

Justice and Electoral Select Committee

Coalition for Open Government submission on the Electoral Finance Bill

1. *This submission is from the Coalition for Open Government (COG).*
2. *We wish to appear before the Committee to speak to our submission.*
3. *COG's spokesperson and primary contact, Steven Price, can be contacted on (04) 463 6366 or Steven.Price@vuw.ac.nz.*
4. *COG re-formed earlier this year to push for substantial changes in New Zealand's electoral laws. The original Coalition for Open Government was established in 1979 to oppose the National Development Bill, and was a major force in the campaign that secured the Official Information Act. The original Coalition for Open Government core group supported the formation of a new Coalition for Open Government focussed on the goal of securing the best possible election finance reform.*

Introduction

5. There is a strong basis for the Electoral Finance Bill, long delayed but still entirely valid, which is the Royal Commission on the Electoral System completed in 1986. That Royal Commission led to New Zealand's MMP electoral system and it is overdue for the commission's call for improved election finance legislation to be acted upon as well.
6. Two main principles underlie the Royal Commission's recommendations, openness and "limit[ing] the potential for corruption by interests with access to substantial funds". Its final report said:
7. "If elections are to be fair and our democracy is to prosper, it is important that the effects of [economic] inequality are minimised." There should be full disclosure of all major donors to political parties, which would "give valuable information to voters about the character of the parties" and "provide healthy confirmation that political parties and candidates are not dominated by big business". It stated: "we believe that these considerations over-ride any right large donors may claim to privacy" and proposed that any donations received anonymously or through "front" organisations (such as private trusts) should have to be returned to the donor or, if that was not possible, passed to the Electoral Commission.
8. The report quoted the United States Supreme Court Justice Louis Brandeis: "Publicity is justly commended as a remedy for social and industrial diseases. Sunlight is said to be the best of disinfectants; electric light the most efficient policeman."

9. Openness and controlling the influence of big money should be the guiding principles of the Electoral Finance Bill. But for these principles to be given effect we need to recognise that they can be undermined by the mobility of money. Election finance laws are like tax laws. To be effective, they need to anticipate and be broad enough to stop wealthy interests sidestepping the legislation and finding new and uncontrolled ways to influence the election with their secret contributions.
10. The inadequacy of New Zealand's election finance laws was graphically demonstrated shortly after the Royal Commission reported its findings. The 1987 election will be remembered as one where the Labour Party received large secret donations from individuals and corporations suspected of being prospective beneficiaries of Labour's privatisations and other policies.
11. The 2005 election was equally controversial and will also be remembered as an election of big money and undeclared alliances. That was the election was when the Exclusive Brethren secretly spent more on election campaigning than most political parties and the National Party received very large sums from political and business lobbies without declaring who they were.
12. Now is the time for all the parties in Parliament to restore public confidence in the electoral system. The Coalition for Open Government applauds the arrival of this Bill. It calls on all parties to put aside short-term fundraising concerns or political point scoring and provide the public with a fair and transparent election finance system.
13. Many New Zealanders do not realise that our current election finance laws are some of the worst in the developed world. Controlling the corrupting influence of big money in elections is a crucial issue for every country and we should not wait for bigger scandals before insisting on the best possible laws. The quality of the Bill decided upon this year will affect the political environment in New Zealand for many years to come.

Anonymous donations and secret trusts

14. We urge the Select Committee to use its powers to reinstate the most important part of the Bill, the controls on secret financial contributions to parties via anonymous donations and secret trusts, which were removed before the Bill's introduction to Parliament.
15. The Labour Government's 50-page Cabinet Paper titled "Review of the Electoral Finance Regime", approved by Cabinet late last year, set out the case for the Bill to control secret donations. "The lack of controls on anonymous donations in New Zealand significantly weakens the current disclosure regime," it said, "and therefore weakens the integrity of the electoral process. I [the Minister of Justice, Mark Burton] recommend further controls to improve transparency and accountability." It would be irresponsible to acknowledge the need and then do nothing. The clauses on donations were the centrepiece of the Bill and should be reinstated.
16. We submit that the Electoral Finance Bill already contains the required elements of a good policy on anonymous donations and secret trusts. The Bill's rules covering donations to Third Parties should apply also to new sections on anonymous donations and secret trusts. In particular the Bill should be amended to:

- (a) Require political parties and candidates to declare the identities of those who give them more than \$500.
- (b) Make it illegal to make an indirect donation a political party or candidate, channelled through an intermediary such as a trust or another person.
- (c) Require donation declarations to the Electoral Commission to be made monthly during the election year and weekly in the last month before election day, with this information made available immediately to the public so they can know who is backing each party and candidate when they vote. It is a basic democratic safeguard to let the public know who is funding parties and election campaigns and draw its own conclusions about whether wealthy contributors are gaining too much influence. This information should be made available on the Internet as it arrives at the Electoral Commission.
- (d) Require all non-commercial loans to parties and candidates to be declared in the same way.
- (e) Prohibit anonymous donations above \$500.

17. We note that there have been suggestions of a National Party amendment to the Bill prohibiting all anonymous donations above \$10,000. In the absence of any other action on anonymous donations, this could sound like a worthwhile measure. However, experience in the United States shows that this approach is almost totally ineffective at creating greater transparency. Donation money is highly mobile and if there is an alternative way to keep large donations secret, the donors will simply change the way it is given.
18. We would risk moving to a United States-style system of 'power brokers' (such as industry lobby groups) arranging \$10,000 a head fundraising events to raise money for a party. The party would be well aware that this or that lobby or company had raised tens or hundreds of thousands of dollars in a night, but not a single donation would need to be declared and only the party would know to whom it was indebted.
19. Thus a move banning anonymous donations above \$10,000 is unlikely to make much difference to either of the main goals of the Bill: openness and reducing the influence of wealthy interests. It would give the impression that New Zealand had controls on secret campaign contributions but the secret money and secret influence would continue.
20. The omission of a ban on anonymous and indirect donations means that the Bill does not fulfil its own stated purposes. These purposes, listed in section 3, include: maintaining public and political confidence in the administration of elections; preventing the undue influence of wealth on electoral outcomes; providing 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 ensuring that the controls on the conduct of electoral campaigns are effective and clear.
21. Any new legislation on election finances that does not deal with anonymous donations and secret trusts would be like road transport legislation that controlled the speed of trucks but not of cars. It is the most important election finance issue and it is where reform is most urgently needed. There is no excuse not to use the current Bill to control secret donations.

Increase public funding of election campaigns

22. The Royal Commission on the Electoral System recommended an increase in public funding for parties' election activities and proposed a formula for allocating this extra funding. Since the Labour Government has stated that it will not support action on anonymous donations and secret trusts without an increase in public funding to cover losses in private donations, we submit that the Select Committee should recommend action on anonymous donations and additional public funding for election campaigns. The Coalition believes that if the price of a transparent and less corruptible election finance system is a small increase in public funding of election activities, then it would be money well spent.
23. We note that there is already considerable public funding of parties' election campaigning. All parties receive public money for broadcast advertising. Parties with MPs also receive free travel, staff, postage and printing, amounting to many millions of dollars each election year. The extra funding needed to replace secret private donations (above \$500) is small compared to the existing spending and triflingly small when compared to the importance of protecting the integrity of the electoral process.
24. We note that all the parties quietly accept the existing state funding and thus it seems inconsistent to take a stand against a small increase in this funding. The explanation appears to be that opposing a small increase in public funding is easy populist politics. However it is bad policy and we call on parties to take a longer term and more principled view of the issue. Most developed countries have a system of public funding of election campaigning together with controls on anonymous donations.
25. We urge that the Select Committee accompany a recommendation prohibiting anonymous donations with support for a formal and independent process to work out and implement a system of additional state funding. This is the thinking behind the public money that goes to 'Smoke Free' sport, where it is decided that it's better for funding to come from the public than with strings attached from tobacco companies.
26. However, we believe the additional public funding initially proposed by the Labour Government (in the "Review of the Electoral Finance Regime" Cabinet paper) was too generous. It proposed an annual payment to parties based on their proportion of the votes at the last election: \$2.00 for each vote received up to 20% of the total vote and \$1.00 per vote thereafter up to a cap of 30%. This system has the simplicity of the Australian 'per vote' system of public party funding and has the advantage of being more generous to smaller than larger parties (providing less money per vote to larger parties), in order to make it easier for new parties to compete with established ones. But it provided this level of funding to parties annually; that is, in both non-election years as well as the election year.
27. We submit that, in order to achieve controls on anonymous donations, the Select Committee should recommend a compromise over public funding. This should involve only providing additional public funding for election years and at a lower level than the Labour Government was proposing -- and thus at a fraction of the cost of the disputed Labour Government proposal. The details should be worked out in an open and independent process (with funding levels based on factors such as previous electoral vote, number of seats held, opinion polls and party membership).

