

22 September 2020

Lee Tarlamis OAM MP  
Chair  
Electoral Matters Committee  
Parliament of Victoria

By email: [emc@parliament.vic.gov.au](mailto:emc@parliament.vic.gov.au)

Dear Mr Tarlamis

### **Inquiry into the impact of social media on elections and electoral administration**

1. This written submission provides information about the New Zealand Electoral Commission's experience with regulating social media, and its impact on elections.
2. After each general election, the Electoral Commission must deliver a report under section 8 of the Electoral Act 1993 regarding the administration of the election and including any desirable legislative change.
3. On the subject of social media, our report which followed the 2017 election recommended that Parliament reviews the rules that apply to election day taking into account the growth of social media and advance voting.<sup>1</sup>
4. As a minimum, the Commission recommended that the online advertising of news media websites that contain election-related material is not unduly restricted. Current rules prevent news organisations advertising their website on election day before voting closes. This is because, while sites are not asked to take down content which may influence voters on election day, advertising the site would bring material posted before election day to the attention of voters. This problem is not present with television or radio.
5. More broadly, the Commission noted that the election day 'blackout' pre-dates social media and that these rules no longer reflect voters' expectations about what they can post online. On the other hand, there has been much discussion of the responsibilities and liabilities of social media companies. In the Commission's view, many social media companies cannot be regarded as passive platforms and should have responsibilities akin to any other publisher.
6. The most recent legislative change in this area was to extend transparency requirements for "election-related" advertising to all media, including the internet and social media.

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<sup>1</sup> <https://elections.nz/democracy-in-nz/historical-events/2017-general-election/electoral-commission-report-on-the-2017-general-election/>.

7. While New Zealand has regulated election advertising on the internet where that promotes parties or candidates, since 2007, we have separate provisions to also address advertising about the election. For example, this covers information about how to vote, where to vote, or references short of promoting particular views or parties.
8. Previously, this was only regulated where it appeared in traditional media. With the 2020 amendment, the requirement for a statement on the material declaring who instigated it was extended to all media. This followed a recommendation by the Electoral Commission.
9. As a result, it would be an offence to anonymously post online misinformation about the voting process in an effort to deter voters.
10. There has not been direct regulation of social media platforms. Rather, platforms like Facebook have chosen to introduce registration and transparency systems for paid political advertising. This is in place for New Zealand's 2020 General Election.
11. The New Zealand Electoral Commission has also made contact with social media platforms to build understanding of New Zealand electoral law and establish channels for escalation when issues on social media arise.
12. To protect freedom of expression, individuals using social media to express personal political views online where no payment is being made or received are exempt from the election advertising rules. This exemption applies provided they are not paying, or receiving payment, to publish those views. It includes posting, reposting, commenting and sharing.
13. This exemption does not apply on election day. The Commission has suggested that this be considered, noting that it can be difficult to distinguish between groups or individuals when identities are hidden behind a page name. Expressing views on behalf of a group or paying to promote election-related content would be subject to the rules, but it is more difficult than envisaged under the legislation to know where this is the case, or to track content to its source.

Yours sincerely



Alicia Wright  
Chief Electoral officer