

# ELECTORAL FINANCE REFORM ISSUES PAPER SUBMISSION OF NEW ZEALAND LABOUR PARTY

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The New Zealand Labour Party is a registered party under the Electoral Act 1993.

This submission on the *Electoral Finance Reform: Issues Paper* published May 2009 by the Ministry of Justice (Issues Paper) is made on behalf of the Party by:

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The submission is organised in two parts:

- Part A:** General discussion of the issues
- Part B:** Response to Ministry of Justice submission form

We do not require the submission to be kept confidential.

## TABLE OF CONTENTS

<b>PART A: GENERAL DISCUSSION OF THE ISSUES</b>	page
<b>1. Guiding principles</b>	4
Introduction	4
The principles	5
Equity	
Freedom of expression	
Participation	
Transparency	
Accountability	
Legitimacy	
Integrity	
Viability	
Clarity	
Cost- effectiveness	
Relativity between principles	7
Purpose statement	
<b>2. Constituency candidate and political party funding</b>	9
Private funding	9
Purchase of influence	9
Lowering of donation threshold	9
Other donations issues	10
Public funding	11
Response to arguments against public funding	
<i>Independence</i>	
<i>Reduce grass-roots involvement</i>	
<i>Funding decisions unfair to newer or smaller parties</i>	
<i>Inappropriate use of taxpayers money</i>	
Models for public funding	12
Base funding	
Policy development	
Electioneering	
Post and pre election funding mechanism	
Tax deductions and status	
Public funding only for registered parties	
Additional accountability	
Broadcast (radio and television) advertising	15
Discontinuing the time allocation	
Parliamentary service funding rules	16
Separation of Parliamentary and Electoral Act spending	
<i>Nature of the problem</i>	

	page
<b>3. Campaign spending</b>	18
Spending limits	18
Regulated period	18
Fixed date for regulated period	
<b>4. Advertising</b>	20
New definition of advertising needed	20
Features of new definition	20
Modern forms of advertising	21
Public disclosure of names and addresses	21
<b>5. Parallel campaigning</b>	22
Guiding principles	22
Nature of regulation	22
<b>6. Monitoring and compliance</b>	24
Public information	24
Oversight agency	24
Reporting dates	24
<b>PART B: RESPONSE TO MINISTRY OF JUSTICE SUBMISSION FORM</b>	
Chapter 1 - Guiding principles	25
Chapter 2 - Constituency candidate and political party funding	26
Chapter 3 – Campaign spending	34
Chapter 4 – Advertising	36
Chapter 5 – Parallel campaigning	38
Chapter 6 – Monitoring and compliance	40

**Note:** While recommendations in this submission are largely captured in Part B, the main recommendations are also bolded in Part A (the first being at para 27).

# **PART A: GENERAL DISCUSSION OF THE ISSUES**

## **1. GUIDING PRINCIPLES**

### **Introduction**

The Issues Paper lists six guiding principles:

- Equity
- Freedom of expression
- Participation
- Transparency
- Accountability
- Legitimacy.

**While the Labour Party agrees with these principles, the essential objective is to protect and improve the health of our parliamentary democracy, and maintain people's confidence in it.**

**Doing so will increase their democratic participation and voter turnout, and enhance respect for the institutions that New Zealanders rely upon to deliver a prosperous, happy and safe country.**

**The biggest changes needed to our electoral financing arrangements are to improve transparency.**

**The purchase of policy, government appointments and access to resources is an easy accusation to make. It is close to an allegation of corruption – and is very hard to disprove in the absence of transparency.**

**Both the risk of hidden deals and accusations that can be made in the absence of transparency undermine public confidence in the reputation and values of our parliamentary democracy that we hold dear.**

We agree with the commentary on the principles in Chapter 1 of the Issues Paper, comment further, and add some relevant additional principles:

- Integrity
- Viability
- Clarity
- Cost-effectiveness.

## **The Principles**

### **Equity**

1. Equity is a crucial principle. The 1986 *Report of the Royal Commission on the Electoral System: Towards a Better Democracy* (Royal Commission) identified the particular importance of fairness between political parties because at elections voters are primarily choosing between alternative party governments. (See para 2.1) The Royal Commission “emphasised the vital role of political parties in modern democracies.” (See para 2.170)
2. This is one of the reasons the Royal Commission recommended limited and modest funding of political parties, a topic we will return to below.
3. Election rules should not advantage one party over another, nor should they place inequitable barriers to the formation and entry of new parties into Parliament.

### **Freedom of expression**

4. Freedom of expression requires that electoral law should not place undue restrictions on the ability of citizens to express their views freely. The proposals in this submission do not unduly constrain freedom of expression.
5. The media is left completely free of any restraint. Any person can commit all of their personal effort to promoting their views without any restraint. Third parties running issues based campaigns can spend an unlimited amount, but above a \$100,000 threshold must be transparent about their funders.
6. In the context of a democratic election, it is important that the principle of freedom of expression is not used by non media interests with a lot of money to excessively override the principle of equity and “buy” election outcomes. Those willing to spend more money will always have more avenues open to pursue their objectives. Taken to an extreme, this unduly overrides the principle of equity.
7. New Zealand’s low-cost election system has always sought to balance these principles. The proposals in this submission seek to continue this practice, which is clearly preferable to the excesses seen in the United States.
8. Freedom of expression does not mean an unlimited right to spend in order to “buy” an election. That is why there are spending constraints on political parties, and why logically there must be some transparency for third party campaigning (i.e. parallel campaigning).

### **Participation**

9. Participation of citizens is important to ensure that as many as possible are able to have an equitable say in the choice of government following an election. While voting in an election is not compulsory in New Zealand, voter registration is.
10. Voter registration is one barrier to participation. From 2002 voters have been able to register up till the day before an election, and this has been an important step in improving participation. However, given that voter registration

is compulsory, it should also be available on election day itself provided the normal statutory criteria for residence are met.

### **Transparency**

11. Transparency is absolutely crucial to ensuring that the choices made by citizens are properly informed, and is essential to ensuring the principle of equity. The greater the level of transparency in all aspects of electoral law, the less need there is for additional regulation which adds to complexity, or provides uncertainty of enforcement.
12. Transparency includes the disclosure of sources of significant funding for political parties, and of third party spending of large amounts on parallel campaigns.

### **Accountability**

13. Accountability is an important principle, but can only be applied where responsibility is clear – hence the added principle of clarity below. Accountability provisions for promoters and financial agents in the Electoral Finance Act 2007 (Electoral Finance Act) were much clearer than those in the Electoral Act 1993 (Electoral Act), now reverted to through the Electoral Amendment Act 2009 (Electoral Amendment Act).
14. The link between authorisation and accountability for expenditure on electoral activity is particularly important. It is simply not good enough for electoral authorities to advise political parties to read the law before authorising activities, and face the possible consequences after an election, without providing any guidelines upon which accountability can be based before the election.

### **Legitimacy**

15. Legitimacy is an essential feature of an electoral system. The system cannot be effective unless both the winners and the losers in an electoral contest can accept that the outcome was fair and legitimate, even if the losing side doesn't like it.
16. Agreement across the political spectrum on the "rules of the game" – and compliance with them – is highly desirable, though it can also be used as an excuse for inaction. It is particularly important that the electoral system avoid corruption. See also the principle of "integrity".

### **Integrity<sup>1</sup>**

17. Integrity is about establishing conditions that minimise the risk or perception of undue influence or corruption in the system.
18. This goes further than the references to corruption in the Electoral Act, where it defined only in relation to those activities described as a corrupt practice: personation, bribery, treating, undue influence and overspending.

