

# House of Representatives

## Supplementary Order Paper

Tuesday, 4 December 2007

### Electoral Finance Bill

#### *Proposed amendments*

Christopher Finlayson, in Committee, to move the following amendments:

#### *Clause 2*

To omit “the day after the date on which it receives the Royal assent” (lines 4 and 5 on page 7) and substitute “1 April 2008”.

#### *Part 1*

To omit “third party” in each place where it appears in this Part and substitute “interest group”.

#### *New clause 3A*

To insert the following new clause after clause 3:

#### **3A Act binds the Crown**

This Act binds the Crown.

#### *Clause 4*

To insert the following definition after the definition of **illegal practice** (after line 8 on page 9):

#### **interest group—**

- (a) means a promoter for the time being listed as an interest group under section 19; and
- (b) includes a promoter who at any time during the regulated period has been listed as an interest group under section 19

To add the following new paragraph to the definition of **periodical** (after line 30 on page 9):

- (c) is not and has not been since its establishment, published by or on behalf of a political party

To omit the definition of **publish** (lines 19 to 33 on page 10) and substitute the following definition:

**publish** means to—

- (a) advertise in any way; or
- (b) broadcast on radio or television; or
- (c) publish, issue, distribute, or display addresses, notices, posters, pamphlets, handbills, billboards, or cards

To omit the definition of **regulated period** (lines 3 to 15 on page 11) and substitute the following definition:

**regulated period** means the period that commences 3 months before polling day and ends with the close of polling day

To omit the definition of **third party** (at lines 21 to 26 on page 11).

#### *Clause 5*

To omit this clause (line 13 on page 12 to line 13 on page 14) and substitute the following new clause:

#### **5 Meaning of election advertisement**

##### **(1) In this Act, election advertisement—**

- (a) means a form of words or graphics, or both, which encourages or persuades, or appears to encourage or persuade, voters to vote, or not to vote, for one or more parties, or for one or more candidates, or both, and which takes place in the regulated period; and
- (b) includes—
  - (i) a candidate advertisement; and
  - (ii) a party advertisement.

##### **(2) The following publications are not election advertisements:**

- (a) an advertisement that is published by the Chief Electoral Officer, the Chief Registrar of Electors, the Electoral Commission, or any other agency charged with responsibilities in relation to the conduct of any official publicity or information campaign to be conducted on behalf of the Government of New Zealand and relating to electoral matters or the conduct of any general election or by-election and which either contains a statement indicating that the advertisement has been authorised by that officer or agency, or contains a symbol indicating that the advertisement has been authorised by that officer or agency;
- (c) any editorial material, other than advertising material, in a periodical that is written by, or is selected by or with the authority of, the editor;
- (d) any broadcast, in relation to an election, of news or of comments or of current affairs programmes;
- (da) any editorial material, other than advertising material, published on a news media website that is written by, or

- selected by or with the authority of, the editor or person responsible for the website:
- (e) a book that is sold for no less than its commercial value:
  - (f) a document published directly by—
    - (i) an incorporated body to its shareholders or members:
    - (ii) an unincorporated body to its members:
  - (fa) a document published in accordance with statutory requirements:
  - (g) the publication by an individual, on a non-commercial basis, on the Internet of his or her personal political views.

*Clause 9*

To add after paragraph (c) (after line 12 on page 18) the following new paragraphs:

- (d) is not an undischarged bankrupt; and
- (e) is not ineligible to be a director of a company under section 151(2) of the Companies Act 1993.

*Clause 14*

*Subclause (1)(b):* To omit “that is not an overseas person within the meaning of the Overseas Investment Act 2005” and substitute “incorporated outside New Zealand” (lines 7 and 8 on page 20).

*Subclause (2)(a):* To omit “other than a non-contesting party” (line 13 on page 20).

To omit subclause (3) (lines 31 to 38 on page 20).

*Clause 16*

To omit subclause (4) (line 23 on page 22 to line 10 on page 23).

