

Privacy Commissioner's submission to the Independent Electoral Review on their Interim Report

1. In line with my statutory function of providing advice on matters affecting privacy, I am pleased to make a submission setting out the key privacy issues and my recommendations on the Independent Electoral Review Interim Report.
2. The Independent Electoral Review panel (the panel) has released their Interim Report (the Report). The Report identifies and recommends several possible changes to each area of the parliamentary electoral system. Overall, I generally **support** the recommendations in the Report as privacy enhancing, in particular:
 - restricting access to the electoral roll
 - changes to the political finance disclosure rules
 - introducing a Tiriti o Waitangi/Treaty of Waitangi provision
 - removing the mentally disordered provisions
3. I **recommend** the panel looks at the following in order to make their recommendations more privacy enhancing:
 - If the access recommendations are not accepted, lowering the threshold to get on to the unpublished roll or creating an opt out option for those not wanting to be on the publicly available roll.
 - Lowering the threshold for 16- and 17-year-olds to get on the unpublished roll.

Electoral Roll Access

4. I support the panel's recommendations on access to the electoral rolls, in particular:
 - removing the availability of the electoral rolls for public inspection,
 - removing the ability for any person to purchase the electoral roll,
 - removing access to the electoral rolls by political parties, candidates, and MPs,
 - removing the ability for scrutineers to access marked copies of the electoral rolls,
 - removing the index of streets and places from sale, and
 - imposing tighter controls on access to the rolls for social science and health research.
5. The electoral rolls are a published public register, administered by the Electoral Commission, containing a list of all people who are enrolled to vote in New Zealand. The published information currently includes the name, address, occupation, and electorate of each voter. One main purpose of the electoral roll is to protect against electoral fraud.
6. It is compulsory for all eligible voters in New Zealand to enrol to vote. People may be concerned that the information they provide can be accessed and put to other uses. The Report also acknowledges that many people are not aware that their information can be accessed and used for other purposes.

Removing public access

7. Removing public access to the roll better aligns the Electoral Act with the Privacy Act 2020 without much of an impact on the key purpose of the electoral roll – protecting

against electoral fraud. The current public availability of the electoral rolls does aid transparency and public confidence in the integrity of our electoral system, however much of the enrolment process is now done electronically by the Electoral Commission. Manual or external scrutiny is now less important to detect fraudulent behaviour than it may have been under the paper records system which was in place when the current provisions were designed.

8. There are concerns that removing public inspection access to the roll will remove the ability for individuals to ensure that their information is correct. Under Information Privacy Principle (IPP) 6 in the Privacy Act 2020, people have the right to ask for access to their personal information. Many agencies in the public and private sector have an access request process in place to do this or are listed in the request my info tool on the OPC website. The Electoral Commission has a process set up for this already and removing access for public inspection would not impact on this process.

Ability to purchase electoral roll

9. The ability to purchase copies of the roll for commercial use (e.g. debt collection) falls outside of the original purpose for which the information was collected. The Privacy Act 2020 and the Information Privacy Principles applies to those who have purchased the electoral roll. However, in practice it is very difficult for individuals to know what is happening with their personal and assert their privacy rights.
10. As the Report identifies, there is little way of knowing how this data is used after it is purchased and there are particular concerns around the data contained in the electoral roll being used for data matching and profiling. These concerns are continuing to amplify with the increasing prevalence and accessibility of Artificial Intelligence tools with capabilities to process, combine and analyse vast quantities of information. Information or data matching can undermine people's trust in government.

Access for research

11. I understand the need for access to the electoral roll for social science and health research. Currently researchers receive a full copy of the roll in order to create a sample list or to collect the necessary information. As the panel identifies, often receiving a full copy of the roll is unnecessary. I support the data minimisation approach on restricting researcher access to the electoral roll and offering randomised lists for survey purposes. This better aligns with IPP1 which provides that you should only collect the information necessary for your purpose.

Restricting political access

12. I support the panel's recommendation restricting political party and candidate access to the electoral roll. As the report identifies, Members of Parliament will still have access to the roll in order to contact constituents but only for Parliamentary purposes rather than campaigning.
13. I support the panel's recommendation to remove the ability for scrutineers to access marked copies of the electoral roll to share this information with political parties.

