

7 September 2007

SUBMISSION on the Electoral Finance Bill to the Justice and Electoral Committee

Introduction

This submission is from Sustainable Future at Level 2, 5 Cable St, Wellington, New Zealand. I, Wendy McGuinness, wish to appear before the committee to speak to our submission. We can be contacted at: 04 4998888 or 021 781200.

Sustainable Future is an independent think-tank based in Wellington, New Zealand. We are currently undertaking a two-year research project called Project 2058. The strategic aim of Project 2058 is to:

promote integrated long-term thinking, leadership and capacity-building so that New Zealand can effectively explore and manage risks and opportunities over the next fifty years. (See Project 2058 Methodology, 2007)

The process to date has:

1. Failed to identify high level goals and expectations that set the context for a strategic debate on electoral finance.

We found it difficult to find high level goals or principles upon which the Bill was based. We noted page 2 of the Explanatory note to the Bill set out seven such objectives, two of which were the same (1 and 3) and none that set a high-level context. Many of the policy objectives on page 2 of the Explanatory Note are low level tools and actions, rather than high-level policy objectives. To explain what we mean by this, we provide excerpts from two documents:

(i) *The Report of the Royal Commission on the Election System* (NZ Govt, 1986)

The Report of the Royal Commission (1986:293) sets out in the introduction and at the end of the report, the values and ethics underlying the report. Notably, it states that where it found value judgements where required, they tried to fairly state arguments contrary to their views so that those who consider the report could access for themselves the validity of their conclusions. Secondly, they tried to adopt an approach based on fairness, equity, representation and democracy. They tried to make proposals for the good of government and for a better democracy.

As a result of these high-level goals, the debate in the review can be very explicit and have much more meaningful discussion, such as:

Achieving absolute equality in the funds available to competing parties and candidates is also unnecessary. Money is one element influencing political life and its impact can be more than offset by the mobilisation of other elements.

Ultimately, it is the people, not dollars that vote. Moreover, measures which are overly restrictive of political activity, or overly generous to some or all political

contestants, may lead to public apathy and be a disincentive both to active involvement in election campaigns and even to voting itself. (NZ Govt, 1986:185)

We are conscious of the need to preserve its relative simplicity and economy (NZ Govt, 1986: 185)

Political contestants should be encouraged rather than discouraged to raise the funds necessary for their work. (NZ Govt, 1986: 186)

One type of income we are concerned, however, is large political donations from sources outside New Zealand. (NZ Govt, 1986: 186)

[And on transparency - a quote] Publicity is justly commended as a remedy for social and industrial disease. Sunlight is said to be the best of disinfectants; electric light the most efficient policeman. (NZ Govt, 1986: 186)

In our system it is the political parties that in fact provide voters with a choice of Governments, policies and candidates. (NZ Govt, 1986: 183)

(ii) *The Delicate Balance between Political Equity and Freedom of Expression - Political Party and Campaign Financing in Canada and the United States (OAS 2005)*

This is an excellent 68 page report by the Organisation of American States *et al* that looks at high-level goals, such as equity and freedom of speech. Excerpts that discuss these issues are included below:

The guiding principle of the Canadian Political financing regime is equity. ...this has been achieved by limits on campaign contributions and expenditures as well as generous public financing for political parties and their candidates. (OAS, 2005: 64)

Where limits were enacted, compensation was provided. Canada limited corporate contributions, but increased public financing. It sought to remove large donors from the nominating races, but increased tax credits to candidates. The United States prohibited large 'soft money' contributions to political parties, but raised the individual limit on hard money contributions. (OAS, 2005: 69)

Despite its differences in parliamentary structure, party organisation and political objectives, the United States and Canada share important commonalities in their political financing regimes. While free speech is the guiding principle in the United States and equity predominates in the regulatory regime in Canada, free speech flourishes in Canada and people of many different backgrounds win elections in the United States. (OAS, 2005: 69)

Reform is enacted to achieve different political ends that reflect the underlying principals of each country. The means may be different, but the end has been the same: to encourage more people to participate in the democratic process of their countries. (OAS, 2005: 69)

Recommendation 1: that the Select Committee refuse to progress this Bill on the basis that it contains no high level goals to discuss and progress this Bill. For

example; is the strategic objective equity, freedom of speech, to increase public participation, make voters more informed, make it administratively easy for stakeholders (such as parties, candidates or those making donations or all of the above) etc?. What is the overarching purpose (goal)?

