

# Background Paper 2: Analysis of the Electoral Finance Bill – First Reading

Select Committee presentation prepared by Sustainable Future, 17 September 2007

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Electoral Finance Bill – First Reading [Hansard: Volume:640;Page:10775] <a href="http://www.parliament.nz/en-NZ/PB/Debates/Debates/b/d/2/48HansD_20070726_00000789-Electoral-Finance-Bill-First-Reading.htm">http://www.parliament.nz/en-NZ/PB/Debates/Debates/b/d/2/48HansD_20070726_00000789-Electoral-Finance-Bill-First-Reading.htm</a>	Comments and Concerns
<p><b>Hon MARK BURTON:</b> This bill deals with one <u>of the most important aspects of our democratic system</u>, the fairness of elections. At the heart of the bill is the principle that the public should have the <b>highest confidence (1)</b> that our electoral system is honest and open, and that money spent in the run-up to an election is clearly accounted for. Alongside this, a second principle promoted by this bill is that there should be <b>fair and equitable participation (2)</b> in electoral campaigning. Wealthy interest groups should not have a disproportionate influence on the outcome of an election simply because they have access to greater financial resources than the general public.</p> <p>The 2005 general election brought concerns about campaign financing into sharp focus. This led to debate across the public and political spectrum about the nature of the electoral finance regime. To this end, the bill is directed at reforming the rules governing electoral finances. It also responds to recommendations from successive Justice and Electoral Committees, including the committee I consulted with that reported last year. Finally, the legislation also addresses <b>some of the unimplemented recommendations of the 1986 Royal Commission on the Electoral System (3)</b>.</p> <p>The bill is a detailed one, and I know that members will be very interested in the fine detail of its provisions. The key features of the bill are as follows. Firstly, it makes a raft of changes to the accounting, audit, and disclosure framework that applies to candidates and political parties in the run-up to a general election. Under the bill, candidates and parties will have to provide much more detailed information about their election expenditure. In tandem with this, the bill will require all expenditure and donations to go through a financial agent who is appointed expressly for this purpose and who also will be responsible for filing a candidate's or party's expense and donation returns on their behalf. These measures will create an environment of accountability and transparency in the run-up to an election, thereby making the campaign finances of candidates and parties a matter of clear public</p>	<p>(1 and 2) We, as in the public, have not had access to the review by the Ministry of Justice, so we have not had fair and equitable participation in this Bill. Hence, how can the public have confidence in the electoral system proposed in the Bill?</p> <p>(3) What are these 'unimplemented recommendations'? These are not listed. In addition after reading the Royal Commission, I cannot find any links to the regime contained in the Bill. In fact it appears quite the contrary – see my written submission.</p>

record. **The proposals are also in line with other comparative regimes such as the United Kingdom and Canada (4)**, which place strict limitations on who can authorise spending and pay for campaign expenditure.

The bill contains a much stricter regime for third parties **that choose to enter the campaign arena (5)**. During the 2005 election it became evident that third parties could mount campaigns that had the potential to undermine candidate and party expenditure limits. It is simply unacceptable to the general public that a third party should be able to, in effect, **buy an election result (6)**. The key features of the new third-party regime are as follows. Firstly, every third party will be required to notify the Chief Electoral Officer of its involvement in electoral activities when spending over a certain threshold occurs or is anticipated. The Chief Electoral Officer will keep a list of all third parties so that everyone is aware of their identity during the lead-up to an election. Alongside this, such third parties will be required to account for their spending in a detailed manner, and provide comprehensive information about any donations they receive that are to be spent on campaigning. Third parties will also be subject to strict election expenditure limits under the new regime. A third party will be limited to spending \$60,000 nationally, or \$2,000 in an electorate contest. **This will help to guard against parallel election campaigns (7)**.

The Government, in introducing these third-party proposals, **is seeking to encourage full and open expression from a diverse range of interests in the run-up to a general election (8)**. Some members have already suggested that **the third-party reforms unjustifiably restrict freedom of expression. They do not, and the Crown Law Office advice on this matter is clear in that regard (9)**. The aim of the reforms is to ensure that wealthy interests do not have a disproportionate voice in our electoral system; nor, for that matter, should they be able to overwhelm the speech of political parties and candidates. To this end, the bill sets a fair limit on the amount that third parties can spend and introduces much greater transparency around their identity and financial expenditure.

Another important new measure in the bill is that the regulated period for election expenditure will significantly

(4) This is not correct. The Canadians only look at advertising expenditure. How can we know what is "in line" or not if we do not understand the analysis and reasoning underlying this Bill? Also see: OAS (2005). The Delicate Balance between Political Equity and Freedom of Expression -Political Party and Campaign Financing in Canada and the United States Retrieved 7 September 2007 from [http://www.idea.int/publications/pp\\_can\\_usa/upload/Freedom\\_Full1.pdf](http://www.idea.int/publications/pp_can_usa/upload/Freedom_Full1.pdf)

(5) Where is the third parties' right to respond? How do the public define a campaign arena?