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<sup>1</sup> Definitions of "integrity" and "viability" are drawn from the Australian Government *Electoral Reform Green Paper: Donations, Funding and Expenditure* of December 2008, and the definition of "cost-effectiveness" is informed by it. (See para 2.1 of the Green Paper, which lists 10 principles in all.)

19. New Zealand's electoral system is susceptible to corruption by purchase. Confidence in democracy is undermined if it is or can be perceived that policy is open to purchase. It is therefore important to avoid wealth having undue influence on our electoral or public policy processes (what might be dubbed the "Berlusconi effect"). In this regard, the 2008 election was the least corrupt at the level of expenditure in recent history, while allowing quite adequate debate on the issues.

### **Viability**

20. Viability ensures that political parties and candidates have sufficient support to enable them to provide the electorate with a suitable choice of representatives.

### **Clarity**

21. Clarity ensures that the rules surrounding the conduct and financing of elections are easy to administer and comply with. This has not always been the case in the past.

### **Cost-effectiveness**

22. Cost-effectiveness ensures that the public and private costs involved in democratic processes, including election and public funding costs, are not unreasonable, and that the costs of administration and compliance are not excessive. (Compare Australian Green Paper definitions of "fiscal responsibility" and "efficiency and effectiveness".)

### **Relativity between principles**

23. The most important principles are equity, freedom of expression, and transparency. Transparency is essential to achieving the correct balance between the principles of equity and freedom of speech. This is how we achieve integrity in electoral process.
24. These principles should be reflected in every aspect of the structure and implementation of the law relating to elections.
25. The other six principles are important but are subject to qualifiers in their application. They assist in achieving the balance which needs to be found between the principles of equity and freedom of expression.
26. Legitimacy is achieved when all principles are properly applied.

### **Purpose statement**

27. **The electoral finance legislation should include a purpose statement which embraces the guiding principles.** Currently the Electoral Act's statement of purpose only refers to it as an Act to introduce a proportional system of elections, and the Electoral Amendment Act only refers to it as an Act to amend the Electoral Act.

28. The Electoral Finance Act had as its purpose the following:

The purpose of this Act is to strengthen the law governing electoral financing and broadcasting, in order to—

- (a) maintain public and political confidence in the administration of elections; and
- (b) promote participation by the public in parliamentary democracy;
- (c) prevent the undue influence of wealth on electoral outcomes;
- (d) provide greater transparency and accountability on the part of candidates, parties, and other persons engaged in election activities in order to minimise the perception of corruption; and
- (e) ensure that the controls on the conduct of election campaigns—
  - (i) are effective; and
  - (ii) are clear; and
  - (iii) can be efficiently administered, complied with, and enforced.

29. **The Labour Party believes that this statement of purpose provides an appropriate model for embracing the guiding principles.**

## **2. CONSTITUENCY CANDIDATE AND POLITICAL PARTY FUNDING**

### **Private funding**

30. While political parties are required to be registered, and to provide their rules relating to membership and the process by which they select candidates, their funding arrangements are otherwise largely undeclared and unknown.

### **Purchase of influence**

31. Recent New Zealand political history has seen a number of occasions where significant sums provided to political parties across the spectrum have raised questions about their purpose in relation to the purchase of influence.
32. The purchase of influence is an easy accusation to make and is close to an allegation of corruption – and hard to disprove in the absence of transparency. Such accusations undermine public confidence in the reputation and values of our parliamentary democracy that we hold dear.
33. It is important that funding of political parties is separated from the undue and hidden influence of those with a financial interest in the outcome of elections or the pursuit of particular policies or the availability of other public resources.
34. There is no particular reason why political parties should be dependent on so-called corporate donations, and many good reasons why they should not be so dependent. In fact donations from corporates have steadily reduced over the period since the introduction of the Electoral Act which provided for MMP in 1993, for a variety of reasons, including reaction to the excessive donations from a few corporate interests in the 1987 and 1990 elections, increasing disclosure requirements, and corporate headquarters moving offshore.
35. We are seeing more donations from very wealthy individuals with particular political views, and in 2005 a particular body with the ability to organise a range of donations by one method or another. These developments risk giving non-transparent influence to a small number of wealthy people, which is inequitable. Such influence does not promote equity as between political parties and is fundamentally detrimental to democracy and public confidence in it.
36. One reason for public funding would be to reduce the impact of these sources on election funding and thence the impact on political parties.
37. Until 2007 political parties were permitted to receive anonymous donations up to any extent, and overseas donations to any extent. The Electoral Finance Act made significant progress in achieving greater transparency in these areas, and the donations regime in that Act was carried over in the Electoral Amendment Act.

### **Lowering of donation threshold**

38. However, the Labour Party believes that more openness about funding sources is needed in order to advance the principles of equity and transparency.
39. The current threshold for political parties to declare donations is \$10,000. Donations from a single source below that amount do not need to be declared.

Yet this amount is sufficiently high that interest groups and others can structure donations so that amounts significantly in excess of this do not need to be declared.

40. Some evidence that this is happening is found in returns provided by the National Party, which declared \$130,001 in named donations in election year 2008, compared with \$1,881,793 in 2005. The 2008 donations were all from individual persons, whereas in 2005 the donations included two from trusts totalling over \$1.5 million. While donations were channelled to the National Party through these trusts, the identities of the (corporate) donors were known to the National Party, so while they were anonymous to the public, the National party knew who made them.
41. Either large donations were made to the Party before the provisions of the Electoral Finance Act came into effect, or the National Party received a large number of donations under the \$10,000 disclosure threshold, or both.
42. **To better ensure transparency, the threshold for declaration of donations should be reduced to \$1000 for both constituency candidates and for political parties.**
43. The argument outlined in the Issues Paper that lower thresholds would be an unjustifiable imposition on freedom of speech is weak and contrary to the principle of transparency. It confuses the right to say what you think with the right to buy policy outcomes without disclosing your interest. Also, the requirements of the donations regime already require that all donations be recorded for audit in order to ensure that there are no aggregated donations above the limit.

#### **Other donations issues**

44. **The current provisions on protected anonymous donations should remain.**
45. **Overseas donations should be banned completely (except for New Zealand citizens, residents or voters for the time being overseas).**
46. **Similarly the rules on in kind donations should remain.** They relate to the difference between what is paid (or not paid) in relation to goods or services, and the reasonable market value.
47. The exclusion for “labour provided free of charge” should remain. It is a form of freedom of expression that is equitable because no-one has available more than 24 hours in a day. This differs from the giving of money where some people can in theory give millions of dollars while others can afford only small amounts.
48. The exclusion of labour has stood the test of time. While various suggestions have been put forward as to how it may be restricted to purely voluntary labour, this would only make interpretation, and hence compliance and enforcement, more complex and difficult to administer.
49. **There should there be a limit on donations from a single source of \$100,000 over a three year period. This limit should be inflation adjusted every three years.**

50. **Political parties should be required to provide annual audited accounts with itemised categories of donations income so that actual income can be compared with declared donations.**
51. **In election year, donations received by a party after its last annual return to the Electoral Commission should be publicly declared through the Commission on a regular basis after they are received, and up to and during the regulated election period.** Changing the timing of disclosure would make it more relevant and maximise transparency for voters
52. However, political parties are voluntary organisations, and donations received at a number of points need to be aggregated. This leads to significant compliance work, which would be eased by the base funding for compliance suggested below.

