are unaware of the provision’s existence.⁶⁵ A 2015 court ruled that statements published before the two-day period that remained visible were covered by the prohibition, but Parliament acted in 2017 to make clear that the section only applies to statements published in the two-day period before Election Day.⁶⁶ It is unlikely in its current formulation to provide any protection against misleading online advertisements.

Cybersecurity

Online political tools have increasingly been targeted by hostile and foreign actors to disrupt democratic states. While New Zealand has yet to experience any major attacks, the intelligence community expects the country will be targeted.⁶⁷ Some steps have already been taken to safeguard New Zealand’s online infrastructure. Parliament passed legislation in March providing for the adjournment of polling in case of major disruptions, including cyberattacks.⁶⁸ The Electoral Commission is advising political candidates and parties on best practices to protect their online security.⁶⁹ Social media platforms have also ramped up their efforts to shut down foreign adversaries, prevent social media hacks, and address astroturfing, or the spread of disinformation through robot accounts and paid participations.⁷⁰

These actions are a start, but real risks remain. Weak disclosure laws mean that bad-faith actors can legally spend NZ\$13,600 (US\$8,980) to influence elections without any disclosure

⁶³ Renwick and Palese, 2019: 38.

⁶⁴ Electoral Act 1993 Section 199A, amended by the Electoral Amendment Act 2017.

⁶⁵ Renwick and Palese, 2019: 38.

⁶⁶ Electoral Amendment Act 2017 Part 1 section 98 and Interview of Dean Shirley, Senior Advisor, Legal, Electoral Commission with author, August 3, 2020. See also: New Zealand Ministry of Justice, “Regulatory Impact Statement: Electoral Amendment Bill: Advance Voting ‘Buffer Zones’ & Prohibition on False Statements to Influence Voters”, 22 June 2016.

⁶⁷ Justice Committee, “Inquiry into the 2017 General Election and 2016 Local Elections”, I.7A, December 2019, 17.

⁶⁸ Electoral Amendment Act 2020, amending section 195 of the Electoral Act 1993.

⁶⁹ Justice Committee, 2019: 55.

⁷⁰ Zuckerberg, Mark, “Preparing for Election”, *Facebook*, 12 September 2018, <https://www.facebook.com/notes/mark-zuckerberg/preparing-for-elections/10156300047606634/>.

whatsoever, up to NZ\$100,000 (US\$66,000) without disclosing expenditures, and as much as NZ\$330,000 (US\$217,800) without disclosing funding sources, in essence “dark money” at work.⁷¹ A lack of proactive enforcement powers means that the Electoral Commission is unable to monitor technology companies to ensure compliance with existing laws.⁷² Without a regulatory framework outlawing foreign social media advertising in New Zealand elections, the country remains at the whim of social media giants to fight foreign influence campaigns. Cybersecurity concerns will continue to grow as both legitimate and illegitimate online political campaigning proliferate.

Recommendations

TI New Zealand identified four major recommendations to increase the level of transparency and accountability of online political campaigning in New Zealand.

Recommendation: Parliament should include, in its Select Committee inquiry into the 2020 election, consideration of legislation requiring those who sell advertisements directly or indirectly online to keep a public, searchable register of published election advertisements targeting New Zealanders, including detailed information on demographic microtargeting, ad reach, cost, and source of payment.

This was also recommended by Government members in the Parliamentary inquiry into the 2017 general election.⁷³ Online platforms have proven reluctant to add transparency measures. It is therefore up to New Zealand’s parliament to require the creation of a strong transparency regime. Canada provides one model, requiring such a database from online providers depending on yearly traffic of each website. This recommendation is likely to be implemented in the next parliament.

Recommendation: The Electoral Commission should consider requiring parties, candidates, and third-party promoters to provide more detailed accounts of online ad buys and the medium of expenditure in their expense returns. Parliament should also consider passing legislation requiring itemised expense reports of all Parliamentary Service-funded advertising.

We consider that these common-sense transparency measures could shed much-needed light on online political expenditures. However we acknowledge that this is a relatively new and rapidly evolving medium of advertising, needing broader consideration. The Electoral

⁷¹ Interview of Nicola Brown, Policy Advisor, InternetNZ, with author, August 2, 2020

⁷² Justice Committee, 2019: 57–9.

⁷³ Ibid., 18.

Commission has statutory power to require more thorough itemization in expense returns, giving the public a clearer picture of what political actors are spending on online advertising. Publishing more detailed expense returns would give the public more information about how political actors are spending money to influence their vote. Finally, publicly funded Parliamentary Service allocations are opaque and present a clear conflict of interest.⁷⁴ The organization overseeing these expenditures, the Parliamentary Service Commission, is staffed by the political parties that benefit from the money. Basic disclosure standards should be followed for all publicly funded advertising expenditures. The Official Information Act 1982 should also be extended to cover the administration of Parliament.⁷⁵

Recommendation: Parliament should include, in its Select Committee inquiry into the 2020 election, consideration of the enforcement capabilities of the Electoral Commission to investigate election expenditure offences and issue penalties.

The select committee report on the inquiry into the 2017 general election unanimously recommended giving the Electoral Commission power to investigate electoral offences, obtain evidence, and impose fines and other remedies for breaches of electoral law.⁷⁶ The commission does not currently have the statutory powers of investigation or resources to fully enforce existing campaign finance provisions. Only the most flagrant violations lead to police referrals, and few of these result in prosecution.⁷⁷ Legislative change will allow the commission to proactively enforce existing campaign finance regulations and penalise minor infractions to ensure a culture of compliance.

Recommendation: Parliament should include, in its 2021 Select Committee inquiry into the 2020 election, consideration of the capacity, enforcement power, and scope of the Advertising Standards Authority to ensure its continued ability to address digital election complaints in a timely manner. This should include whether the Advertising Standards Authority should extend its “rapid-response” elections unit to cover the beginning of every election year through polling day.

A substantial increase in the number of election complaints and the fast-track election complaint process in place close to polling day is a strain on the ASA’s limited resources. Hilary Souter, the Chief Executive of the ASA, noted that filling this funding gap would cost less than NZ\$100,000 (US\$66,000) to ensure the continuing ability of the ASA to address election complaints.⁷⁸ Extending the fast-track complaint process to the beginning of the year

⁷⁴ Transparency International New Zealand, 2019: 275.

⁷⁵ Ibid., 280, 382.

⁷⁶ Justice Committee, 2019: 5.

⁷⁷ Geddis, 2014: Chapter 9 and Justice Committee, 2019: 30–31.

⁷⁸ Interview of Hilary Souter, Chief Executive, Advertising Standards Authority with author, July 28, 2020.

would reflect the realities of a longer online campaign period, with parties spending heavily on online advertisements well in advance of polling day.⁷⁹

Conclusion

In summary, New Zealand has core provisions in place that provide for the regulation of election advertisements. However, the growth of digital campaigning has yet to be met with a sufficiently robust response. Problems with regulation and enforcement, misinformation, and cybersecurity will continue to grow in the coming years. The recommendations presented provide a pathway forward to tackle these challenges head-on.

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⁷⁹ Cooke, "Stopping viral misinformation...", 2019.

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This research forms a chapter profile contributing to a broader report compiled by a group of Transparency International chapters. Joshua Ferrer was contracted to undertake the research for Transparency International in 2020.

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