28. One easy way of achieving this would simply be to use the same mechanism as the \$3.2 million broadcasting allocation. It could be renamed the “broadcasting and party electioneering allocation”. The broadcasting allocation would remain as it is, but \$2 million would be added in and allocated in the same proportion to parties to spend, as they choose, on non-broadcasting campaign activities.

29. COG has chosen \$2 million because it is about the amount of money declared by the parties as received from anonymous or secret trust donors at the last election. While that money would be distributed more generally between the parties, the bulk of it would still go to the major parties. The public money provided would be free from any taint of influence or corruption. However, it would be much less than the level of public funding Labour was initially proposing, and would only be allocated once in every election cycle. Furthermore, it would be distributed according to a more equitable formula than mere dollars-per-vote: a formula that takes into account current polling, any changes of party allegiance in Parliament, any by-election results, and the importance of fairness to the minor parties.

30. In addition, all parties would continue to accept private donations, subject to the new disclosure rules prohibiting anonymous and indirect donations.

31. NZ spends nearly \$50 million on its National Library each year. Two million dollars once every three years does not seem a high price to pay to allow financial transparency and make democracy work.

32. We reiterate: most developed countries ban large anonymous donations and have some system of state funding. These are not radical ideas. It is time for New Zealand to catch up. A recommendation from the Select Committee would go a long way to making this happen.

Controls on third-party election campaigning

33. Probably the best feature of New Zealand's existing election finance law is the cap on party spending during the regulated election campaign period (parties contesting all seats can only spend about \$2.4 million in the three months before the election). This stops the excesses of spending races between parties seen in other countries and acts as some restraint on how much private fundraising and therefore potential private influence occurs. However, as the better resourced parties have started spending up to or close to the \$2.4 million cap, the problem of "parallel campaigning" has emerged as a major election finance issue for New Zealand.

34. There is no point in capping party election spending, or controlling secret big donations to parties, if the donors can simply shift their money into parallel 'third-party' advertising campaigns that assist the same parties indirectly. The spending race then just shifts to a new arena. As a result the UK, Australia, Canada, the US and many other countries already have more rigorous systems for controlling third-party advertising than New Zealand. This is another area where New Zealand needs to catch up.

35. The Coalition broadly supports the Government's proposals for controlling third-party election activities. Some sections are well designed and we strongly support them. However the wording of some other sections has produced unacceptable (and, we hope, unintentional) restrictions on normal political behaviour and free speech in an election year. The solution is to retain the good parts and fix the parts that are poorly drafted.