2. Failed to provide an Independent Public Review

Our first observation was how New Zealand electoral reform came to this, a Bill that reduces the freedom of speech in a country that has actively sought processes and procedures throughout history to ensure equity and protect democracy. Therefore this submission is based on tracking how we ended up here, in order to reflect on how best to get us back on track – and protect the democracy our ancestors fought for and future generations rely upon.

The 1986 Royal Commission on the Electoral System, stated in its first sentence of the introduction:

This report is about our democracy. It is about the way New Zealanders give their consent to the exercise by parliament and government of the great public power. (NZ Govt, 1986: 5)

Anyone reading the *Report of the Royal Commission* will appreciate the importance that was placed on the outcome. This was very serious business and one that required not only the best brains in the country, but those with the highest of ethics. Hence, from the selection of the terms of reference, to the quality of the Commissioners and to the displays of public consultation (such as 5 marae through the New Zealand Maori Council, 804 written submissions, and three public hearings in Auckland, Wellington and Christchurch), it was evident that this was an issue of the highest importance for the future of this new country.

The reality is that the 1986 review was considered and treated with the reverence one would expect in designing a democracy that would create a platform for the government of the day to legitimately say it had the consent to New Zealanders to govern. In their view the electoral processes played a central role in democracy, based on the principle that the electoral process is integral to wider political processes and are not just a single technical event.

How then did New Zealand end up with:

Cabinet agreed, in April 2006, to a target review of the electoral finance regime, focussing on the electoral expense, advertising and broadcasting rules, including –

- A review of what an ‘election expense’ is, what the limits should be, and how expenses can be apportioned between parties and constituency candidates:
- Whether third parties should be subject to election expense limits and the requirement to furnish returns:
- Political donations:
- Whether there is an alternative approach to the current regime, including the campaign funding of parties and constituency candidates w, which would be simpler for parties, candidates and administrators. (NZ Govt, 2007:2)

How was government able to put forward such a Bill that deals with the core to our democracy without an independent written review based on thorough and

investigative analysis of the risks, costs and benefits for New Zealanders, in regard to equity and freedom of speech for current and future generations?

The actions of this government appear in complete contrast to the findings of the 1986 Report of the Royal Commission, which concluded in its chapter on Political Finances:

We note as well that where legislation concerning political finance has been introduced overseas, it has proved valuable for a bi-partisan Committee of Parliament to consider the detail of proposals to ensure they are both appropriate in scope and administratively practicable. We consider such an approach would be useful in respect of our recommendations in all the areas addresses in this chapter.

We further consider that once the fundamental elements of political finance legislation have been implemented, **it would be inappropriate for Parliament to make significant changes other than on the recommendation of an independent body or inquiry.** (NZGovt, 1986:230)

We fail to understand why we have not had an independent body or inquiry. Such an inquiry would:

1. Define the problem the Bill is trying to solve
2. Have a high level principle underlying the purpose of the Bill (for example in Canada it is *equity* or in the United States it is *free speech* – (See OAS, 2005:69).
3. Review and assess the current problem in context with the history in New Zealand (e.g. the 1986 Royal Commission, which is a very comprehensive, rigorously analysed and logical document of 294 pages and 71 recommendations).
4. Review the effectiveness of the institutions, for example is the Electoral Commission doing its job, are they part of the problem and therefore part of the solution
5. Reviews the international options, experiences and lessons learnt, or
6. How much the administration of this Bill will cost in terms of the third party administration costs or the costs to government.

So this leaves us with further questions, if Cabinet agreed to this review in April 2006, did such a review occur, by who, and was it made public – and if not why not. We have not been able to find it.

The independent body both capable and funded to produce such reviews is the Law Commission. Therefore our next step was to assess the extent the Law Commission had reviewed or inquired into the Bill. We found no evidence that the Bill has even been identified as being one that required a further assessment. We note:

The Law Commission helps ensure that the law provides effectively for the current and future needs of our rapidly changing society. Its goal is to achieve laws that are just, principled, accessible, and that reflect the heritage and aspirations of the peoples of New Zealand. (Law Commission Website)

To provide a context to what we are suggesting, the Law Commission has recently produced a 500 page review containing 300 recommendations to improve the body of laws pertaining to search and surveillance; reforms which Sir Geoffrey Palmer (the president of the Law Commission) states in the NZLawyer (17 August 2007), were “long overdue”. This is the type of review one would have expected the Law Commission to produce on electoral finance, but to date, has not. In our view the

Electoral Finance Bill does deserve this level of analysis, but we are unsure how this can occur when the Bill is already before the Select Committee.

