

Submission

By



to the

**Ministry of Justice**

on

**Electoral Finance Reform  
Issues Paper**

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PO Box 1925  
Wellington  
Ph: 04 496 6555  
Fax: 04 496 6550

## **Business New Zealand Electoral Finance Reform**

### Q1.1/2/3

Principle 1, Equity, is unrealistic in that it is not possible for constituency candidates and political parties to campaign on a level playing field given the likely support smaller parties and some candidates (from all parties) will inevitably receive from the public at large. Similarly with principle 3. Public participation in elections is discouraged to the extent that electoral rule-making operates to put impediments in place. For such reasons it is not appropriate to preface any legislation that may be introduced with a statement of the six principles set out in this introduction. Legislative language is always open to interpretation.

### Q2.1/2/3

There seems to be no good reason why anonymous donations of over \$1,000 should be payable to the Crown, particularly as there is the ability to make separate \$1,000 donations. And the arbitrary limits imposed by the protected disclosure scheme (a political party can receive only 10 percent of its funding by this means with an individual donor entitled to provide only 15 percent of that amount) seems designed to lead to offending (unintentional or otherwise) by political parties or individual candidates by being unnecessarily prescriptive.

While continuing to allow donors to give as much or as little as they like to a candidate or party, it would be far simpler to remove current disclosure provisions and instead require all donors to state who they are when making a donation. Addresses need not be made public at that time but anyone wanting to follow up on candidate party/giving would have the right to access donor lists. While there are those who argue their political views should be a private matter, transparency is almost always the better course to follow and would forestall the kind of unpleasantness that occurred during the 2005 election campaign.

### Q2.4/5/6/7

The names of donors to candidates and political parties should be available to anyone making an inquiry but their addresses should not be made public (for fairly obvious reasons).

If all donors are required to provide their names, there will no longer be a need for disclosure levels. Members of the public would then be able to see for themselves the kind of support a political party was receiving and the source of that support – and make up their own minds about whether or not the party was worthy of that support.

## Q2.8

No. A transparency requirement would allow members of the public to decide for themselves whether or not they were prepared to vote for a candidate/party that received donations from a particular source (or sources). As with Australia, public scrutiny acts to regulate behaviour. In New Zealand's case, as well, any concern that allowing unlimited donations from a single source could see parties and constituency candidates relying on a small number of wealthy donors would not likely be realised. Evidence to date suggests New Zealanders as not easily influenced by donor wealth; parties and constituency candidates would soon see that reliance on just a few (identified) donors made very little sense. Copying what is done in some countries overseas is not recommended.

## Q2.9/10/11/12

There should be no restriction on who can donate to candidates and political parties, although as in the UK, public companies should be required to get specific shareholder approval for donation policies and to record details in their annual reports. Again, transparency would allow voters to know who has made donations and to decide for themselves whether or not that meets with their approval.

## Q2.13/14/15/16

Other than the current funding available for radio and television purposes constituency candidates and political parties should not be publicly funded. It is a misnomer to refer to public funding as coming from the state. Public funding is provided by the taxpayer and it is not a proper use of taxpayer money to provide it to support candidates and parties that individual taxpayers would not themselves support. This is particularly so in an MMP environment where the public has no say whatsoever in persons appointed to party lists. The 1986 Royal Commission report was produced at a very different time when the emphasis was not so much on the party as on the individual (elected) candidate. Among other objections, taxpayers should not be called upon to provide funding for list candidates over whose selection they have no control.

A further objection arises from the apparent assumption that as all political parties 'play an important role in the democratic process' (paragraph 2.49) all political parties will therefore support a democratic system of government. However, this may not necessarily be the case. It is entirely possible to envisage a situation where tax payer funding (if available) would have to be supplied to a party with anti-democratic intentions.

And it is far from being the case that public funding necessarily limits actual or perceived corruption, as the current UK expenses debacle clearly indicates.

Q2.17

The rules appear to be reasonable clear.

A 'parliamentary purpose' must be a purpose related to or connected with the functioning of the House of Representatives during the parliamentary term, not some activity carried out for electioneering purposes.

Q2.18

The current broadcasting allocation is adequate. As the latest US elections have shown, there are now means of communicating with the public other than via radio and television.

Q2.19./20/21

Yes/No. Even if the allocation remains, there seems to be no good reason why parties should not be free to spend their own money on advertising as well. There is a real possibility that excessive advertising will be self-defeating since the public can readily become afflicted with advertising overload and simply switch off (road accident advertisements are a case in point).

Q2.22/23

The current broadcast allocation should, as now, be restricted to buying radio and television advertising but, as above, with parties free to use their own funds to advertise elsewhere and/or to buy radio/television time over and above their allocation.

Q2.24/25/26

Yes/Yes/No.

Q2.27/28

Yes, parallel campaigners should be able to campaign on radio and television although it is a moot point whether or not this will do them any particular good. Internet websites are now probably a much more potent vehicle for campaign advertising than has been the case to date. Spending limits are not necessary for the kind of reasons already set out (notably the boredom factor encouraged by excessive advertising).

Q2.29/30

Yes a certain amount of free time should be available but it should be for the agencies concerned (TVNZ and Radio NZ National) to determine how much to allocate. Allocation should be to the accepted 'main' political parties (as indicated by their numbers in the previous parliament) and there should be no requirement to fund fringe parties even though these have registered for the

election. The ability for parties to pay for further advertising should go some way to compensate for any revenue lost as a consequence of the requirement to provide free air time.