36. We do not support the current definition of election activity. It is too wide and includes legitimate political activity and free speech in an election year.
37. Instead, the definition should be based on the British legislation (and extended to include negative advertising such as that by the Exclusive Brethren against the Labour, Green and Progressive Parties in 2005). We submit that the Bill should define an "election advertisement" as "an advertising message that can reasonably be regarded as intended to promote or oppose electoral success at any relevant election for one or more particular registered parties or candidates or for one or more registered parties or candidates who advocate (or do not advocate) particular policies". The aim of this wording is to include "issue" advertisements that, while not specifically saying 'Vote for X' or using party colours, contain wording, images or themes that have the effect of promoting or discouraging support for a party or parties; but not to prohibit other issue advertisements.
38. To make this clear, we submit that the following subclause be added:

In considering whether an election advertisement can reasonably be regarded as intended to promote or oppose electoral success at any relevant election for one or more particular registered parties or candidates or for one or more registered parties who advocate (or do not advocate) particular policies, any of the following factors are relevant:

- (a) the extent to which the messages are similar to those of a political party or candidate;*
- (b) the extent to which the design, logo or slogans are similar to those of a political party or candidate;*
- (c) the extent to which the issues or policies raised are associated with a political party or candidate;*
- (d) the closeness of the date of publication of the advertising message to the date of the election;*
- (e) any other indicia in the advertising message that would lead reasonable voters to believe it was directed at their voting behaviour.*

39. We favour leaving the meaning of "advertisement" for courts to define themselves (as in New Zealand's existing law, and in Canada and UK), and then either listing the mediums covered (as in the UK) or coming up with a better list of exceptions (as in Canada). The current "any form of words or graphics" wording is too wide.
40. Most important, though, the current drafting faults should not be allowed to detract from the important parts of the Bill's third-party controls. We fear that some politicians are using the evident (but fixable) drafting faults to undermine the worthwhile parts of the Bill's third-party controls.
41. Overall, the principles behind the third-party rules are the same as for the rest of the Bill: openness and, as the Royal Commission said, "limit[ing] the potential for corruption by interests with access to substantial funds". Stated simply, it should not be possible in future for wealthy individuals or organisations to spend large sums of money as the Exclusive Brethren did parallel campaigning for the National Party in 2005.

Thus:

- We support the parts of the Bill requiring declaration of all donations above \$500 going to third-party election activities;
- We support the ban on anonymous donations over \$500;
- We support the requirement of a financial agent and audits for those conducting significant campaigns;
- We support registration of third-parties spending more than \$5000 (for a party) or \$500 (for a candidate);
- We support a cap on spending on third-party campaigning by any individual or organisation, except that we think \$100,000 is a fairer balance between the Bill's purposes and freedom of speech than the current \$60,000 (\$100,000 is enough money for prominent nationwide newspaper advertising); and
- We support the anti-collusion rules, in clauses 67(2), 86(2) and 104(2) (except that in those sections breaches should be a corrupt practice not illegal practice).

42. To reduce unnecessary administrative burdens on organisations, we submit the following amendments:

- Remove the statutory declaration requirement. Simply require registration for those spending over the thresholds. Low-spending third parties will still need to identify themselves on their advertisements, and can be prosecuted if they overspend without registering, but otherwise are free to engage in election advertising up to that limit without administrative burden.
- Reword the definition of the donors that third parties have to disclose. Instead of including donors who contribute directly or indirectly toward the election expenses, which may be unduly wide and uncertain, only make them disclose those donors whose donations can reasonably be regarded as intended to be used, or partly used, for the purpose of electoral expenses, whenever such donations are received.
- Allow unincorporated bodies most of whose members are entitled to reside in New Zealand to register as third parties and to publish election advertisements.

43. In addition, we submit that information about third-party election campaigns and the donors behind them should be required to be made available to the public monthly during the election year, weekly in the last month before the election day and daily in the last week. This information should be made available on the Internet as it arrives at the Electoral Commission.

Extending the regulated election period

44. Another way that parties with wealthy backers can attempt to outspend their rivals is by doing election-related spending before the current three-month regulated election period. A

recent example of this in the 2005 election was the National Party billboard campaign (Iwi-Kiwi etc) that began in April 2005, five months before the election, and was for two months not controlled by the spending cap. Equally, there could be an equivalent billboard campaign funded and fronted by a third-party. Each of these is an example of the mobility of election money that, in the absence of adequate controls, can defeat the Electoral Act's purpose of reducing financial inequality.