### **Public funding**

53. **The Labour Party believes that the corollary of tightened controls on private funding of political parties – with the greater disclosure and compliance requirements involved – is some provision of public funds for political parties.**
54. The primary vote in an MMP electoral system is the party vote. The Royal Commission “emphasised the vital role of political parties in modern democracies.” (See para 2.170) Strong and adequately-resourced parties are essential to the functioning of our system.
55. The Royal Commission recommended public funding for political parties for the reasons outlined at paras 2.45 and 2.46 of the Issues Paper. The Royal Commission recommended that there should be limited and modest public funding of political parties and independent candidates on a sliding scale based on voter support at an election, separate from Parliamentary Service funding for parliamentary parties (which cannot be used for electioneering purposes).
56. Most democratic political systems – over 80 and including the United States, Canada and Australia – provide for public funding of political parties. This is to reflect the position, as the Royal Commission states, that healthy political parties are essential to our democratic system.
57. The Electoral Act requires the registration of political parties in order to be able to identify and provide for proportional representation of voters’ choice, and imposes a range of obligations on the parties. The Labour Party believes that a base level of public funding support should be provided for additional reasons to those outlined by the Royal Commission, namely to support the compliance costs and duties required to manage and record donations, election expenses and member records.

## **Response to arguments against public funding**

58. The arguments against public funding listed in the Issues Paper (at para 2.53) are addressed as follows:

### ***Independence***

59. Parties represented in Parliament are significantly advantaged by the provision of parliamentary support funding to Members of Parliament, as opposed to parties who may represent voters' views and choices but are not currently heard in Parliament.
60. Both the registered party and parliamentary party contribute to the formation of policy on which the voters base their choice. The accountability provisions in the Electoral Act also devolve to the registered extra-parliamentary party. Public funding would contribute to the independence of the extra-parliamentary party by providing a balance and the avoidance of parliamentary capture.

### ***Reduce grass-roots involvement***

61. In fact, a healthy, adequately funded extra-parliamentary party is required in order to prevent its capture by the parliamentary party. Such capture is more likely in the present system.

### ***Funding decisions unfair to newer or smaller parties***

62. Again the absence of any public funding for smaller or newer parties provides the greatest obstacle to them being able to obtain representation for the views of their members in Parliament.
63. In our view, a base level of public funding should be available to parties who meet the statutory criteria of 500 members and contesting seats in Parliament. Currently the only available form of public funding for such parties is provided through the Broadcasting Act 1989, which on its own is clearly insufficient.

### ***Inappropriate use of taxpayers money***

64. Political parties provide an essential service to our process of democratic choice of governments and policies. As required by our law, parties choose the representatives who will exercise government. It is utterly appropriate that a modest level of public funding is made available to them to support these essential features and functions of our democratic representative government system.

## **Models for public funding**

65. In an MMP system, public funding should be made available to registered political parties, not to candidates. As the Royal Commission noted, candidates are selected and elected through their parties. Funding should be separate from and additional to the funding presently provided to parliamentary parties and Members of Parliament for parliamentary purposes.
66. What is being discussed here is providing public funding to registered parties to assist them to carry out their basic functions of developing policy, conducting

election campaigns, and complying with the authorising and reporting requirements of the law.

67. The sums of money involved in New Zealand are relatively small. The most any political party can spend in an election is \$1,000,000 plus \$20,000 for every electorate. These amounts apply to all parties, so provide for equity as between parties, and have not changed in absolute terms for some 15 years. Inflation over that period has been of the order of 25%. However, it should be noted that electorate candidates often do not reach their limit
68. There are a variety of funding models used in other jurisdictions, and aspects of them could be adopted here. Approaches overseas range from direct forms of funding linked to voter support on a full or partial basis, reimbursement of election expenses to a specified proportion, and matching funds – as well as more indirect forms of funding such as broadcasting allocations, annual grants to parties, and tax credits that may be provided additionally or as an alternative to direct forms of funding.
69. Funding approaches in New Zealand could include those outlined below.

### **Base funding**

70. Funding could be provided to all registered parties at a base level, say \$50,000, to allow for compliance with the requirements of the Electoral Act, with an additional allowance in accordance with parties' membership figures. This would meet the principle of equity as between parties that are inside and outside Parliament, and assist with the problems faced by all parties in ensuring compliance.

### **Policy development**

71. A second level of public funding could be made available for policy development. This could be at a variable level depending on member numbers as determined by subscriptions with matching funds for funds raised.

### **Electioneering**

72. A third level of public funding could be made available for electioneering, and be provided by way of post-election refund of campaign expenses. Again this would meet the principle of equity as between parties.

### **Post and pre election funding mechanism**

73. A simple funding mechanism is post election funding on the basis of the party vote. Advantages of this approach would include:
  - Clear public eligibility and criteria
  - Funding of a party is based on its public support
  - Parties would have flexibility in the use of the funding
  - It would cover all registered parties
  - It would be simple to administer
  - Payment could be made promptly to parties after the final election result is declared.
74. An alternative could be for payment to be made on the basis of voting support from the previous election. This approach is applied in Canada in determining

quarterly allowances to parties. However, such an approach disadvantages new or growing political parties and disproportionately advantages declining parties.

75. Either approach would be acceptable to the Labour Party. The amount paid per vote could be, for example, \$1.00. This funding would cover the policy development and electioneering aspects mentioned above and also the base level if that was not separately provided for.
76. On a \$1 per vote formula, the two largest polling parties at the last election, National and Labour, would have received combined funding of \$1,850,278. In total, parties currently represented in Parliament would have received \$2.2 million, as follows:

National Party	\$1,053,398
Labour Party	\$796,880
Green Party	\$157,613
ACT New Zealand	\$85,496
Māori Party	\$55,980
Jim Anderton's Progressive Party	\$21,241
United Future	\$20,497

77. This funding would be a small price to pay for transparency, and far less than the cost to the country of potential benefits to large or secret donors if governments felt beholden to them.

#### **Public funding only for registered parties**

78. **New Zealand should keep the present system of public funding for registered political parties only, with a prohibition on any ability for outside agents to access broadcast advertising in parallel campaigns. This should be linked to clear guidelines for what is appropriate as government advertising.**
79. The basis of the argument should be that it is political parties that are the contenders in an election campaign, and the responsible agents for voters' choice and policy outcomes. They should be given clear air to present themselves, and outside parties should not be able to influence voters' choice unduly in favour of one political party or another.

#### **Additional accountability**

80. **In return for public funding, additional accountability provisions should be required from political parties. As mentioned above, they should be required to provide annual audited accounts to the electoral authorities. Also their rules should be lodged and available for public inspection as should donations and expenses returns. Membership information should be provided at a standardised level based on membership income as set out in audited accounts.**

## **Broadcast (radio and television) advertising**

81. Broadcast advertising is the primary means that wealth-based electoral systems use to influence opinion.
82. **The limitation of broadcast advertising to allocated public funds is an excellent feature of New Zealand's political system and should be retained.** It:
  - keeps our elections low cost
  - reduces the demands on political parties to fund huge advertising programmes
  - keeps the excesses of negative advertising to a minimum
  - limits the potential for those with wealth to influence election outcomes as is seen in other countries.
83. The total amount available for the broadcast allocation was increased for the first time in 2007 for the effects of inflation since it was originally set in 1993.
84. The administration of the broadcasting grant could be improved. Issues include the:
  - statutory criteria
  - minimum amounts available
  - allocation of time.
85. **The criteria should be more objective. A direct formula translating current criteria (a) to (e) of section 75 of the Broadcasting Act 1989 into an allocation would be more appropriate, and should be recognised in the law.**
86. Over the course of several elections and allocations of the broadcasting account, the Electoral Commission has developed some weighting of the allocation criteria, and this could be a basis for a direct formula.
87. **The principle of equity as between parties is dealt with by allocating a minimum amount to each party as a starting point. It is arguable that within the limits set up by the overall amount this minimum amount is too small, but it should be continued and increased, with a base level of, say, \$20,000.**
88. **Otherwise the statutory criteria are useful, as they allow grants to be set according to electoral support. However, in our view the membership criterion should be transparent and compare apples with apples by being based on person equivalents measured in dollars.**

## **Discontinuing the time allocation**

89. The allocation of broadcasting time relates back to the days when broadcasting agencies were state-owned. The broadcasting advertising market is now very differentiated. **It may be preferable for the cost of the time allocation to be added to the broadcasting allocation and the time allocation discontinued and replaced with funding that can be used to buy time as best suits the parties.** This would allow for freer use by political parties of the resource for broadcast advertising.