Recommendation 2: that the Select Committee refuse to progress this Bill until a public report has been prepared by an independent body, on the basis that this is in the best interest of democracy. Once such a review is completed, the PCO could re-write the Bill in a clear and precise manner, so the general public can read and understand its contents. All legislation should meet this standard, but in our view this Bill requires a significantly higher standard, because of its importance to the people of New Zealand.

3. Failed to Clarify and Quantity the Problem it is trying to Solve

The Bill states the problem as:

The 2005 General Election brought concerns [the problem] about the rules governing electoral finance into sharper focus. Allegations were reported to the police about breaches of electoral finance rules, including breaches of third party advertising rules and overspending on election broadcasts, but prosecutions did not proceed. The Peters v Clarkson election petition, although not upheld in court, raised questions about the interpretation of current law, for example, the treatment of dual-purpose advertisements. (EN: page 2)

This raises questions such as: Is the problem that:

- (i) the prosecutions did not proceed?
- (ii) New Zealand does not have enough case law to enable the electoral legislation to be interpreted?
- (iii) We had dual-purpose advertisements?
- (iv) We cannot trust the political parties to be accountable?
- (v) We cannot trust the Electoral Commission or the Electoral Commission does not have enough powers/resources to police the law, or is the Commission being intimidated or conflicted?

Also, it raises questions about the relationship between these problems and Cabinet's way forward (the method), being a review of the *electoral finance regime*, as stated on page 2 of the Explanatory Note that:

For these reasons Cabinet agreed, in April 2006, to a target review of the electoral finance regime, focussing on the electoral expense, advertising and broadcasting rules, including -

- A review of what an 'election expense' is, what the limits should be, and how expenses can be apportioned between parties and constituency candidates:
- Whether third parties should be subject to election expense limits and the requirement to furnish returns:
- Political donations:
- Whether there is an alternative approach to the current regime, including the campaign funding of parties and constituency candidates w, which would be simpler for parties, candidates and administrators. (NZ Govt, 2007:2)

Whereas if any government was going to complete a targeted review of the electoral finance regime; one would have expected:

- (i) A full review,
- (ii) by an independent group of reviewers (say three),
- (iii) who were provided an agreed sum in advance
- (iv) to complete an agreed terms of reference, and
- (v) be required to produce a detailed public report that
- (vi) explained what they discovered
- (vii) where the costs and benefits occur
- (viii) where we sit in contrast with other overseas countries, and
- (ix) developed a logical and coherent set of recommendations.



Therefore, to date we have a problem that lacks clarity, a method that looks like a sledge hammer to break an egg, and a solution that cannot be assessed because it has no high-level principles or problem definition to know whether, if made law, it was successful or not.

Legislation must be based on solving a problem for the public good, but in this case we could not grasp what the problem was the Bill was trying to solve. We therefore searched widely in the public sector, but found very little evidence to provide clarity over the extent of the problem and whether this was the only way to solve the problem.

Recommendation 3: The problem must be clearly defined in such a way to create the test for the legalisation – does it deliver the outcome desired to solve the problem?

4. Failed to focus on the rights of the voter

We believe the purpose of the Bill has been skewed, as indicated by the *policy objectives* (page 2 of the Explanatory Note) being different from the Purpose in the Bill and note:

- (i) Two of the *policy objectives* are the same (being ‘undue influence of wealth’ and ‘access to large financial resources’, being 3 and 7) - this could and we suggest does skew the content of the Bill towards anti-wealth rather than for democracy.
- (ii) There is no mention in the *policy objectives* of the rights of the voting public to be informed, and although Section 3(b) does add the words ‘promote participation by the public in parliamentary democracy’, we do not think this goes far enough. The policy objectives, we argue skews the debate to focussing on the rights of the party in power being their democracy, rather than the public's rights to democracy and the rights to be informed.

- (iii) We note the *policy objective* (being 6) 'Reflect our unique political culture and environment (point 6)' is not included in the purpose.