*Clause 17*

To omit paragraph (a) (lines 15 to 20 on page 23) and substitute the following new paragraph:

- (a) commences 2 days before polling day; and

*Clause 18*

To omit subclause (1)(c)(iii) (line 5 on page 24).

*Clause 19*

To omit subclause (2) (lines 17 to 26 on page 24) and substitute the following new subclauses:

- (2) If the Electoral Commission determines there are grounds under section 18 to refuse an application to be listed as an interest group, the Electoral Commission must, forthwith and in any case not later than 5 working days after the date of the determination, give the promoter written notice that the Electoral Commission has refused the application, and set out the reasons for the refusal.
- (3) In the event that any promoter receiving notice under subsection (2) seeks a judicial review during the 3 months prior to

an election of the decision of the Electoral Commission to refuse an application for listing, the High Court must accord priority to the hearing of the application.

*Part 2*

To omit “third party” in each place where it appears in this Part and substitute “interest group”.

*Clause 22*

Definition of **anonymous**: To omit “or” (line 12 on page 26) and substitute “and”.

*Clause 25A*

To omit “the amount of the donation, or its value” in each place where it occurs and substitute “the value of the donation”.

*Subclause (2)*: To omit “\$1,000” in both places it appears (lines 17 and 21 on page 33) and substitute “\$4,000”.

*Clause 25C*

To omit “the amount of the donation, or its value” in each place where it occurs and substitute “the value of the donation”.

*Subclause (1)(a)*: To omit “a New Zealand citizen or” (line 14 on page 34).

*Subpart 1A*

To omit “the amount of the donation, or its value” in each place where it occurs and substitute “the value of the donation”.

*Clause 38*

To omit this clause (line 26 on page 48 to line 21 on page 49).

*Clause 53*

*Subclause (2)(d)*: To omit “\$12,000” (line 20 on page 58) and substitute “\$40,000”.

*Clause 55*

*Subclause (1)*: To insert “during the regulated period” after “published” (line 30 on page 59).

*Subclause (1)*: To omit “, or appears to encourage or persuade,” (line 31 on page 59).

*Clause 55B*

To omit this clause (lines 1 to 12 on page 61) and substitute the following new clause 55B:

**55B Certain persons and bodies may not promote an election advertisement**

- (1) The following persons and bodies may not publish or cause or permit to be published during the regulated period any election advertisement:
  - (a) the chief executive (however described) of a department of State or a Crown entity;
  - (b) a department of State;
  - (c) a Crown entity;

- (d) a State enterprise (within the meaning of section 2 of the State Owned Enterprises Act 1986) or a Crown owned company;
  - (e) any other instrument of the Crown.
- (2) Nothing in this section prevents Television New Zealand and Radio New Zealand from carrying out their functions under Part 6 of the Broadcasting Act 1989.

*Clause 56*

To omit this clause (lines 13 to 26 on page 61).

*Clause 57*

*Subclause (1):* To omit “During the period beginning 2 months before polling day and ending with the close of the day before polling day” (lines 28 to 29 on page 61) and substitute “During the regulated period”.

*Clause 58*

*Definition of candidate advertisement, paragraph (b):* To omit “in any form (for example, in the form of a radio or television broadcast, notice, poster, pamphlet, billboard, or electronic message)” (lines 2 to 5 on page 63).

*Definition of candidate advertisement:* To omit paragraph (c) (lines 6 to 11 on page 63).

*Clause 66*

To omit subclause (3) (lines 15 to 19 on page 69) and substitute the following new subclause:

- (3) However, this section does not apply where the candidate appears in a party advertisement published—
  - (a) in the electoral district in respect of which the candidate has been nominated; and
  - (b) 10 other electoral districts.

*Clause 80*

*Definition of party activity:* To omit paragraph (b) (lines 12 to 16 on page 76) and substitute the following new paragraph:

- (b) that constitutes publishing a party advertisement; and

*Definition of party activity:* To omit paragraph (d) (lines 19 to 21 on page 76).

*Clause 81*

To omit subclause (2)(g) (lines 26 to 27 on page 77).