90. There may need to be a requirement for the state-owned broadcasters – Television New Zealand and Radio New Zealand – to make time available for purchase from the state provided funding.
91. **Political parties should not be able to purchase broadcasting time with their own resources.** This will only serve to advantage parties with access to money. The principle of freedom of expression is sufficiently served by the equitable sharing of the broadcasting allowance and the fact that constituency candidates can purchase broadcast advertising within the statutory limits.
92. **The prohibition on other parties electioneering on the broadcasting media should continue.** It has served the test of time.

#### **Parliamentary service funding rules**

93. The parliamentary funding service rules are clear as to the definition of electioneering, and therefore clear as to what parliamentary funding may not be used for.
94. The rules as set out in the *Appropriation (Continuation of Interim Meaning of Funding for Parliamentary Purposes) Act 2007* and reintroduced in the *Parliamentary Service (Continuation of Interim Meaning of Funding for Parliamentary Purposes) Bill* currently before the House are very clear and provide the only workable set of rules for the future.

#### **Differentiating Parliamentary and Electoral Act spending**

95. However, there is a remaining area of confusion as to the interaction between the Parliamentary rules and the Electoral Act. It is not sufficiently clear as to whether funding approved for parliamentary purposes can be captured as election expenses under the Electoral Act.
96. **It must be made clear in the Electoral Act that no spending authorised for parliamentary purposes by Parliamentary Service rules can be counted as election expenses under the Electoral Act.**
97. A clear line line must be defined between all Parliamentary Service funding authorised during the regulated period and election expenses under the Electoral Act. Allowable Parliamentary Service activity must not be caught by the Electoral Act.
98. In particular, it must be made clear that communications that have been authorised by the Parliamentary Service as not being electioneering for the purposes of the relevant legislation governing Parliamentary Service funding cannot be counted as election activity/expenses under the Electoral Act.
99. **To reinforce the point, it should be made clear that the Secretary of the registered party is not responsible and cannot be made responsible for spending undertaken by Parliamentary Service staff.**

### ***Nature of the problem***

100. The current problem lies with the definition of “election activity” in the reconstituted Electoral Act, as it applies to parties in section 206.
101. The problem is that while advertising may not explicitly seek support for the casting of a party vote for a particular party or political parties, and therefore be legitimately able to use parliamentary funding, it may at the same time be deemed to “encourage or persuade or appear to encourage or persuade voters to vote for the party”.
102. This situation returns us exactly to the dilemma posed by the Crown Law opinion provided to the Auditor-General post the 2005 election. In effect, the opinion stated that any parliamentary advertising carried out over the triennium is part of a political contest as between parties.
103. The situation is not helped by section 221 requiring any positive advertisement that “appears to encourage or persuade” to be authorised by the Secretary of the political party. This requirement for authorisation by the Secretary is not specified in section 206, which additionally defines “election activity” as carried out “by the party or with the party’s authority”.
104. This lack of specification has at least two negative effects. In most people’s minds, “party” is broadly defined as including the registered party and the parliamentary party, and any Member of Parliament belonging to a party, so any advertising produced by any of the above may be deemed to be captured by section 206(a).
105. Secondly, it makes accountability impossible, as we are back to the “grey areas” and multiple issuing sources that caused many of the problems for all parties in 2005.
106. The Auditor-General interventions before the 2005 election were directed at the parliamentary party, and there was no consultation with the registered party. Also, he conflated the definitions and restrictions in the Electoral Act with the lack of clarity around parliamentary purpose in the empowering legislation and regulations for parliamentary expenditure.
107. The Electoral Finance Act did not resolve this dilemma either, which meant effectively that no guidance came from the Electoral Commission as to how to treat advertising for a parliamentary purpose.
108. The Electoral Act has evolved incrementally from a plurality to a proportional system and the parliamentary funding process has developed in recent years. The fundamental problem is that there has been insufficient articulation and integration of the various definitions so that clear boundaries can be established as to how legitimate parliamentary expenditure relates to the definition of campaign expenditure captured by the Electoral Act.
109. There is now a bright line test as to what is allowable parliamentary advertising. It does not include electioneering. Allowable parliamentary advertising should not be captured by the Electoral Act definitions.

### 3. CAMPAIGN SPENDING

#### Spending limits

110. New Zealand's low election spending limits are hugely beneficial. They mean that we are more subject to the free media, and less able to influence opinion with paid media, but that is immensely to our advantage as a society. These limits should be kept at all costs, particularly in support of the principles of equity and integrity.
111. As noted in the discussion documents, the limits on campaign spending by parties were introduced with the introduction of MMP, arguably for the same reason as MMP itself, in that it was a much fairer approach. Certainly the evidence would bear out that these limits have been beneficial. The Labour Party would have raised and spent approximately twice as much in 1987 as it did in 2008, but there has been no diminution of democracy in the interim.
112. The limits on campaign spending since the Electoral Act 1993, tighter with the limits on broadcast advertising, means we have arguably the fairest, most cost-effective and least corruptible electoral system in the world.
113. **The current limits for constituency candidates (\$20,000) and political parties (a maximum of \$2.4 million, if all electorates are contested) should be retained but be inflation adjusted (from the 2008 limits as a base) before the 2011 election.**
114. **The limits should be adjusted in line with inflation after each election (to appropriate round figures). A body independent of both Parliament and the executive should have responsibility for such reviews. The independent body should be limited to calculating the inflation adjustment, not relitigating the limits.**
115. A similar adjustment is now made to the broadcasting allocation.

#### Regulated period

116. The extension of the regulated period in the Electoral Finance Act to the beginning of the calendar year in which an election takes place added greatly to compliance requirements.
117. The main purpose of a regulated period is to limit the amount of money that parties can spend on election campaigning prior to an election. While the now restored three months restriction reduces compliance requirements from those required in the 2008 election, there are two difficulties with it that need to be addressed.
118. The first is the likelihood of the regulated three month campaign period operating retrospectively from the date of an election announcement, as pointed out in the Issues Paper (at paras 3.16 and 3.17). The second is of unregulated election spending occurring before the commencement of the assumed three month campaign period, thus undermining the very purpose of campaign spending limits.

119. The Electoral Finance Act had the effect of solving both of these problems, but at the cost of greater compliance and some would argue undue restrictions on freedom of expression. **The Labour Party favours a regulated period that reasonably balances these factors.**
120. The issue of the regulated period is vexed because the incumbent government in effect sets the date of an election, which can be perceived as providing its component parties with an unfair planning advantage over other parties.
121. And the regulated period being retrospective can have a profound practical effect on candidates. For example, it has been suggested that the 2002 National candidate in Wellington Central was unable to campaign effectively because early spending meant she was almost at the limit when the (unexpectedly early) election was called.