Recommendation 4: The purpose of the Bill, being Section 5, should be re-written to place the emphasis on the voters, such as: providing voters with a choice of Governments, policies and candidates, to encourage voters to actively participate in the electoral process, to inform voters, to make administrative processes transparent, simple and cost effective.

We consider the addition of 'prevent the undue influence of wealth on electoral outcomes', may prevent candidates gaining donations, which will reduce rather than encourage participation and reduce rather than increase information to voters. It is a thin line and we consider that this statement in the purpose will increase apathy rather than increase participation.

5. Failed to keep the onus on those responsible and accountable and failed to consider the level of compliance and administrative costs

We were confused why this Bill moves the administration (time and costs) and onus (legal penalties) from political parties and candidates to donors and therefore voters. This is not good business practice, as in totality, the costs of administration will increase, particularly with the additional army of record keepers and auditors. We have seen no evidence that the full cost/benefits of such an approach have been taken into account – never lone the disincentive to the public to donate to their favourite party, candidate or cause.

The Canadian system is far less onerous and takes a much narrower view as to *election advertising expenditure* (See Table 1). It is almost like government cannot trust the political parties, so lets make it hard for those making donations and then donations will drop, voters will be less informed and disinvested to participate to vote, so policy will not be debated – so that not only do we not have a lively democracy, but we do not get optimal innovative policy.

Those that can should be accountable – in this case that is clearly the political parties and secondly the candidates. If, as implied they are not accounting for donations correctly, and as the (OAS, 2005) referred to, we need to account for what comes in and how it goes out.

Recommendation 5: The onus must remain with the political party and candidate, rather than the voter and the donor. This does not mean that *election advertising expenditure* like in Canada does not need to be reported, but that the reporting is the onus of those that most benefit, the political party and the candidate.

6. Failed to review the Electoral Commission

We are not sure when the last time the Electoral Commission was audited and/or reviewed, but there is an implication in the Explanatory Note that 'the 2005 General election brought concerns about the rules governing electoral finance into sharper focus' – that make us wonder if the problems are stemming from the Electoral

Commission lacking the necessary resources (funds) or legal teeth to manage the electoral process to the standard intended. See Appendix 1.

Recommendation 6: The select committee should obtain and assess any recent reviews of the Electoral Commission and align with the problems, once they are more specifically defined – as per recommendation 3.

7. Failed to clarify why the prosecutions did not proceed

Prosecutions may not proceed for a number of reasons, but before changes to the legislation are made, the reasons alluded must be qualified, in terms of recommendation 3.

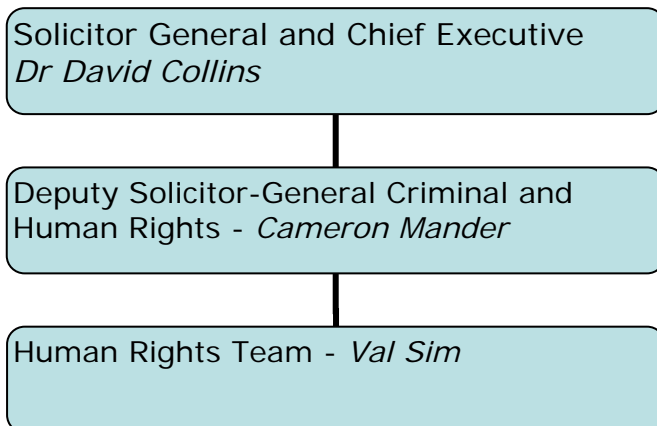
Recommendation 7: If prosecutions are not proceeding, the reasons must be clearly identified before legislation is changed, the problem and the solution must align - as per recommendation 3.

8. Failed to obtain comprehensive and appropriate legal advice

The Crown Law Office is responsible for providing legal advice and representation services to the government in matters affecting the executive government, particularly in the areas of criminal, public and administrative law. As stated on their website, it has two purposes; (i) advising the Attorney-General in the public interest and (ii) advising government through its departments. Both have the potential to conflict, and the Office works hard to manage the tension responsibly and sensitively. We wonder if this is such a case where the two purposes have conflicted.