45. We support the Bill extending the regulated election period to the full election year. It is necessary for this extended period to cover both party spending and third-party spending or the money could simply move from one to the other.

46. This extension of the regulated period makes it all the more important that the definition of election activity/advertising does not include normal political advocacy and debate in the election year. Thus the importance of amendment to the third-party definitions and rules.

Overseas and corporate donations

47. The Labour Government's "Review of the Electoral Finance Regime" Cabinet paper also decided to ban donations from people living overseas, unless they were entitled to vote in New Zealand. It quoted the 1986 Royal Commission, which said that "as a matter of principle it was not legitimate for wealthy and powerful interests outside New Zealand to intervene in our electoral process". We support this view and submit that the Bill should be amended to:

- (a) Prohibit election donations, either directly or indirectly, from any person who is not a citizen or permanent resident of New Zealand. This means that only people who are entitled to vote in a New Zealand election (or will be entitled to vote when they reach the age of 18) have the right to participate in the election by donating money. The same rule should apply to donations to third parties that are engaging in election activities as covered by this Bill. We urge an amendment to this effect.
- (b) Follow the example of Canada and prohibit donations, either directly or indirectly, from corporations and other organisations. The democratic principle behind this would again be that only those who are entitled to vote should be entitled to participate in an election by spending money. Thus the individuals in any organisation could donate money, but not the organisations themselves. We urge an amendment to this effect.

Limit the size of donations

48. Another effective way of reducing inequality of electoral influence is by placing a cap on how much any individual can donate to a party or to a third party for election advertising. This occurs in Canada.

49. We submit that this cap on donations should be \$5,000, the basis for this figure being that it is an amount within the means of most New Zealanders. If public funding is to be increased, the case for caps on private donations becomes even stronger.

Enforcing the laws effectively

50. There is no point in having election finance laws if the penalties for breaches are so low that it is tempting to ignore the laws in the race for the election. The penalties need to be a serious deterrent and political parties and third parties should be liable for breaches of the electoral laws.

- (a) We submit that the fines and jail terms for corrupt practices under the Electoral Act should be increased significantly. The maximum penalty for corrupt practices should be \$1 million for parties and third parties and seven years' jail for individuals. The modest increases in the EFB are out of line with existing serious fraud offences, which are surely comparable to electoral corruption.
- (b) Parties should be required to become incorporated societies, and should be themselves held liable for election law breaches.
- (c) We also submit that it is unsatisfactory that four different agencies have responsibility for overseeing election regulation. They should be rolled into one organisation under a Commissioner for Elections, whose independence and resources are secured by giving the position the status of an Officer of Parliament. COG understands that this is a matter for the government's proposed independent review, but suggests that a recommendation from this Select Committee would be helpful.

More detailed declaration of expenditure

51. Currently parties are only required to provide a very general breakdown of their election expenditure to the Electoral Commission.

52. Apart from the shortcomings in transparency, this means that the electoral authorities are ill-equipped to detect and follow up possible breaches of the expenditure rules.

53. Accordingly, we submit that there should be an amendment to the Bill requiring parties and candidates to provide a much more detailed breakdown of expenditure, including a description of all individual items over \$1,000 and details of all suppliers, contractors and others to whom payments were made.

Schedule: Third Party Rules Reform

The parts of the Electoral Finance Bill (EFB) that regulate the activities of third parties have been criticised for being too wide, and catching too much activity that ought to be unrestricted.

This schedule shows how the bill can be fixed, so that it doesn't have these unintended consequences.

The problems with the existing ERB draft:

1. The definition of "election advertisement" is too wide.

It includes anything that "can reasonably be regarded as... taking a position on a proposition" associated with a candidate or party (see EFB, clause 5). This may cover a lot of speech that's about political issues, even though that speech is not really targeted at the election.