#### **Fixed date for regulated period**

122. A sufficiently early fixed date for the start of the regulated period would resolve the issue of retrospectivity and would allow parties and candidates to plan effectively. Historically most New Zealand elections have been held in November. The last time an election was held before 1 July was 1884.
123. However, of the last nine elections, only three have been held in November, with two in October, one in each of September and August, and two in July. The elections held in July have been the 1984 election (14 July) and the 2002 election (27 July). For both the 1984 and 2002 elections, the three month regulated period began retrospectively, on 14 April and 15 May respectively.
124. **Considering the pattern of the last 25 years, a reasonable fixed date for the start of the regulated period would be 1 May of election year.**
125. Provision would need to be made for where a particularly early election was called. We suggest that in the case of an election date being announced earlier than 30 April, the regulated period begin the day after the announcement.
126. **All election advertising outside the regulated period should require to be identified by a promoter statement.**

## 4. ADVERTISING

### New definition of advertising needed

127. **Advertising definitely needs a clearer and more modern definition.**
128. The present definition of election activity (section 205 of the Electoral Act ) has grown like topsy and is utterly confusing. It links “advertising of any kind” to distribution of paper forms of advertising, to “encourages or persuades or appears to encourage or persuade”.
129. The atomistic redefinition in the Electoral Finance Act (section 5) of “any form of words or graphics, or both” proved problematic. It was taken to an absurd extent and used as an invitation to nit-pick, and was a large part of the reason why the Act was perceived by many as inappropriately limiting freedom of expression.

### Features of new definition

130. **A new election advertising definition for political parties should properly catch the advertising spending traditionally covered under previous regimes. However, it should take care not to include as election expenses spending authorised for parliamentary purposes by Parliamentary Service rules. (See paras 96 to 99 above)**
131. The new definition should:
- include negative and positive advertising, to make it clear that it refers to promoting a vote for or against the election of a particular party (or parties) or candidate(s)
  - include modern forms of advertising, such as banners on web sites, promotional videos etc
  - provide that the party authority is provided by the party secretary, so that there is single source of accountability for party electioneering advertising.
132. For third parties, “issue based advertising” should not be caught by the definition providing they do not promote voting for or against the election of a particular party (or parties) or candidate(s). If the third party goes this far, it should need political party approval, and the cost would be included in the relevant party’s own spending cap and return.
133. The Canadian definition of “election advertising” is helpful as it is close to the definition of electioneering excluded for parliamentary advertising. It also encompasses modern electoral practice. Section 319 of the Canada Elections Act 2000 says:
- "election advertising" means the transmission to the public by any means during an election period of an advertising message that promotes or opposes a registered party or the election of a candidate, including one that takes a position on an issue with which a registered party or candidate is associated. For greater certainty, it does not include

- (a) the transmission to the public of an editorial, a debate, a speech, an interview, a column, a letter, a commentary or news;
- (b) the distribution of a book, or the promotion of the sale of a book, for no less than its commercial value, if the book was planned to be made available to the public regardless of whether there was to be an election;
- (c) the transmission of a document directly by a person or a group to their members, employees or shareholders, as the case may be; or
- (d) the transmission by an individual, on a non-commercial basis on what is commonly known as the Internet, of his or her personal political views.

### **Modern forms of advertising**

- 134. When the Electoral Act was written, parliamentary advertising was mainly on paper or in broadcast media.
- 135. In the last election campaign, parties used robotic telephoning, text messaging, persuasive polling, and internet advertising, websites linked to advertisements and advertisements posted to You-tube and Facebook.
- 136. All of these should be captured in the definition of election advertising and should be accountable and attributable.
- 137. **It is also important that the electoral agencies adopt a more proactive approach to assisting candidates and parties to be aware of the inclusions and exceptions (including the exceptions for polling).**

### **Public disclosure of names and addresses**

- 138. **The true name and address of those who promote election advertising should be disclosed. Truth is the issue, and the ability to find the promoter. Home addresses should not be necessary.**
- 139. So for registered parties the true address should not have to be the residential address of a party secretary or official or candidate. These individuals are acting as agents for the party. Publishing a home address is an unnecessary invasion of privacy/compromise of security not only for the named individual but also for others who also live at that address.
- 140. **The registered address of the registered party should be acceptable, including for individual candidates running as official candidates of that party.**
- 141. Use of PO boxes by non-registered parties should not be accepted. However, if they have legitimate privacy/security concerns, they could perhaps publish a non-home address provided that the Electoral Commission was first satisfied that it was in fact a true address. The same could apply to parallel campaigners.
- 142. **Sanctions for providing a false address should be increased.**

## 5. PARALLEL CAMPAIGNING

### Guiding principles

143. As noted at the outset of this submission, the guiding principle of *freedom of expression* requires that electoral law should not place undue restrictions on the ability of citizens to express their views freely.
144. However, in the context of a democratic election it is important that the principle of freedom of expression is not used by non media interests with a lot of money to override the principle of equity.
145. It was also noted that the most important guiding principles are equity, freedom of expression, and transparency, which should be balanced in every aspect of the structure and implementation of the law relating to elections. The need to balance equity and freedom of expression is relevant also to parallel campaigning.
146. As to equity between political parties, it is important to ensure that they, as the primary participants at an election, cannot through the use of parallel campaigns evade rules that would otherwise limit their spending.
147. Freedom of expression does not mean an unlimited right to spend in order to buy outcomes. That is why there are spending constraints on political parties, and why logically there must be some accountability for third party campaigning, i.e. parallel campaigning.
148. In 2005 a third party wished to spend up to \$1,000,000 in favour of the National Party, half as much again as the National Party expenditure limit. As is now clear this was a covert parallel campaign, and was not an issue affecting the right of freedom of expression.
149. For the longstanding limits on political party spending to be meaningful, third party activities that go beyond issue based campaigning to promoting a vote for a particular party or candidate need to be covered by the definition of election activity.
150. Where the third party campaign is issue based and does not seek to promote a vote for or against a particular party or candidate, we do not propose any spending cap but do propose transparency above, say, \$100,000 of spending.

### Nature of regulation

151. **Consequently, parallel campaigners should be regulated if they propose to spend over a specified threshold, say \$100,000. They should be required to register with the Electoral Commission, and a list of all such parallel campaigners should be made public, as should their donors.**
152. This would ensure that those who wish to participate significantly in determining the outcome of an election are known to all the participants and the public, in order that the outcome can be the result of a fully informed choice of voters.

153. Parallel campaigning registration schemes exist overseas, for example in Australia and the United States, and (with expenditure also capped) in Canada and the United Kingdom.
154. Registration is justified by the experience of the 2005 election, where the existence of parallel campaigns in favour of the National Party, and designed to avoid the spending limits in the Electoral Act, was subsequently revealed. The Electoral Finance Act controls ensured a particularly clean campaign in 2008.
155. **While there should not be a limit on how much parallel campaigners can spend over the \$100,000 threshold, they should be required to disclose their name and address on advertising material, and to comply with the same donations limits and disclosure regime as registered political parties.**

## **6. MONITORING AND COMPLIANCE**

### **Public information**

156. **Both constituency candidate and registered political party returns for the regulated period should be required to be audited, before being provided to the Electoral Commission for publication.**
157. **Registered political parties should be required to provide audited and itemised annual accounts for Electoral Commission for publication, especially if additional state funding is made available to them.**
158. **The financial agent provisions from Electoral Finance Act should be reinstated – accountability is only possible if responsibility is clearly defined.**

### **Oversight agency**

159. **Consideration should be given to reforming and amalgamating the electoral oversight agencies, and giving the oversight agency power to obtain further information about parties' accounts. This is especially the case if additional state funding is made available to registered parties.**
160. **The role of the Police should be retained for prosecution referrals.**

### **Reporting dates**

161. **Reporting dates for election expenses need to be aligned as between constituency candidates and political parties to enable accurate identification of shared advertising.**

# ELECTORAL FINANCE REFORM ISSUES PAPER SUBMISSION OF NEW ZEALAND LABOUR PARTY

## PART B: Response to Ministry of Justice submission form

### Chapter 1 – Guiding Principles

#### Question 1.1

Do you agree with the six principles for guiding the development of the new legislation?