There may have been other documents and reviews on the Bill to the Attorney-General, but we were unable to find them on the website. What we did find was a 17 page letter from the Crown Counsel, signed by Val Sim that was peer reviewed by Joanna Davidson. On reviewing the Crown Law Office website we found that Val Sim is currently the leader of the Human Rights Team but we were unable to find out the level of expertise of Joanna Davidson (See Figure 1). We would have expected that advice on the introduction of a 'third party' to the electoral framework to have been signed off by the Solicitor General. We would also have expected work of this type to be on the Statement of Intent (June 2007 or June 2008), which it was not.

Figure 1: Crown Law Office



Recommendation 8: The Select Committee must request the Attorney-General to provide any additional material provided by the Crown Law Office and in so doing, question whether the advice to date is of a sufficient calibre to represent the high-level public good assessment needed to reflect the changes contained in this Bill.

9. Failed to list the unimplemented recommendations from the Royal Commissions recommendations.

We have reviewed the list of 71 recommendations and could not find the recommendations that the explanatory note (page 1) refers. We consider this is important information and should be made public. It would also be valuable to know why it was not implemented in 1986 or later, as there may be good reasons for the contrary view.

Recommendation 9: The Select Committee should find out why the *unimplemented recommendations* referred to have not been implemented to date and how they may interrelate with other recommendations, as it would be likely that of the 71 recommendations, most were part of a package based in high-level principles, and should therefore not be implemented in isolation.

10. Failed to provide an international assessment of the lessons to be learnt from international frameworks

Although related to the second failure above: *Failed to provide an Independent Public Review*, we were concerned that no international comprehensive assessment had been completed and therefore there was a danger of inaccuracies. For example, we have heard that this Bill is based on the Canadian version, but when we compare the Bill with the Canadian Act, we find the Canadian version much less prescriptive.

Recommendation 10: Complete a detailed assessment of international frameworks that are similar to New Zealand.

11. Recommendation on anonymous donations

If it is that we cannot trust the returns of the political parties or the candidates we suggest they are required to provide a receipt with a number that must be reported in the IRD Annual Return of the entity or individual giving the donation. We already have this system. The IRD could add these up and check that their political party or candidates list figures equal that of the IRD – in other words put the onus back on the political parties. Put the onus on the political parties to chase them up.

Recommendation 11: We believe New Zealanders should stand proud for what we believe in, and if we cannot, we should not give donations. Therefore in our view all anonymous donations over say \$100.00 should be given to the Chief Electoral Officer or Governor General to give to a registered charity of his or her choice. All entities that provide donations over \$100.00 should require a receipt.

12. Recommendation on regulated period

Elections do reduce the ability of government to govern, as indicated increasingly over the last two elections. We need vibrant, robust, exciting elections that bring issues and concerns to the head, rather than long drawn out elections, where voters are bored and unengaged from the process – hence short and robust is our preference.

Recommendation 12: The regulated period should be no longer than three months.

13. Failure to provide a Bill that is logical, clear and accessible

Recommendation 13: The Bill needs to be completely overhauled, both from a content and structure perspective. Writing good legislation is as much an art as a science, and this Bill lacks the expertise of both. If this Bill was rushed, it shows.

14. Recommendation on the meaning of third parties

This Bill will require, as written, Sustainable Future to register as a third party next year due a number of reports we are hoping to publish next year.

We have attached sample reports for your interest. By its very nature, the Bill makes our project appear to be election and party politics related, when Sustainable Future is about issues for all parties to consider. We are non-partisan, which means for us we are about ideas and issues, not political parties or people. We feel the mere existence this Bill, (which makes think-tanks like ourselves register), makes us part of a process that we have actively sought not to be part of.

If it is that others not affiliated to a party want to provide what they consider is significant information on a topical issue or an issue they consider needs to be responded to by political parties – such as what is party x or candidate y view on z issue, well isn't this what participating in democracy is about? Are we really not going to allow people to ask questions or provide additional information on an issue for debate or dialogue that they think is significant?

See also (OAS, 66) for an excellent discussion on third parties.

Recommendation 14: The Bill needs to ensure that only advertising paid by third parties related to a party or to a candidate needs to be reported. Debate and dialogue over issues and ideas without reference to political parties or candidates, should be treated as sacrosanct, for the purposes of democracy.