*Clause 84*

To omit subclause (1) and substitute the following new subclause:

- (1) Where a party is listed in the part of the ballot paper that relates to the party vote, the party’s election expenses in respect of any regulated period must not exceed the amount of \$1,000,000 plus the amount of \$20,000 for each electoral district contested by a candidate for the party.

*Clause 91*

*Subclause (2)(b):* To add “, if required” after “under section 92” (line 27 on page 83).

*Clause 92*

To omit subclause (1) (lines 29 to 31 on page 83) and substitute the following subclause:

- (1) Every financial agent must, before the Electoral Commission receives the return required by section 91, obtain from the auditor appointed under section 11 a report on the return, if the party gains representation in the House of Representatives or gains more than 1% of the party vote.

*Clause 99*

To omit paragraph (b) of the definition of **third party** (now **interest group**, at lines 6 to 10 on page 87) and substitute the following new paragraph:

- (b) that constitutes publishing an election advertisement; and

*Clause 103*

*Subclause (1)(b)*: To omit "\$120,000" (line 21 on page 90) and substitute "\$300,000".

*Clause 106A*

*Subclause (1)*: To omit paragraph (b) (lines 24 to 27 on page 92) and substitute the following paragraph:

- (b) an illegal practice in any other case.

*New clause 106B*

To insert the following new clause after clause 106A (after line 31 on page 92):

**106B Corrupt practice**

Every person who is not registered as an interest group and who spends more than either of the maximum amounts in **section 103(1)** on election expenses is guilty of a corrupt practice.

*Clause 111*

*Subclause (1)*: To omit "70 working days" (line 9 on page 94) and substitute "50 working days".

*Clause 112*

*Subclause (1)*: To omit "25%" (line 35 on page 94) and substitute "75%".

*New Part 2B*

To insert the following new Part after Part 2 (after line 3 on page 98):

## Part 2B Indexation of amounts

**117D Indexation of amounts**

- (1) This part applies to the dollar amounts specified in the following provisions:
  - (a) **section 22(2)** definitions of **candidate donation**, **interest group donation**, and **party donation**;
  - (b) **sections 22A(1)(a), (b) and (c)**;
  - (c) **section 23A(2)(b)**;

- (d) **sections 24(1), (2) and (3):**
- (e) **section 25A(1), (2) and (3):**
- (f) **section 25C(2):**
- (g) **sections 28B(1), (2) and (3)(c):**
- (h) **section 29(1)(ab), (b) and (c):**
- (i) **section 35(1)(ab), (b) and (c):**
- (j) **sections 47(1)(ab), (b) and (c):**
- (k) **sections 53(2)(d)(i) and (ii):**
- (l) **sections 54(1) and (2):**
- (m) **section 59(5):**
- (n) **sections 62(1)(a) and (b):**
- (o) **section 71:**
- (p) **section 81(5):**
- (q) **sections 84(1) and (2):**
- (r) **section 90:**
- (s) **section 100(5):**
- (t) **sections 103(1)(a) and (b):**
- (u) **section 110.**

#### **117E Indexation mechanism**

- (1) The dollar amount specified in the provisions listed under section 117D will be altered on 1 January for every year where the indexation factor is greater than 1.
- (2) Where the indexation factor is greater than 1 the dollar amount specified in the provisions listed under section 117D is replaced by the amount worked out using the following formula (rounded to the nearest \$100):

Dollar amount for the provision for the previous calendar year multiplied by the Indexation Factor
- (3) Any changes made to the dollar amount specified in the provisions listed under section 117D must be calculated by the Electoral Commission by 30 November of the year prior to the year in which they will apply.
- (4) The Electoral Commission must notify any changes made to the dollar amount specified in the provisions listed under section 117D as soon as practicable after the change is made in the *Gazette*, and in the major daily newspapers of Auckland, Hamilton, Wellington, Christchurch and Dunedin.
- (5) The indexation factor is the number worked out using the following formula:

September index number for the year prior to the year in which the changes would apply divided by September index number for the year two years prior to the year in which the changes would apply.
- (6) The indexation factor is calculated to 3 decimal places, but increased by .001 if the fourth decimal place is more than 4.