*Yes, in general.*

Are there other principles you think are also important?

*Yes – integrity, viability, clarity and cost-effectiveness*

*Definitions of “integrity” and “viability” are drawn from the Australian Government Electoral Reform Green Paper: Donations, Funding and Expenditure of December 2008, and the definition of “cost-effectiveness” is informed by it. (See para 2.1 of the Green Paper, which lists 10 principles in all.)*

**Integrity** – *establishing conditions that minimise the risk or perception of undue influence or corruption in the system.*

**Viability** – *ensuring that political parties and candidates have sufficient support to enable them to provide the electorate with a suitable choice of representatives.*

**Clarity** – *ensuring that the rules surrounding the conduct and financing of elections are easy to administer and comply with. This has not always been the case in the past.*

**Cost-effectiveness** – *ensuring that the public costs involved in democratic processes, including election and public funding costs, are not unreasonable, and that the costs of administration and compliance are not excessive. (compare Australian Green Paper definitions of “fiscal responsibility” and “efficiency and effectiveness”.*

#### Question 1.2

Are any principles more important than others?

*Yes – The most important principles are equity, freedom of expression, and transparency. Transparency is essential to achieving the correct balance between the principles of equity and freedom of speech.*

*These principles should be reflected in every aspect of the structure and implementation of the law relating to elections*

*Legitimacy is achieved when all principles are properly applied.*

**Cont.**

Do any of the principles conflict?

*A continual balance is needed between equity and freedom of expression.*

If so, how do you think a balance can be achieved?

*Identify the reasons as to why some principles need qualification.*

**Question 1.3**

Should a statement of these principles be included in the new legislation?

*Yes. The purpose clause of the Electoral Finance Act 2007 (Electoral Finance Act) provides a model for doing so.*

**Additional comments**

*See Part A, Introduction and paras 1 to 29.*

**Chapter 2 – Constituency candidate and political party funding**

**Private funding**

**Question 2.1**

Should direct anonymous donations be permitted to constituency candidates and/or to political parties?

*Yes.*

If so, is the current threshold appropriate?

*Yes. And it is consistent with the threshold being introduced in Australia.*

**Question 2.2**

Should there continue to be a disclosure requirement for indirect anonymous donations (for example, through intermediaries such as trusts) to constituency candidates and/or to political parties?

*Yes.*

If so, is the current threshold (\$1000) appropriate?

*Yes. And it is consistent with threshold being introduced in Australia.*

**Question 2.3**

Should the protected disclosure scheme for donations to political parties be retained?  
Yes.

**Question 2.4**

Should the name and address of donors who donate above a certain threshold be disclosed (that is, made publicly available)?  
Yes.

**Question 2.5**

Should the disclosure thresholds be left as they are?  
No.

Raised or lowered?

*Lowered.*

If so, to what level?

*\$1000.*

*If a higher level were used (which we oppose), related party definitions should be used to aggregate donations for related parties.*

**Question 2.6**

Should the same disclosure threshold apply to donations made to constituency candidates, and to donations to political parties (including donations made through intermediaries, such as trusts)?

Yes.

**Question 2.7**

Should the disclosure threshold for political parties (currently set at \$10,000) be the same as the limit on anonymous donations (currently set at \$1,000) to reflect the equivalent regime that exists for candidates?

Yes.

*Also, in election year, donations received by a party after its last annual return to the Electoral Commission should be publicly declared through the Commission on a regular basis after they are received, and up to and during the regulated election period. This would maximise transparency for voters.*

<b>Question 2.8</b>
Should there be a limit on donations from a single source? Yes.
If so, what should it be? <i>For political parties, a maximum by a person over a three year period of \$100,000 (person to include related parties like trusts and close family companies as defined in companies or income tax legislation).</i>
Should it be inflation adjusted? Yes – every three years.
<b>Question 2.9</b>
Should there be a prohibition on donations from certain sources (for example, overseas individuals, or corporate, or unincorporated entities)? <i>Yes – overseas donations should be banned completely (except for New Zealand citizens, residents or voters for the time being overseas). Otherwise, use transparency and disclosure and limit donations from a single source (see 2.3 to 2.8 above).</i>
<b>Question 2.10</b>
Are the current limits on overseas donations appropriate? <i>No – overseas donations should be banned completely (except for New Zealand citizens, residents or voters for the time being overseas).</i>
<b>Question 2.11</b>
Should any other sources of donations be banned? <i>It seems likely, based on overseas experience, that capping private donations or lowering disclosure limits will lead to avoidance attempts. The electoral authorities would need to be given adequate powers to prevent/ban/punish such avoidance/collusion.</i>
If so, which ones? <i>As above.</i>
<b>Question 2.12</b>
Should legal entities (for example, companies, trade unions or special interest groups) be treated differently from individuals?

**Cont.**

*No – but related party donations should be treated as one donation if the transparency rules apply from a threshold higher than \$1000 as proposed at 2.5. Otherwise no – they should receive identical treatment.*

**Public funding**

**Question 2.13**

Should constituency candidates and political parties be solely reliant on private funding or should they receive additional public funding?

*Public funding should be provided to parties, who will determine where to spend it.*

**Question 2.14**

If the public funding system in New Zealand is changed or increased, how do we make constituency candidates and political parties accountable for how they spend public money?

*Reinstate financial agent provisions from Electoral Finance Act – accountability is only possible if responsibility is clearly defined.*

*Both constituency candidate and political party returns should be required to be audited.*

*Political parties should be required to provide audited and itemised annual accounts to Electoral Commission for publication.*

**Question 2.15**

If there are to be changes to the public funding of political parties, should public funding be restricted to parties that are represented in Parliament, or alternatively, should it continue to be available more broadly to a wider group of political parties?

*Should be available to all registered political parties. They are all important to the functioning of MMP. Principles of equity and viability.*

**Question 2.16**

Do you have any suggestions to make about the appropriate level of funding?

*Set base amount for legal compliance for all registered parties, say \$50,000.*

*Base level of broadcast funding for all registered parties, say \$20,000, with the balance divided according to normal practice.*

*Funding for either votes received or refund of amount spent or formula that accounts for both to allow for equity between parties and reflect level of support in electorate.*

### Question 2.17

Are the rules sufficiently clear that Parliamentary Service funding cannot be used for election expenses?

Yes.

*The rules as set out in the Appropriation (Continuation of Interim Meaning of Funding for Parliamentary Purposes) Act 2007 and reintroduced in the Parliamentary Service (Continuation of Interim Meaning of Funding for Parliamentary Purposes) Bill currently before the House are very clear and provide the only workable set of rules for the future.*

*However, it must be made clear in the Electoral Act that no funding approved for parliamentary purposes by the Parliamentary Service can be counted as election expenses under the Electoral Act.*

If not, what do you think would make the rules clearer?