(6) Does this statement imply votes can be bought or is it more correct to say that those that can market themselves and their policies better often get more traction?

(7) What evidence supports that this is not happening? (We have one of the highest voting public in the world).

(8) It is a significant concern that an initiative that is meant to be seeking to encourage full and open expression from the public, has not sought such an approach in developing the third-party rules.

(9) The Crown Law Office is not clear in this regard, as the excerpt below indicates:

2. *The Bill raises issues in respect of a number of rights affirmed by the Bill of Rights Act: 2.1 The various constraints on electoral advertising and related activity limit the right to freedom of expression affirmed by s 14;*
3. *Some of the freedom of expression issues,*

increase. The bill proposes that where a general election is held in the final year of the parliamentary term, candidates, parties, and third parties will all have to account for their expenditure from 1 January. This is a significantly longer period than the 3-month rule that currently applies, and it should provide a much more accurate picture of campaign expenditure. This is in line, again, with other comparable jurisdictions. For example, the period is less than that of the United Kingdom, which provides for a regulated period of a full calendar year before polling day. For early elections – that is, any general election that is held in the first 2 years of the parliamentary term – there will be a fixed 3-month regulated period for candidates and parties. For third parties, the regulated period will run from the date when the Prime Minister announces the election.

The bill also seeks to clarify issues that emerged from the *Peters v Clarkson* election petition about the interpretation of the current law. Amongst other things, that case raised questions about the allocation of election expenses between a candidate and a party where an advertisement says: “Vote for me, vote for my party”. These issues are clarified so that the clearly defined rules are in place for the next election.

The bill also strengthens the electoral penalty regime. The penalties for the most serious electoral offences – corrupt and illegal practices – will be significantly increased. Alongside this, changes are proposed to the time limits for prosecution, which will make New Zealand’s system, again, comparable to that in jurisdictions such as the United Kingdom. The bill provides a new penalty that will allow the courts to require persons convicted of an offence under the electoral finance regime to pay any benefit they have received from their offending to the Crown. This recognises the significance of these types of offences and ensures that people who breach the provisions cannot profit from their offending.

There are also changes to the broadcasting regime. The most significant change relates to the membership of the Electoral Commission. The bill will remove the requirement for political representatives to be appointed members of

*particularly those related to the regulated period within which advertising restrictions apply, are finely balanced. I have concluded that the Bill is not inconsistent with the Bill of Rights Act. In reaching my conclusion I have taken into account that the regulation of the electoral system ultimately depends upon political judgments and is an area in which a wide margin of appreciation is afforded to Parliament. <http://www.justice.govt.nz/bill-of-rights/bill-list-2007/e-bill/electoral-finance-bill.html>*

the Electoral Commission when exercising their functions under Part 6 of the Broadcasting Act. The bill also simplifies some aspects of the broadcasting regime.

The Government has also considered the question of the structure of electoral agencies. In 2001 the Election Framework Taskforce recommended that there should be a **single electoral agency (10)** with integrated responsibility for all parliamentary electoral administration. That recommendation has, I believe, significant merit. However, it needs to be reconsidered in the context of the bill that is before the House now, which confers new functions on the Chief Electoral Office and the Electoral Commission.

As part of the preparation of this reform package, the Government also **looked very closely (11)** at the way in which political parties are funded. One possibility that was considered was that political parties might receive some public funding, as this system already operates in a number of other countries. The Government also looked at implementing much stricter rules around the donations that candidates and parties receive from private individuals. However, the reality is that such proposals **require very detailed consideration (12)** and also a measure of consensus. In the United Kingdom, for instance, Sir Haydon Phillips was recently asked by the Prime Minister to conduct a review of political party funding. His report was published in March this year. The report, for those members who have not read it, provides a very useful examination of the substantive issues. More important, Sir Hayden has built consensus among political parties about the reform of party funding.

To enable full and careful consideration of these matters, the Government is **establishing a review of electoral administration and political party funding. The review will report back in December 2008 (13)**. This will give time to consider the recommendations and, if appropriate and required, to introduce legislation before the 2011 election.

In conclusion, I reiterate that many of the **measures in the bill are consistent with those of comparable jurisdictions. Other countries are moving in a similar direction (14)**. There are some very valuable measures in the

(10) The piecemeal approach appears to be ongoing in the Bill development process, and there does not seem to be any clarity as to the overall objectives and functions. Is this review of the type of electoral agency going to happen as part of the Bill process or as part of the Dec 2008 review?