Unpublished Roll Threshold

14. I appreciate that the decision to keep the threshold the same is balanced against the recommendations restricting access to the electoral roll. I **support** no change to the threshold to register on the unpublished roll if the restricted access recommendations are to proceed.
15. Should the access provisions not proceed, I do not support the panel's recommendation. I **recommend** the panel looks at amending the threshold to get on the unpublished roll or looking at alternatives for individuals interested in staying anonymous.
16. The threshold for the unpublished roll set out in the Electoral Act is very high.¹ To be placed on the unpublished roll requires evidence, such as a protection order or letter from an employer to prove that an individual's personal safety, or that of their family's, could be prejudiced by the publication of their name and details. The assumption under this approach is that 'feeling unsafe' rather than 'being objectively unsafe', is not sufficient to override the public good served by having a public electoral roll. This is a huge hurdle. A lower threshold for eligibility would be a worthwhile means for giving a wider range of individuals more choice and greater privacy, while not impacting electoral officials access and use of the information for primary electoral purposes.
17. Alleviating voter concerns by providing more access to the unpublished roll may actively encourage new prospective voters to participate in the electoral system, particularly minority groups who are generally under-represented on the roll and who may also be more likely to be concerned about their privacy.

Opt-out Option

18. Alternatively, I **recommend** the panel retain the current unpublished roll threshold and introduce a voluntary opt-out system similar to the one used in the United Kingdom.
19. An opt- off model allows for information relating to a person who opts off the public roll, to remain on the full version of the roll which is used for electoral administration, but which cannot be copied or purchased by the public.
20. This system provides a targeted mechanism to remove public access to personal information for those who have concerns about their information being used for secondary purposes. It also provides more protection to individuals with safety concerns that do not meet the unpublished roll threshold.

Ordinary Vote for those on Unpublished Roll

21. I **do not support** the panel's recommendation for those on the unpublished roll to cast an ordinary vote by publishing their name and another unique identifier.
22. The panel recommends that name and date of birth be used to secure identity. I am concerned that an elector's date of birth is insufficiently secure for use in authenticating an elector's identity. Many people share their date of birth widely and it is often known to a person's friends and family. Social media sites such as Facebook encourage users to make their date of birth publicly available online. Date of birth is also a poor choice for authentication because if compromised, a person cannot alter it.

¹ Electoral Act 1993, s 115

Under 18 Voters

23. The panel recommends that the voting age be lowered to 16. I **recommend** that the panel makes it easier for those under 18 to be placed on the unpublished roll and/or not publish the addresses of those under 18 to recognise that 16 and 17 year olds may be more vulnerable than adults and have less control over where they live.

Political Finance

24. I previously submitted to the panel during this process expressing my concerns around political finance disclosure. I am pleased to see and **support** the recommendation to only publish donor and lender names, not their addresses. This appropriately balances the need for transparency against privacy.
25. Lowering the anonymous donation threshold and removing the protected disclosure scheme does raise privacy concerns as those who do not want to share their information publicly will have less opportunity to support their chosen political party. However, I am satisfied that the public interest in political donations outweighs this privacy risk and as the panel highlighted neither scheme is used often. I **support** the panel's recommendation to lower the threshold for anonymous donations and removing the protected disclosure scheme.

Te Tiriti o Waitangi / Treaty of Waitangi

26. I **support** the Panel's recommendations relating to the Treaty of Waitangi /te Tiriti o Waitangi:
- Requiring decision makers to give effect to te Tiriti/the Treaty and its principles when exercising functions under the Electoral Act.
 - Electoral Commission prioritises establishing Māori governance over data collected about Māori in the administration of the Electoral Act
27. Māori consider data to be a living taonga, and of f strategic value . Māori data refers to the data produced by or that is about Māori and the environments Māori have relationships with. ² Māori Data Governance would enable Māori to make decisions about how, when, and why Māori data is defined and classified, collected, stored, used, analysed, and shared. It would enable Māori to consider what privacy means to them in a particular context, as this can differ from the Pakeha view of privacy.
28. I support the Panel's suggestion of establishing a Māori Data officer as part of the recommendation prioritising Māori data governance. Recognising a Māori Data officer would address specific Treaty/Tiriti issues, including privacy issues for Māori, that could otherwise be subjected to unnecessary delay in implementation if left to develop out of a more general Treaty/Tiriti provision.
29. It is important to balance the right of privacy of the individual Māori with the interests of the collectives such as hapu and iwi in the personal information of their members. It will be important for the Electoral Commission to discuss how to strike the right balance between Māori individual and collective privacy. An option to consider would be to

² <https://www.temanararaunga.maori.nz/s/Te-Mana-Raraunga-Charter-Final-Approved.pdf>

request the consent of Māori individuals to share their personal information and agreeing the terms which upon which it is provided.