*The remaining area of confusion is the interaction between the Parliamentary rules and the Electoral Act. A clear line must be defined between all Parliamentary Service funding authorised during the regulated period and election expenses under the Electoral Act. Allowable Parliamentary Service activity must not be caught by the Electoral Act.*

*In particular, it must be made clear in that communications that have been authorised by the Parliamentary Service as not being electioneering for the purposes of the relevant legislation governing Parliamentary Service funding cannot be counted as election activity/expenses under the Electoral Act.*

*To reinforce the point, it should be made clear that the Secretary of the registered party is not responsible and cannot be made responsible for spending undertaken by Parliamentary Service staff.*

### Question 2.18

If there is public funding, do you have any suggestions about the kind of model that might be suitable to adopt?

*Further to 2.16, a simple funding mechanism is post election funding on the basis of the party vote. Advantages of this approach would include:*

- Clear public eligibility and criteria*
- Funding of a party is based on its public support*
- Parties would have flexibility in the use of the funding*
- It would cover all registered parties*
- It would be simple to administer*
- Payment could be made promptly to parties after the final election result is declared.*

*An alternative could be for payment to be made on the basis of voting support from the previous election. This approach is applied in Canada in determining quarterly*

**Cont**

*allowances to parties. However, such an approach disadvantages new or growing political parties and disproportionately advantages declining parties.*

*Either approach would be acceptable to the Labour Party.*

*The amount paid per vote could be, for example, \$1.00.*

*This funding would cover the policy development and electioneering aspects mentioned above and also the base level if that was not separately provided for.*

### **Broadcast (radio and television) advertising**

#### **Question 2.19**

Should there continue to be an allocation of public funding to allow political parties to advertise on radio and television?

Yes.

Should it decrease?

No.

Increase?

*Yes – to allow for base level for all registered parties.*

*Should be inflation adjusted every three years.*

#### **Question 2.20**

Should there be a change in criteria if the current allocation process is retained?

*Yes – adopt the principle of a base level, say \$20,000, for all registered parties.*

*Criteria should be more objective. A direct formula translating current criteria (a) to (e) of section 75 of the Broadcasting Act 1989 into an allocation would be more appropriate, and should be recognised in law.*

#### **Question 2.21**

If the allocation of public funding for radio and television is abolished, should there be a proportionate increase in political parties' spending limits?

*Allocation should not be abolished.*

**Question 2.22**

Should the broadcast allocation be restricted to buying radio and television advertising or should political parties be able to use it for other purposes?

*Restricted to radio and television advertising for parties as at present. Parties can use their campaign funds for other forms of advertising.*

**Question 2.23**

If political parties are given greater freedom to choose how to spend the broadcast allocation, should criteria for 'approved' spending be developed?

*The money would have to be spent on broadcasting.*

If so, what spending do you consider should be approved?

*N/A.*

**Question 2.24**

Should political parties who receive a share of the broadcasting allocation of time and money be able to spend additional money on broadcasting advertising within their expenditure limits?

*No – the status quo has worked well.*

**Question 2.25**

Should political parties that do not receive a share of the broadcasting allocation of time and money be able to spend their own money on broadcasting advertising?

*No.*

*All registered political parties should receive a set base allocation for radio and television broadcasting. This has been the principle used by the Electoral Commission in every allocation since 1993 – the problem is that as the total amount available was not increased in absolute terms till 2008 and only then to adjust for inflation the Commission has been increasingly constrained as to how to apply this principle and achieve equity for the parties in light of the statutory criteria.*

**Question 2.26**

If political parties are allowed to spend their own money on broadcasting advertising, should restrictions apply?

*They shouldn't be allowed to spend their own money. But if they are, then restrictions should apply – spending should be limited by the total statutory spending cap.*

**Cont.**

If so, what restrictions?

*As above.*

**Question 2.27**

Should parallel campaigners be able to campaign on radio and television?

*No.*

**Question 2.28**

Should restrictions on radio and television advertising by parallel campaigners be removed if there is a limit on spending?

*Perhaps – depends on the limit.*

**Question 2.29**

Should Television New Zealand and Radio New Zealand National be required to provide free air time for political party broadcasts?

*Yes, unless the current time allocation process is discontinued and replaced with capped funding that can be used to buy time as best suits the parties.*

*The value of the time provided by TVNZ would then be added to broadcasting allocation for purchase of advertising.*

*There might need to be a requirement for TVNZ and RNZ to make time available for purchase from the state provided funding.*

**Question 2.30**

Should a minimum amount of time for free campaign advertising by political parties be mandated in legislation for the state broadcasters?

*Maybe. The broadcasting advertising market is now very differentiated, so perhaps the current time allocation process should be discontinued and replaced with funding that can be used to buy time as best suits the parties. This would require a different rule for Radio New Zealand.*

**Connection between private funding and public funding**

**Question 2.31**

If there is an increase or decrease in public funding, should there be a change to the current rules on private funding?

*Limits on private funding from a single donor.*

**Question 2.32**

Should the change to the donations regime in the Electoral Finance Act 2007 have resulted in changes to the public funding regime?

*Yes – provision of public funds for political parties is the corollary of tightened controls on private funding of parties – with the greater disclosure and compliance requirements involved.*

*Transparency of donations still needs to be improved by lowering disclosure thresholds.*

**Question 2.33**

If there are more restrictions placed on private funding, should there be a change to the current rules on public funding?

*Yes – to increase public funding.*

**Additional comments**

*See Part A, paras 30 to 109.*

**Chapter 3 – Campaign spending****Spending limits****Question 3.1**

Should there be limits on campaign spending for constituency candidates and political parties?

*Yes – principles of equity and integrity.*

**Question 3.2**

If there are campaign spending limits, should the current limit for constituency candidates (\$20,000) and political parties (a maximum of \$2.4 million, if all electorates are contested) be retained or adjusted?

*Current limits should be retained but be inflation adjusted before the 2011 election.*

<b>Question 3.3</b>
Should campaign spending limits be adjusted regularly in line with inflation? <i>Yes, after every election (to appropriate round figures).</i>
If not should spending limits be regularly reviewed? <i>N/A</i>
Who should have responsibility for the review (for example, a parliamentary committee or an independent body)?  <i>Independent body, limited to calculating the inflation adjustment, not relitigating the limits.</i>
<b>Regulated campaign period – commencement and length</b>
<b>Question 3.4</b>
When should the regulated campaign spending period start?  <i>The issue of the regulated period is vexed because the incumbent government in effect sets the date of an election, which can be perceived as providing its component parties with an unfair planning advantage over other parties. And having a regulated period such as three months before polling day can have retrospective effect.</i>  <i>A sufficiently early fixed date for the start of the regulated period would resolve the issue of retrospectivity and would allow parties and candidates to plan effectively.</i>  <i>Of the last nine elections (from 1984), three have been held in November, two in October, one in each of September and August, and two in July. The elections held in July have been the 1984 election (14 July) and the 2002 election (27 July). For both the 1984 and 2002 elections, the three month regulated period began retrospectively, on 14 April and 15 May respectively.</i>  <i>Considering the pattern of the last 25 years, a reasonable fixed date for the start of the regulated period would be 1 May of election year.</i>  <i>Provision would need to be made for where a particularly early election was called. We suggest that in the case of an election date being announced earlier than 30 April, the regulated period begin the day after the announcement.</i>

<b>Spending outside the regulated campaign period</b>
<b>Question 3.5</b>
<p>How long should the regulated campaign spending period be?</p> <p><i>Between about 3 &amp; 6 months. It should not come into effect retrospectively.</i></p> <p><i>Any election advertising outside the regulated period should be subject to requirements for publication of promoter name and true address.</i></p>
<b>Question 3.6</b>
<p>If the length of the regulated campaign spending period is decreased or increased, should there be a corresponding decrease or increase in overall spending limits?</p> <p><i>No.</i></p>
<b>Additional comments</b>
<i>See Part A, paras 110 to 126.</i>