- (7) Despite the other provisions of this section, no changes will be made to dollar amounts in section 117D if January 1 of a year falls at a point between the issue of the writ for the election and the polling day for the election.
- (8) In this section:  
**September index number** means the Consumer Price Index number published by the Government Statistician in respect of the 3 months ending on 30 September.

*Part 3*

To omit “third party” in each case where it appears in this Part and substitute “interest group”.

*Clause 119*

To add the following subclauses after subclause 3 (after line 7 on page 99):

- (4) When a fine has been imposed upon a party secretary or financial agent for a party in any proceedings under this Act, the payment of such fine or costs may be enforced and recovered in the same manner as if the party were a body corporate and as if all property vested in the party secretary or financial agent were vested in the party.
- (5) In legal proceedings brought under this Act a party may also be sued in the name, as defendant, of a party secretary or financial agent for a party with the addition of the words “on behalf of the (party).”
- (6) No legal proceeding abates or is discontinued by the death, resignation or removal from office of a party secretary or financial agent for a party after the commencement of proceedings.
- (7) Any summons, writ, process or other proceeding to be issued against the party secretary or financial agent sued on behalf of a party is sufficiently served by personally serving that party secretary or financial agent, or by leaving a true copy at the registered office of that party or at any place of business of the party.
- (8) Where the said summons, writ, process or other proceeding is not served by means of such personal service, or by leaving a true copy at the registered office of the party, a copy must be sent in a registered letter addressed to the party at the registered office and posted at least 6 days before any further step is taken on the proceeding.

*Clause 120*

To omit “knowingly” (line 9 on page 99).

*Clause 121*

To omit this clause (line 15 on page 99 to line 16 on page 100).

*Clause 122(1)*

*Subclause (1)*: To omit “6 months” (line 19 on page 100) and substitute “2 years”.

*Clause 128*

*Subclause (2)*: To add the following new paragraph after paragraph (c) (after line 20 on page 103):

- (d) the Electoral Commission agrees with the recommendation.

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### Explanatory note

This Supplementary Order Paper amends the Electoral Finance Bill to address some of the concerns raised by submitters during the select committee hearing, and to reflect the recommendations of the Electoral Commission.

These amendments make the Bill more workable and attempt to ensure that the legislation that New Zealanders are subject to during next year’s General Election is clear and understandable.

One of the key planks of democracy is that all citizens are free to express themselves on all political issues. They are free to criticise the government. They are free to criticise the opposition. They are free to promote policies they like and protest against policies they do not like. These amendments go as far as is possible within the framework of the existing Bill to try to ensure that these principles are at least partially adhered to.

In particular, the amendments focus on clarifying key definitions (such as “publish”, and “electoral advertisement”), placing fairer limits on those participating in the democratic process, and ensuring that liability is fairly identified and properly enforced.

This Supplementary Order Paper creates a new regime by providing for the indexation of the spending and donation caps contained in the legislation, as suggested by the Electoral Commission and currently the practice in Australia. A companion Supplementary Order Paper creates a new enforcement regime.

Clause 2 is amended so that the Bill comes into force on 1 April 2008, thereby giving parties, third parties and the Electoral Commission time to understand the legislation and develop guidelines.

*Part 1, Part 2 and Part 3* are amended to change “third party” to “interest group” to better reflect the function of these groups or persons.

*Clause 4* is amended so that the definition of a “periodical” does not include a periodical published by or on behalf of a political party. Periodicals are exempted from the meaning of an election advertisement in *clause 5*.

*Clause 4* is amended so that the definition of “publish” reflects section 214B(1)(b) of the Electoral Act 1993.

*Clause 4* is amended so that the regulated period commences 3 months before polling day, as in the Electoral Act 1993.