Online Tracking and Microtargeting in Elections

30. The panel did not make any recommendations to change regulations around online tracking and microtargeting in elections, but it was noted that this was a concern for many submitters. The privacy risks and concerns related to online tracking, data scraping, and microtargeting exist both within and outside of the political space. I **recommend** that the panel look into possible ways to mitigate these risks in the political space.
31. Microtargeting is not a legally defined term in New Zealand's regulatory framework. The UK's Information Commissioner's Office defines microtargeting as "*a form of online targeted advertising that analyses personal data to identify the interests of a specific audience in order to influence their actions... Microtargeting may determine what or how relevant content is delivered to an individual online and is sometimes used to market goods or services and for political marketing*"³.
32. This process of online tracking and targeting allows political parties and candidates to divide their audiences into small groups based on granular information about their demographics, behaviour, and attitudes and create targeted advertisements that fits with these views.⁴ This targeting process can use 'lookalike' modelling to identify potential supporters that share similarities with their existing audience. This targeting can be used to share political ads encouraging someone to vote a certain way, to discourage voting all together, or to bury opposition adverts.
33. A 2018 report commissioned by the UK Information Commissioner's Office identified and examined new technology and the emerging trends in how data is used in political campaigns.⁵ The report identified different ways that political parties could target individuals including cross device and geo-location targeting and AI to automatically generate content. It has been reported that political parties around the world are using AI to generate content but it is not clear if this content was created to be specifically targeted.⁶
34. The Cambridge Analytica scandal is one of the most well-known examples of this being used in a political setting. In 2018 it was revealed that the data analytics company Cambridge Analytica harvested the data from 50 million Facebook profiles and used this data to target personal political ads. These advertisements were used to sway swing voters to vote in a particular way and to discourage other individuals from voting all together (find reference).
35. From a privacy perspective, the main concern with online tracking and microtargeting in the political realm are agencies and political parties manipulating user's decisions based on deeply personal information. Agencies may inadvertently use sensitive information and characteristics, such as religious and ethnic grouping, to target individuals. Individuals are not being meaningfully informed or offered the chance to exercise control over their data. A personalised, microtargeted online environment creates 'filter-bubbles'

³ <https://ico.org.uk/for-the-public/be-data-aware/social-media-privacy-settings/microtargeting/>

⁴ <https://ico.org.uk/media/2259365/the-future-of-political-campaigning.pdf>

⁵ <https://ico.org.uk/media/2259365/the-future-of-political-campaigning.pdf>

⁶ New York Times "[A.I.'s use in elections sets off a scramble for guardrails](#)" 25 June 2023

where people are exposed to 'more-of-the-same' information and encounter fewer opinions, resulting in increased political and ideological polarization. It increases the pervasiveness and persuasiveness of false stories and conspiracies.

36. I am happy for my office to look at any recommendation that the panel puts forward.

Vacancies in Parliament

37. I support the panel's recommendation on removing the outdated mentally disordered provision.⁷ This provision provides grounds for a Member of Parliament (MP) to vacate their seat if they are subject to a compulsory treatment order and deemed mentally disordered'.⁸

38. As part of this assessment, the Director-General of Health must examine the MP, along with a medical professional, and report on whether the MP is 'mentally disordered'. As the panel identified, the current law has a very high threshold and the process to meet this is very privacy invasive.

Conclusion

39. I **support** the panel's recommendations of

- restricting access to the electoral roll
- changes to the political finance disclosure rules
- introducing a Tiriti o Waitangi/Treaty of Waitangi provision
- removing the mentally disordered provisions

40. I **recommend** the panel looks at the following in order to make their recommendations more privacy enhancing:

- If the access recommendations are not accepted, lowering the threshold to get on to the unpublished roll or creating an opt out option for those not wanting to be on the publicly available roll
- Lowering the threshold for 16 and 17 year olds to get on the unpublished roll

41. I trust my comments are of use to the Panel.



Michael Webster
Privacy Commissioner

17 July 2023

⁷ See clause 6.12 of the Interim Report.

⁸ Electoral Act 1993, S 56