We believe a democracy needs to space for people like ourselves that are actively concentrating on providing information on specific issues for the greater good. Clearly no one person or group of individuals can be an expert at everything, therefore our task is to provide research on one or two issues well. We feel it is important to fight for this right, just as others before us have and those in front of us will. We feel we have responsibility to have the freedom to research and speak, provided we are not doing harm. What this Bill does is assume we are doing harm, and we resent the implication.

We close with a poem that reflects how we feel about the third party obligation on non-partisan groups and individuals that will be caught up in this Bill, if it proceeds as currently written. The poem is attributed to Pastor Martin Niemöller (1892–1984) about the inactivity of German intellectuals following the Nazi rise to power and the purging of their chosen targets, group after group. *A 1976 poem born from World War II)*

*When the Nazis came for the communists,
I remained silent;
I was not a communist.*

*When they locked up the social democrats,
I remained silent;
I was not a social democrat.*

*When they came for the trade unionists,
I did not speak out;
I was not a trade unionist.*

*When they came for the Jews,
I remained silent;
I wasn't a Jew.*

*When they came for me,
there was no one left to speak out.*

Table 1: Comparing New Zealand’s Royal Commission, current Electoral Reform, the effects of the Bill, Canada’s framework *et al*
 Note: This table is not completed, but it provides an example of how members could assess both the differences and the policy mixes available.

| | New Zealand Royal Commission 1986 | New Zealand Electoral Act 1993 | New Zealand Electoral Finance Bill | Canada Elections Act <small>http://www.elections.ca/content.asp?section=10&dir=leg/ed/ceak/document/index&lang=ek&study=fa</small> http://www.elections.ca | <i>et al</i> (e.g. Australia) |
|--|---|---|---|---|-------------------------------|
| Donation of Money | | | | | |
| (a) anonymous | | | | Third parties must not use anonymous or foreign funds for their election advertising [s 357]. | |
| (b) from overseas | | | | Third parties must not use foreign funds for their election advertising [s. 358]. | |
| (c) limits before registering | | | | | |
| Donation of a Service or Good | | | THIRD PARTY ELECTION EXPENSES | THIRD PARTY ELECTION ADVERTISING | |
| What is the maximum amount of time the third party is required | | Does not currently exist. | From 1 Jan in year of election date. | Appears to be once the election date has been set. | |

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| to be assessed under this legislation? | | | | | |
| Define what is a third party? | | | <p><i>Third party</i> means a <i>promoter</i>. A <i>promoter</i> means a person on whose initiative an election advertisement is published and <i>Election advertisement</i> (as per section 5) and <i>publication</i> means to (a) - (h).</p> <p>Section 5 (1) (ii) means even if the name of the party or candidate is not included.</p> | <p>"<i>Third party</i>" means a person or a group, other than a candidate, registered party or electoral district association of a registered party.</p> | |
| What type of expenses is under assessment? | | | <p><i>Election Expense (Section 100) third party activity and cost of election advisement (see above).</i></p> | <p>352. A third party shall identify itself in any election advertising placed by it and indicate that it has authorized the advertising.</p> | |
| What is the spending limit for third party? | | | <p>Max \$2000 per candidate and with a max of \$60,000 per party (Section 103)</p> | <p>Spending limit 350. (1) A third party shall not incur election advertising expenses of a total amount of more than \$150,000 during an election period in relation to a general election.</p> | |
| When does the third party need to register? | | | <p>Not clear, but appears to be at the time the regulated period starts. See Section 20</p> | <p>353. (1) A third party shall register immediately after having</p> | |

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|---|--|--|--|--|--|
| | | | (2) | incurred election advertising expenses of a total amount of \$500 and may not register before the issue of the writ. | |
| When must a return be completed? | | | Within 70 working days after polling day by the financial agent. Section 111 | 359. (1) Every third party that is required to be registered in accordance with subsection 353(1) shall file an election advertising report in the prescribed form with the Chief Electoral Officer within four months after polling day. | |
| When must an auditor be appointed? | | | If the third party spends more than 25% of max in Section 103. | 355. (1) A third party that incurs election advertising expenses in an aggregate amount of \$5,000 or more must appoint an auditor without delay. | |

Table 2: Looking at the Alignment between the purpose of the Bill and the content and actions contained in the Bill

Note: The right hand column shows some of the issues and activities that have not been included in the Bill, but in our view should be considered for including.