(11) Where is the thinking and research underlying this statement?

(12) We agree, but should not this level of analysis and consensus also be applied to third party?

Where is the balance and fairness where third parties are (i) defined so very broadly, (ii) are required to be registered, (iii) required to keep records admin and (iv) be fined, whereas when it comes to the political parties or candidates, you have postponed and acknowledged the need for a more detailed review?

Who in this system is fighting for the rights of the public? Where is the room for the public to fight?

(13) This is the first time that this information has been made available to the public. I have referred back to other sites, including the Ministry of Justice, but have not found any reference anywhere to this review. This lack of transparency, about an initiative

<p>bill, and it is my view that it will enable far greater public confidence that our electoral system is open and fair, with clearly defined rules to protect it from abuse. I strongly encourage members of the public to make submissions on the bill when it is before the select committee. I commend the Electoral Finance Bill to the House.</p>	<p>based on transparency, is a significant concern.</p> <p>(14) Where is the evidence? This is not the experience from our initial review. See our submission. General statements like this without any clarity raise concerns over transparency and accountability.</p>
<p><b>SIMON POWER (National – Rangitikei) Excerpts Only</b></p> <p>I am deeply concerned about the partisan approach that this legislation has taken, <b>when, historically, electoral reform has been negotiated and shared between the major political parties and the other parties in Parliament, and has operated in an enduring way.</b> The curious thing about this legislation is that on the substantive issue there has been no consultation and no discussion with the major political parties, but when it comes to the procedural matter of the make-up of the select committee, that is a different kettle of fish altogether. All of a sudden the Minister of Justice is very interested in having conversations about how those matters can be expedited.</p>	
<p><b>JEANETTE FITZSIMONS (Co-Leader – Green) : Excerpts Only</b></p> <p>The Green Party is deeply concerned that those practices should not happen again. So what is needed to ensure that? We believe that there are five areas that need immediate change, and that others should be considered in the longer term.</p> <p><u>First</u>, there must be limits on what parties can spend, so that policies and credibility, not budgets, determine the outcome, and that must be the case not just for the 3 months before the election. <u>Second</u>, there must be limits to spending by proxy organisations, so that they do not just become a way for parties to get around the spending cap.</p>	

Third, anonymous donations over a small amount – we propose \$1,000 – must be outlawed. It is fundamentally important that voters know who is funding parties and to whom they are beholden. People and particularly corporations give large donations to political parties not out of altruism but in order to influence or reward policy. That information must be before the voters when they look at the policies the parties are offering.

Fourth, there must be limits, we believe, on the size of donations. It is fundamentally undemocratic if parties representing big business or very rich individuals can raise their entire campaign budget from a few very large donations and have no need for broad-based, grassroots support.

Fifth, we must end the practice of having representatives of the two old parties on the Electoral Commission when it allocates broadcasting funding under the pretence that the largest Opposition party can represent all the smaller parties. The Tui billboard has a good expression for that.

The Greens are voting for this bill because **it goes halfway**. It deals with Nos 1, 2, and 5 of the concerns I have expressed, but we are very disappointed that the Government has backed away from dealing with the other two.

We are supporting the bill because it implements Green Party policy on extending the pre-election period back to 1 January in an election year. That will ensure that an election campaign like the National Party billboards in 2005 can still happen, but it will be part of the capped election spending. We support the rolling disclosure of donations above \$20,000 during a campaign, because it is not much help to voters to find out in April of the year following an election who has bankrolled the new Government.

We support the bill because it removes all political appointments from the Electoral Commission when it is determining broadcasting funding, leaving that to independent analysis rather than horse-trading on the commission. We have been arguing about that for many years, so it is good to see that in the bill.

We support the bill because it attempts to control the practice of re-routing election spending via third parties. I was appalled to hear the National Party this afternoon defending the campaign by the Exclusive Brethren. *[Interruption]* Oh, yes. They did not mention the Exclusive Brethren. They talked about the unions, the Post Primary Teachers Association, and the environmental movement – and we know they have always been strong supporters of those organisations! But we know who they really meant.

There is a fine line to tread between controlling **ways of bypassing parties' spending caps and completely muzzling freedom of speech by many citizens' organisations, and this bill goes a bit too far**. Does it mean, for example, that any organisation that expresses any views in an advertisement in an election year, even if it does not mention parties, voting, or the election, is breaching the rules? Organisations have an absolute right to influence public opinion if they identify themselves and if they do not do it in support of a political party.

But we in the Green Party are very disappointed that the bill goes barely halfway to giving us a fair campaign finance system. It still does not address the serious issues of anonymous donations, and it does not address caps on individual donations. There are no controls on secret donation laundering trusts, there is no cap on what a large corporation can give, and there are no restrictions on overseas donations, including donations from foreign Governments.