The solution: Only include advertising messages that can reasonably be regarded as aimed at influencing the election itself.

Both the UK and Canadian laws are more closely tailored to *electoral* speech than the EFB.

The EFB provision is modelled on the Canadian law, but doesn't include two vital components of it:

- that the election advertisement be an "advertising message"; and
- that it "promotes or opposes a registered party or a candidate".

[Canada Elections Act 2000, s 319]

COG believes the UK's law is clearer. It confines its regulations to "material which can reasonably be regarded as intended to promote or procure electoral success at any relevant election" for a particular party, or for parties or candidates who advocate particular policies or positions.

[Political Parties, Elections and Referendums Act 2000, s 85(2)]

A definition of electoral advertisement that draws on the best of both definitions might be:

"an advertising message that can reasonably be regarded as intended to promote or oppose electoral success at any relevant election for any party or candidate or group of parties or candidates".

COG thinks this definition is enough by itself. The ways in which advertisements may do this need not be spelled out.

This definition will not catch genuine political speech that isn't aimed at elections, such as protest and debate about the Civil Union laws (unless they become an election issue).

To make this clear, we suggest that a series of relevant factors be set out, so that those designing political advertising would have a good idea of what crosses the line. The relevant section should make it clear that these are merely different types of potential indicia and not a checklist of factors that all need to be present:

In considering whether an election advertisement can reasonably be regarded as intended to promote or discourage electoral success at any relevant election for one or more particular registered parties or candidates or for one or more registered parties who advocate (or do

not advocate) particular policies, any of the following factors are relevant:

- (a) the extent to which the messages are similar to those of a political party or candidate;*
- (b) the extent to which the design, logo or slogans are similar to those of a political party or candidate;*
- (c) the extent to which the issues or policies raised are associated with a political party or candidate;*
- (d) the closeness of the date of publication of the advertising message to the date of the election; and*
- (e) any other indicia in the advertising message that would lead reasonable voters to believe it was directed at their voting behaviour.*

This overall approach is reflected in the current NZ law, where third party advertising is controlled if it “is used or appears to be used to promote or procure the election” of a candidate or “encourages or persuades or appears to encourage or persuade voters to vote” for a registered party.
[Electoral Act 1993, s 221(1)]

This is also the thrust of the recommendation of the Royal Commission on the Electoral System, which said that restrictions should be targeted only at “*advertising*”, so that other political speech would be untouched.

Para 8.40

“Advertising message” isn’t defined in the Canadian or UK legislation. Nor is “advertisement” defined in the Electoral Act. However, it’s plainly narrower than “any form of words or graphics”, and will be interpreted in a Bill of Rights consistent way to exclude things like newsletters and placards and chalk on pavements.

2. The concept of “advertisement” is too wide

The EFB currently includes “any form of words or graphics”. It seems too broad.

The solution: make a list of the media that are covered (or widen the exceptions).

A list could be defined as advertising messages that are broadcast, or published in a newspaper or periodical, pamphlet, poster, banner, billboard or other printed or electronic advertisement, or commercial advertisements on the internet.

The UK law only controls third party advertisements that are broadcast or published in a newspaper or periodical.

[Political Parties, Elections and Referendums Act 2000, s 87(2)]

A similar approach has been adopted in New Zealand in the past. The Electoral Act controls third parties who want to publish messages in any “newspaper, periodical, poster, or handbill” or broadcast it on radio or television.

[NZ Electoral Act s 221]

The Canadian law is much wider, and includes messages “transmitted to the public by any means”. Again, this is similar to the approach taken in the EFB. However, the Canadian law also sets out a wider range of exceptions (ie things that aren’t regulated) including “an editorial, a debate, a speech, and interview, a column, a letter, a commentary or news”, however they are transmitted.