| Overarching Purpose of the Bill. In our view the overarching objective is: <i>Ensure that for a specified time before every election, political parties, the electoral candidates and their supporters and those that oppose their policies, so that the voting public can hear and be part of a fair and equitable conversation around optimal policy for New Zealand.</i> | Electoral Finance Bill Section 3: Purpose, (being the policy objectives from page 2 of the explanatory note) | Detail contained in the Bill | | What the Bill (and the explanatory note) fails to discuss or include that is our view would improve the balance and the outcome of the Bill |
|---|---|---|------------------|---|
| What is the length of the specified time? | | Talks about: <i>Registered Period – being 1 Jan to date of election, in year of election</i> | | Does not explain in the explanatory note why – so long. It is either 3 months or up to 12 months but why? |
| Who are the participants the Bill is concerned with? | Section 3 (b) Promote participation by the public in parliamentary democracy | Talks about: (i) <i>Candidates / financial agent/ auditor</i> (ii) <i>Political Party/ financial agent auditor</i> (iii) <i>Third Parties – donor / donation / promoter / election advertisement</i> | Specified Amount | Does not talk about: - the voter / elector -the rights of the voting public to be informed and to hear wide debate and dialogue. We note participation is not defined? Does this refer to third parties type of |

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|------------------------------------|---|--|--|---|
| | | <i>auditor</i> | | participation or the right of the public to ask questions, research topics, write reports, leaflets etc. |
| What does fair and equitable mean? | <p>Section 3(a)-Maintain public and political confidence in the administration of elections</p> <p>Section 3 (c)-Prevent the undue influence of wealth on electoral outcomes</p> <p>Section 3(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 –</p> <p>Section 3(e) Ensure that the controls on the conduct of electoral campaigns are (i) are effective (ii) are clear and (iii) can be effectively administered, complied with and enforced</p> | <p>Talks about Rules</p> <ul style="list-style-type: none"> - <i>Corrupt practice</i> - <i>Illegal practice</i> - Financial agent - Penalty \$40,000 | | Does not talk about principles, rights or ethics underlying the rules. Rules without principles, creates a fixed law that sets it in a period of time, whereas principle based law allows for the law to grow and change over time. |

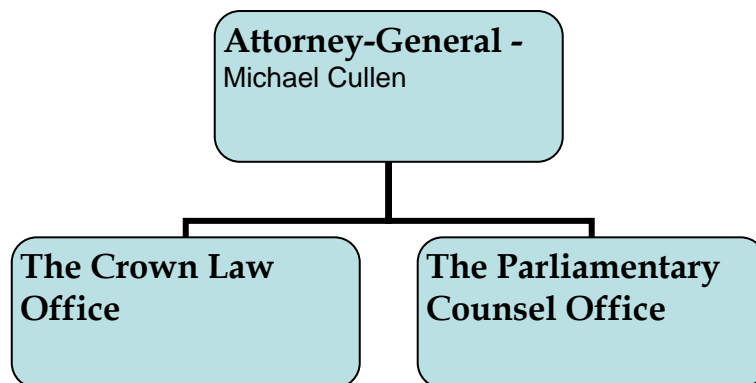
Appendix 1: Background Parties to the Bill

Excerpts from their respective websites.

The Law Commission

Rt Hon Sir Geoffrey Palmer is president of the Law Commission. The Commission is an independent, government-funded organisation, which reviews areas of the law that needs updating, reforming or developing. It makes recommendations to Parliament, and these recommendations are published in our report series. The Law Commission helps ensure that the law provides effectively for the current and future needs of our rapidly changing society. Its goal is to achieve laws that are just, principled, accessible, and that reflect the heritage and aspirations of the peoples of New Zealand. The principal statutory functions of the Law Commission are:

- To take and keep under review in a systematic way the law of New Zealand;
- To make recommendations for the reform and development of the law of New Zealand;
- To advise on the review of any aspect of the law of New Zealand conducted by any Government department or organisation and on proposals made as a result of any review;
- To advise the Minister of Justice and the responsible Minister on ways in which the law of New Zealand can be made as understandable and accessible as is practicable.



The Crown Law Office

The Crown Law Office provides legal advice and representation services to the government in matters affecting the executive government, particularly in the areas of criminal, public and administrative law. The services provided include matters covering judicial review of government actions, constitutional questions including Treaty of Waitangi issues, the enforcement of criminal law, and protection of the revenue. The Office administers the prosecution process in the criminal justice system, in particular, trials on indictment before juries.