I wonder whether members have ever reflected on the extent to which foreign Governments would have the capacity to influence the New Zealand elections by funding some of the participants. I refer here to Raymond Miller's book published in early 2005, *Party Politics in New Zealand*, where he quoted Peter Dunne as saying that United Future drew on the expertise offered gratis by an American political consultant who was put in touch with the party by the US embassy in Wellington. So the US Government's representatives in Wellington provided a US consultant's services free to the party that was trying to give the Government a way out on genetic engineering – and it

<p>succeeded in giving the Government that way out. I do not think that overseas organisations should be able to participate in our elections.</p>	
<p><b>Dr PITA SHARPLES (Co-Leader – Māori Party) Excerpts Only</b></p> <p>The intentions of this bill are honourable, mouthing commitments to democracy, transparency, and integrity. The problem is that the <b>fine print does not match the platitudes</b>; the fact that donations are still anonymous in effect endorses the status quo, wherein political influence and corruption can occur through secret means. We are also greatly disappointed that consultation amounted to nothing. That is a particular concern, because we do have such a huge interest in ensuring that the Parliament is connected, responsive, and accountable to the people of the land; being able to have discussions together around that is what we would think could happen in a democracy.</p> <p>We cannot vote for a bill that has so much rhetoric attached to it and lacks real substance. While it is said that turkeys never vote for Christmas, it appears that the turkeys in this House will be voting for their Christmas, as they have the numbers at this time. Thank you.]</p>	
<p><b>Hon PETER DUNNE (Leader – United Future): Excerpts Only</b></p> <p>United Future will support the introduction of the Electoral Finance Bill and its reference to a select committee, because it thinks there are, at the moment, issues relating to the way in which the financial treatment of elections occurs that need to be updated. I am one of those who think that laws relating to electoral finance and spending <b>ought to be changed rarely, that changes should occur only when circumstances permit, and that they should occur on the basis of the widest possible consensus about what those changes might be.</b> I am always wary of</p>	



<p>members of Parliament being seen to set out our own rules in this respect. I must say that as this debate has unfolded over the last few months United Future has been concerned that it is being conducted in an excessively partisan manner. ....I conclude as I began. I think this bill has some useful measures in it. United Future members will certainly be supporting its going to the select committee. We are looking forward to participating in that committee and hearing the submissions, but it is a matter of regret that will taint the passage of this bill that it has been put together in a way that has seen a bare majority involved in its construction, and a significant minority excluded. The one lesson to emerge from this process is that for robust, credible law in the future, it is best to have as many people as possible involved in its drafting, or its evolution, at the start, to get the buy-in, to get the support, and to remove the suspicion that it is being done at the behest of one group to advantage it at the expense of another. I hope that is not the case with this legislation when it comes back to the House and is eventually passed. It will be a test of the select committee, and the participation of members in that, to ensure that that is not so.</p>	
<p>A party vote was called for on the question, That the Electoral Finance Bill be now read a first time</p> <p>Ayes 65      New Zealand Labour 49; New Zealand First 7; Green Party 6; United Future 2; Progressive 1.</p> <p>Noes 54              New Zealand National 48; Māori Party 4; Independents: Copeland, Field.</p> <p style="text-align: center;">Bill read a first time.</p> <ul style="list-style-type: none"> <li>• Bill referred to the Justice and Electoral Committee.</li> </ul> <p><b>Hon MARK BURTON (Minister of Justice) :</b> I seek leave for the membership of the Justice and Electoral Committee, for the purpose of its consideration of the Electoral Finance Bill, to be increased to 13 members, through the addition of one further member from each of New Zealand Labour, New Zealand National, New Zealand First, ACT New Zealand, and United Future, with those members to be appointed by the leaders or whips of each respective party; and for Hone Harawira to have the right to vote on any question put to the committee in relation to</p>	

this bill.

**Mr DEPUTY SPEAKER:** Leave has been sought for that course to be followed. Is there any objection? There is not.

**Increase from the seven below to thirteen:**

Justice and Electoral	Member	<b>Auchinvole, Chris</b>	National Party, List
Justice and Electoral	Member	<b>Chauvel, Charles</b>	Labour Party, List
Justice and Electoral	Deputy-Chairperson	<b>Finlayson, Chris</b>	National Party, List
Justice and Electoral	Member	<b>Hartley, Ann</b>	Labour Party, List
Justice and Electoral	Chairperson	<b>Pillay, Lynne</b>	Labour Party, Waitakere
Justice and Electoral	Member	<b>Tanczos, Nandor</b>	Green Party, List
Justice and Electoral	Member	<b>Wagner, Nicky</b>	National Party, List