[Canada Elections Act 2000, s 319]

There is clearly a tension here between the desire to include new technologies, and the need to ensure that the means of making political points is not unduly restricted. COG believes that the better approach is to include new technologies, such as expensively produced advertisements posted on YouTube, or advertisements on electronic billboards or given out on DVDs. This suggests the Canadian model is better.

Concerns about width can be addressed by:

- widening the exceptions;
- only regulating advertisements aimed at the election (point 1); and
- only regulating advertisements when significant money is spent on them (point 3);

3. The EFB rules require excessive administration

Under the EFB, no-one can publish an electoral advertisement unless they register as a third party or sign a statutory declaration (clause 53). Publishing is defined very widely (EFB clause 4) and includes to issue, display, disseminate via the internet, broadcast or “send...by any means”. Considered together with the very wide definition of “election advertisement” – see point 1 above – this creates a far-reaching regime. And it is triggered whenever someone seeks to “publish”. There is no exception when only trivial amounts are spent doing so.

Solution: set a threshold for the administrative requirements

This would permit anyone to publish electoral advertisements up a certain total – we recommend \$500 for electorate messages and \$5000 for party ones - without being caught by the electoral finance administration rules. This would exclude the placard-maker, the pavement-chalker, and the small-scale local posterer from being caught up in the registration/statutory declaration regime.

The law could continue to require all election advertisements to carry the name and address of the person or organisation behind them, and to require registration for those spending over \$500/\$5000.

The UK and Canadian rules are both triggered by spending money on messages rather than merely publishing them.

Under Canadian laws, it is only when any third party spends \$500 on election advertising that it must register as a third party.

[Canada Elections Act 2000, s 353]

The UK likewise simply makes it an offence for an (unregistered) third party to spend more than 10,000 pounds (or 5,000 in Scotland, Wales or Northern Island) on election material during the regulated period.

[Political Parties, Elections and Referendums Act 2000, s 94(3) and (5); Schedule 10]

4. The regulated period

Under the EFB, the “regulated period” – when the restrictions apply – will usually cover the whole of election year, up until the election. The restrictions discussed above will be in place all year (clause 4).

COG believes that the solutions already outlined above will ameliorate this problem. An advertisement opposing reform of the smacking laws in February will not fall within the definition of election advertisement, unless it can reasonably be regarded as intended to promote or oppose electoral success.

Likewise, the \$500/\$5000 threshold proposed in point 3 above will permit a range of genuine political activities that will not be captured by the rules.

COG supports the extended regulated period. Without it, heavy spending by a third party shortly before the regulated period commences might influence the election. This is all the more likely if political parties themselves are regulated for the full election year.

5. The cap is not high enough

Under the EFB, no third party can spend more than \$60,000 nationally (\$2,000 in any electorate) on election advertising. In the context of a longer regulated period and a wide definition of election advertising, this seems low.

However, once the definition of election advertising is tightened (points 1 and 2 above), \$60,000 is a more justifiable level.

Still, elections are a vital time for political speech and third parties should be able to participate in the debate to a reasonable extent, without having the ability to swamp the electorate with advertising aimed at getting a person or party elected or defeated.

Solution: raise the cap to \$100,000 (and \$5000 in an electorate).

This would permit a third party to finance a nationwide pamphlet drop, or a nationwide newspaper advertising campaign.

The Canadian limit is \$150,000, and applies to the last 5-8 weeks of the campaign. Given that Canada's population is eight times that of New Zealand and most campaigning occurs close to the election, \$100,000 seems a comparable figure for New Zealand. The Canadian limit has been upheld by the Canadian Supreme Court.

[Canada Elections Act 2000, s 350(1); *Attorney General v Harper* 2004 SCC 33]

6. Only some registered voters can be third parties

To be a third party under the EFB, and therefore able to spend more than \$5000 on electoral advertising, you need to be a registered elector, a group whose members are all registered electors, or a NZ body corporate (clause 14). That excludes any group with members who are under 18, for example.

Solution: only NZ citizens and those entitled to residency in NZ (or groups comprising at least mostly those people) can be third parties.