The Office has two primary purposes in providing these services:

- to ensure that the operations and responsibilities of the executive government are conducted lawfully, and
- to ensure that the government is not prevented, through legal process, from lawfully implementing its chosen policies and discharging its governmental responsibilities.

The achievement of a responsive and quality driven service for clients can place considerable demands on the Office and its staff. The diversity and complexity of issues being raised, in a legal and political context, challenges the Office to maintain its independence from the pressures faced by policy makers and administrators, yet at the same time remain aware of the Attorney-General's responsibility to consider the public interest. These two aspects of the Crown Law Office functions, of advising the Attorney-General in the public interest and advising government through its departments, have the potential to conflict, and the Office works hard to manage the tension responsibly and sensitively.

The Parliamentary Counsel Office

The Parliamentary Counsel Office (PCO) is New Zealand's law drafting office. It is responsible for drafting and publishing most New Zealand legislation. The PCO is constituted as a separate Office of Parliament. From time to time, the PCO also drafts certain other instruments such as Orders in Council establishing commissions of inquiry, warrants and regulations made under the Royal prerogative and relating to medals and honours, documents appointing officers of the Ross Dependency, pardons given under the Royal prerogative of mercy, and documents relating to issues raised by the Cabinet Office.

The PCO is not part of the Public Service proper (i.e., it is not under the control of the State Services Commission). Nor is it part of the Parliamentary Service. It is under the control of the Attorney-General or, if there is no Attorney-General, the Prime Minister.

The Ministry of Justice

The Ministry works closely with other agencies in the justice sector such as New Zealand Police, the Department of Corrections and the Ministry of Social Development, to advance the sector's common goal of a safe and just society for New Zealand.

The Ministry's approximately 2,900 staff work in 103 different locations around New Zealand delivering a wide variety of services from court services and fines collection to policy advice, negotiation of Treaty of Waitangi claims and running the parliamentary elections. The Ministry is led by Secretary for Justice and Chief Executive Belinda Clark.

The Electoral Commission

The Electoral Commission is an independent body set up by Parliament to register political parties and party logos. It also receives registered parties annual returns of donations and returns of election expenses. It allocates

election broadcasting time and funds to eligible political parties. It also conducts public education about electoral matters and provides advice to Parliament. The current President is a retired judge of the High Court, the Hon A. A. T. Ellis QC. The duties and functions of the Commission are established in the [Electoral Act 1993](#)

Duties of Electoral Commission

(1) It is the duty of the Electoral Commission to see that the provisions of section [214G\(1\)](#) are complied with.

(2) If the Electoral Commission believes that any person has committed an offence against section [214G\(3\)](#) or section [214G\(4\)](#), the Electoral Commission must report the facts upon which that belief is based to the police.]

Functions

The principal functions of the Electoral Commission shall be—

(a) To carry out such duties in relation to the registration of political parties and political party logos as are prescribed by Part [4](#) of this Act:

(b) To supervise political parties' compliance with the financial disclosure requirements of this Act:

[[~~(ba) To carry out such duties in relation to Parliamentary election programmes as are prescribed by Part [6](#) of the Broadcasting Act 1989:]]~~

(c) To supervise political parties' compliance with the requirements of this Act relating to the filing of returns of election expenses:

(d) To promote public awareness of electoral matters by means of the conduct of education and information programmes or by other means:

(e) To consider and report to the Minister or to the House of Representatives on electoral matters referred to the Electoral Commission by the Minister or the House of Representatives.]

6 Powers

(1) Repealed.

(2) [The] Commission shall have the power –

[(a) To initiate, sponsor, and carry out such studies and research as the Commission thinks necessary for the proper discharge of its functions:]

[(aa) To make such inquiries as the Commission thinks necessary for the proper discharge of its functions:]

(b) To publicise, in such manner as the Commission thinks fit, such parts of the Commission's work as the Commission thinks necessary for the proper discharge of the Commission's functions, and to consult with any persons or classes of persons:

(c) To request advice, assistance, and information from any Government department or any State enterprise within the meaning of the [State-Owned Enterprises Act 1986](#).

[(3) Subsection (2) does not limit sections [16](#) and [17](#) of the Crown Entities Act 2004.]

References

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