*Clause 5* is amended to remove the second part of the definition of “election advertisement” and to make this definition similar to the existing definition of “election activity” in the Electoral Act 1993. As it stands, the practical implications of clause 5(1)(a)(ii) are unclear, and parties and individuals will not know whether certain activities would be considered as coming under this subclause or not.

*Clause 5* is amended to ensure that all editorial material, and all books, are specifically exempted from the definition of “election advertisement”.

*Clause 5* is amended to ensure that document which are required by law to be published, such as annual reports of companies, are specifically exempted from the definition of election “advertisement”.

*Clause 5* is amended to ensure that all personal political views expressed on the Internet, and not just on blogs, are specifically exempted from the definition of election “advertisement”.

*Clause 9* is amended to prevent an undischarged bankrupt from being able to be a financial agent.

*Clause 14* and *clause 16* are amended to prevent a political party from also listing as a third party.

*Clause 17* is amended to allow third parties to be listed up to 2 days before polling day.

*Clause 19* is amended to give more urgency to the process of notifying promoters that they have been refused listing as third parties, and to give urgency to judicial reviews of these decisions.

*Clause 25A* is amended to allow for anonymous party donations of up to \$4,000, in line with the recommendation of the Electoral Commission.

*Clause 25A*, *clause 25C* and *Subpart 1A* are amended to ensure that with regard to donations, parties, candidates and third parties only deal with the Electoral Commission or the Chief Electoral Officer in cash.

*Clause 25C* is amended to ensure that only people who are registered as an elector in New Zealand can give a donation from overseas which exceeds \$1,000.

*Clause 38* is amended to remove the requirement for parties to submit a special return of donations when a single donor’s total donations for the past 12 months exceeds \$20,000.

*Clause 53* is amended to raise the spending limit at which a interest group must register as a third party from \$12,000 to \$40,000, in line with the recommendation of the Electoral Commission.

*Clause 55* is amended to make it consistent with clause 5(1)(a)(i) and is also amended to make reference to the regulated period.

*Clause 55B* is amended to permit Television New Zealand and Radio New Zealand to broadcast election advertisements and is also amended to make reference to the regulated period.

*Clause 56* is omitted as *clause 59*, *clause 81* and *clause 100* require financial agents to account for the expense of displaying an advertisement in certain circumstances, and they should therefore be able to make those expense payments.

*Clause 57* is amended so that specified advertisements can be displayed without being subject to local authority bylaws during the whole regulated period, not just in the last 2 months before polling day.

*Clause 58* is amended to remove the exemption for members of Parliament, acting in their capacity as a member of Parliament, in the definition of a “candidate activity”.

*Clause 80* and *clause 81* are amended to remove the exemption for members of Parliament, acting in their capacity as a member of Parliament, in the definition of a “party activity” and in the meaning of an election expense.

*Clause 91* and *clause 92* are amended so that not all parties need to obtain an auditor’s report on their election expenses.

*Clause 103* is amended to raise the spending limit for a third party from \$120,000 to \$300,000, in line with the recommendation of the Electoral Commission.

*New clause 106B* has been inserted to ensure that a person who is not registered as a third party, but who spends more than the third party limit, can be found guilty of a corrupt practice.

*Clause 111* is amended so the reporting deadline for third parties should be the same as for parties, rather than the same as for candidates.

*Clause 112* is amended to raise the threshold at which third parties are required to obtain an auditor’s report on their election expenses.

*New Part 2B* is inserted to adjust spending, donation and registration limits in this Bill each year for inflation, using the Consumer Price Index published by Statistics New Zealand.

*Clause 119* is amended to ensure that parties themselves, not just their financial agents, are liable for offences committed against this Bill. There is no good reason why political parties should retain an effective immunity from prosecution.

*Clause 121* is omitted to remove the power for a search warrant to be issued in respect of an illegal practice not punishable by imprisonment.

*Clause 122* is amended to allow for a prosecution to be commenced within 2 years of the date of a return, rather than 6 months.

*Clause 128* is amended to require that the Electoral Commission also agree with the Minister’s recommendation.

The other amendments are drafting corrections or improvements.