<b>Chapter 4 - Advertising</b>
<b>Election advertising - scope</b>
<b>Question 4.1</b>
<p>Should New Zealand retain its current approach to the regulation of election advertising, or should a revised definition of 'advertising' be adopted?</p> <p><i>Revise definition – with it being made clear that that authorised parliamentary advertising cannot be counted as election advertising (see 2.17 above).</i></p>
<b>Question 4.2</b>
<p>How should “election advertisement” be defined?</p> <p><i>A new election advertising definition for political parties should properly catch the advertising spending traditionally covered under previous regimes. However, it should take care not to include proper parliamentary expenditure as defined under the bright line test that regulates parliamentary funding. The new definition should:</i></p> <ul style="list-style-type: none"> <li><i>• include negative and positive advertising, to make it clear that it refers to promoting a vote for or against the election of a particular party (or parties) or candidate(s)</i></li> <li><i>• include modern forms of advertising, such as banners on web sites, promotional videos etc</i></li> <li><i>• provide that the party authority is provided by the party secretary, so that there is single source of accountability for party electioneering advertising.</i></li> </ul> <p><i>For third parties, “issue based advertising” should not be caught by the definition providing they do not promote voting for or against the election of a particular party (or</i></p>

<p><b>Cont.</b></p> <p><i>parties) or candidate(s). If the third party goes this far, it should need political party approval, and the cost would be included in the relevant party's own spending cap and return.</i></p>
<p>Should it be broad or narrow?</p> <p><i>As above – i.e. broad but specified as advertising.</i></p>
<p>Should there be exceptions and if so, what should they be?</p> <p><i>Advertising for parliamentary purposes as defined.</i></p>
<p><b>Question 4.3</b></p>
<p>Should rules on publication be media neutral, so that new communication technologies that are developed fall within them?</p> <p>Yes.</p>
<p><b>Public disclosure of names and addresses on advertising</b></p>
<p><b>Question 4.4</b></p>
<p>Should there be a requirement for persons who publish an election advertisement to include their name and contact address?</p> <p><i>Yes, but the issue is “true” name and address, and the ability to find the promoter. Home addresses should not be necessary.</i></p> <p><i>So for registered parties the true address should not have to be the residential address of a party secretary or official or candidate. These individuals are acting as agents for the party. Publishing a home address is an unnecessary invasion of privacy/compromise of security not only for the named individual but also for others who live at that address.</i></p> <p><i>The registered address of the registered party should be acceptable (including for individual candidates running as official candidates of that party).</i></p> <p><i>Use of PO boxes by non-registered parties should not be accepted. However, if they have legitimate privacy/security concerns, they could perhaps publish a non-home address provided that the Electoral Commission was first satisfied that it was in fact a true address. The same could apply to parallel campaigners.</i></p> <p><i>Sanctions for providing a false address should be increased.</i></p>

<b>Question 4.5</b>
If so, are the existing rules adequate, or should they be changed in some way? See 4.4.
Do you have any suggestions for change? See 4.4
<b>Additional comments</b>
See Part A, paras 127 to 142.

<b>Chapter 5 – Parallel Campaigning</b>
<b>Regulation of parallel campaigners</b>
<b>Question 5.1</b>
Should there be any regulation of individuals and groups who participate in election campaigns but are not standing for election? <i>Yes – political parties form the government. The guiding principles of equity, transparency and integrity requires that those who wish to significantly influence election outcomes should be regulated.</i>
<b>Question 5.2</b>
Should negative or attack advertising by parallel campaigners be regulated? <i>Yes, if above the suggested \$100,000 threshold.</i>
<b>Question 5.3</b>
Should there be restrictions placed on the people or groups who are allowed to engage in election campaigning? <i>Third parties/parallel campaigners should be required to register with the Electoral Commission if they propose to spend over a specified threshold, say \$100,000. A list of all such parallel campaigners should be made public.</i>  <i>This would ensure that those who wish to participate significantly in determining the outcome of an election are known to all the participants and the public, in order that the outcome can be the result of a fully informed choice of voters.</i>

<p><b>Cont.</b></p> <p><i>While there should not be a limit on how much parallel campaigners can spend over the threshold, they should be required to disclose their name and true address on advertising material, and to comply with the same donations limits and disclosure regime as registered political parties.</i></p>
<p><b>Question 5.4</b></p> <p>Should there be tighter rules around government department publications in the period before an election?</p> <p><i>There is a need for tight rules to prevent inappropriate advertising by government departments before an election. Current state services and Cabinet Manual guidelines appear to work satisfactorily without unduly constraining legitimate government department activities.</i></p>
<p><b>Question 5.5</b></p> <p>Should there be any restrictions on election campaigning by persons or groups closely associated with a constituency candidate or political party?</p> <p><i>Same as 5.3.</i></p>
<p><b>Identification of parallel campaigners</b></p>
<p><b>Question 5.6</b></p> <p>If parallel campaigners should be regulated, is disclosure of their name and address on advertising that they promote sufficient?</p> <p><i>No – see 5.3.</i></p>
<p><b>Question 5.7</b></p> <p>Alternatively, should individuals who spend over a certain amount be required to register on a public list?</p> <p><i>Yes.</i></p>
<p><b>Question 5.8</b></p> <p>If there is to be a public list of parallel campaigners, who should be required to register?</p> <p><i>Those who wish to spend over a certain amount.</i></p> <p>Should there be a monetary threshold for registration?</p> <p><i>Yes.</i></p>

<p><b>Cont.</b></p> <p>If so, how much should the threshold be?</p> <p><i>\$100,000.</i></p>
<p><b>Spending by parallel campaigners</b></p>
<p><b>Question 5.9</b></p>
<p>Should spending by parallel campaigners be limited?</p> <p><i>No. Issue campaigning by third parties ought to be unlimited, but if the parallel campaigner is spending above a \$100,000 threshold they must be transparent about their donors, who should be publicly disclosed as for a political party.</i></p>
<p><b>Question 5.10</b></p>
<p>If a spending limit is imposed, what do you think the limit should be?</p> <p><i>N/A.</i></p>
<p><b>Additional comments</b></p>
<p><i>See Part A, paras 143 to 155.</i></p>

<p><b>Chapter 6 – Monitoring and Compliance</b></p>
<p><b>Question 6.1</b></p>
<p>Based on your answers to questions in previous chapters, do you have any views on how constituency candidates' and political parties' compliance with the electoral finance rules should be monitored and enforced?</p> <p><b>Public information</b></p> <p><i>Both constituency candidate and registered political party returns for the regulated period should be required to be audited, before being provided to the Electoral Commission for publication.</i></p> <p><i>Registered political parties should be required to provide audited and itemised annual accounts for Electoral Commission for publication, especially if additional state funding is made available to them.</i></p> <p><i>The financial agent provisions from Electoral Finance Act should be reinstated – accountability is only possible if responsibility is clearly defined.</i></p>

**Cont.**

***Oversight agency***

*Consideration should be given to reforming and amalgamating the electoral oversight agencies, and giving the oversight agency power to obtain further information about parties' accounts. This is especially the case if additional state funding is made*

**Cont.**

*available to registered parties.*

*The role of the Police should be retained for prosecution referrals.*

***Reporting dates***

*Reporting dates for election expenses need to be aligned as between constituency candidates and political parties to enable accurate identification of shared advertising.*

**Additional comments**

*See also paras 156 to 161.*