#### Q2.31/32/33

There should be no increase in public funding for the reasons already given. Similarly there should be no restrictions on private funding.

#### Q3.1/2/3

There is no good reason for imposing spending limits on political parties since it is never going to be possible to create a completely level playing field. Even current spending limits are likely to be too high for that purpose. That aside, however, unlike some other countries there appears to be little evidence in this country of an electorate unduly affected by what is spent on advertising campaigns. In New Zealand greater expenditure and undue influence do not necessarily go together. (Voters are capable of making up their own minds on the basis of their perceptions of a government's record – witness the recent success of the BNP in the European parliamentary elections, the consequence of government failure to listen to rank and file concerns.)

#### Q3.4

Without limits on campaign spending there would be no retrospectivity problem. Since parties and candidates will never have unlimited funds, campaign spending should be for constituency candidates and political parties to determine for themselves.

#### Q3.5/6

See answer above. Other possible 'solutions' simply act to complicate matters. The assumption that wealthier constituency candidates will inevitably be successful is misguided. The electorate should be credited with more sense than that. Freedom to speak freely is by far the most important element of any election campaign (although in New Zealand political correctness does tend to limit that freedom).

#### Q4.1/2/3

While it might seem desirable to adopt a revised definition of 'advertising' in light of more recent electronic possibilities, the width of the definition then becomes an issue. The discussion quotes the Canadian, Irish and United Kingdom definitions of 'advertising' but gives no real indication of how these are applied. When is advertising (however defined) permitted and when is it disallowed? It is suggested therefore that rather than devising complicated rules which, at least on the margins, will always be open to interpretation, it would be better to allow all forms of advertising provided the source of every advertisement is identified. This would remove the temptation to get round whatever rules might apply and would allow voters to decide for themselves

whether or not the 'advertiser' is to be trusted. Advertising is, after all, a two-edged sword which can persuade or repel depending upon its origins and content – and even on its capacity to annoy. It is also unlikely that internet communications can ever be effectively policed. Voters are quite capable of reaching their own conclusions about party and candidate suitability, whatever advertising is directed at them. What is important is to encourage free speech not as at present, to provide an incentive to get round the rules, encouraging pointless litigation.

#### Q4.4/5

As previously noted, there should be a requirement for any candidate or supporter who publishes or authorises an advertisement (in whatever form) to identify him or herself in the published advertisement. Addresses should also be provided to the 'publisher' but for harassment reasons would not have to be made generally available at the point of publication. (Rather along the lines of letters to the editor.) Parties and supporting organisations should certainly have to identify themselves and provide legitimate addresses in order to prevent hiding behind the name of relatively unknown persons. Individuals and candidates who publish advertisements might also be required to provide their address to some kind of supervisory body to be made available to anyone who challenged the advertisement. This requirement would, however, operate on a strict need-to-know basis and there would be no requirement to inform the public at large.

#### Q5.1/2

No. Such regulation only encourages attempts to circumvent it.

#### Q5.3/4/5

Apart from the fact that government department publications should not be used as part of an election campaign (although parties, candidates and supporters would be free to refer to what the previous government has done – or the current government in the case of a by-election) there seems to be little point in trying to limit what third parties can say by way of advertising. Material produced by government departments should, in any event, always be factual in nature, not an advertisement for the government in office at the time. Any regulation that was put in place would need to be of a general nature only, for example, that third party (or any) advertising should not be untrue, defamatory or in some way unlawful. Anything else leads only to attempts to beat the system. That aside, there is little evidence that 'attack' advertising necessarily causes damage – it may attract a sympathy vote instead. But the most effective attack advertising comes most usually from the media which is rarely constrained in what it can say. Nor, in New Zealand, does money – or overseas influence - always talk. (The anti MMP campaign is a good example of this.) Parties and political candidates tend to stand or fall on their record (or perceived record). Requiring parties/candidates to authorise any advertising supporting them may be more a protection for the candidates/parties themselves than for the 'advertisers'. What about advertisements directed to

a policy rather than a candidate or party? Where would that figure in the scheme of things if advertising were to be regulated to any extent?

Q5.6/7/8

As indicated in earlier answers, the requirement should be to provide published identification and an address to be given to anyone in the event that a complaint is laid against the advertiser.

Q5.9/10

The imposition of spending limits unnecessarily complicates the electoral process. The safeguard lies in the public knowing who has authorised an advertisement and allowing individuals to make up their own minds. Freedom of speech is its own reward and transparency is far more effective than convoluted attempts to control what is spent. With limits on third party advertising, including negative advertising, even if the amount of expenditure were controlled, it would still be difficult to control the numbers of persons or groups involved in the advertising. Large support numbers may be far more effective than large expenditures by a smaller number of persons (as witness the latest US presidential campaign).

Q6.1

Require all advertisers to cite their names publicly and to provide an address (which should be checked when provided) to be made available to anyone who lodges a complaint in respect to a particular advertisement. Leave the amount of expenditure up to candidates/parties/supporters and those with opposing views. Transparency is the best safeguard and removing (or not imposing) spending limitations should also remove any temptation to beat the system or to trawl through the affairs of others looking for something to their disadvantage.

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