

BILLS DIGEST

ELECTORAL FINANCE BILL 2007 (2007 No 130-2)

As reported from the Justice and Electoral Committee: 19 November 2007

Bills Digest No. 1579



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ELECTORAL FINANCE BILL 2007 (2007 No 130-2)
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Date of introduction:	23 July 2007
Portfolio:	Justice
Select Committee:	Justice and Electoral
Date report presented:	19 November 2007

PURPOSE

The Bill creates a stand-alone Act to draw together the provisions relating to electoral finance into one comprehensive scheme¹.

The Bill as introduced is described in [Bills Digest No 1527](#).

MAIN CHANGES TO THE BILL

The Select Committee has recommended many technical amendments which are explained in the Select Committee's Commentary.

Definition of election advertisement

The Bill as introduced defined the term election advertisement as "any form of words or graphics, or both, that can reasonably be regarded" as doing one or more of the following:

- "encouraging or persuading voters to vote, or not to vote, for 1 or more specified parties or for 1 or more candidates or for any combination of such parties and candidates" (*Clause 5(1)(a)(i)*);
- "encouraging or persuading voters to vote, or not to vote, for a type of party or for a type of candidate that is described or indicated by reference to views, positions, or policies that are or are not held, taken, or pursued (whether or not the name of a party or the name of a candidate is stated)" (*Clause 5(1)(a)(ii)*);
and
- "taking a position on a proposition with which 1 or more parties or 1 or more candidates is associated" (*Clause 5(1)(a)(iii)*).

The term included "a candidate advertisement" and "a party advertisement".

The Select Committee has recommended the deletion of Clause 5(1)(a)(iii) and other amendments to the definition (*Part 1, amending Clause 5*).

¹ Electoral Finance Bill, 2007 No 130-1, Explanatory note, General policy statement, p. 1.

Comment

The Select Committee stated in its commentary on the Bill: "We sympathise with issues-based organisations who pointed out that they may be captured by this definition ... since their work routinely involves 'taking a position on a proposition with which 1 or more parties or 1 or more candidates is associated' "².

Increasing third party spending limits

The Select Committee has recommended that the spending limits for third parties be increased to \$4,000 (from \$2,000) for spending related to candidate advertising, and to \$120,000 (from \$60,000) for any other purpose (*Part 2, Clause 103, amending subclause (1)*).

Donations to third parties

The Bill as introduced provided that third parties³ must disclose any donation for election expenses above \$500.

The Select Committee has recommended that this specified amount be increased from \$500 to \$5,000 (*Part 2, inserting New Clause 22A(c)(headed "Meaning of specified amount")*).

Persons eligible to be third parties

The Select Committee has recommended that it be made clear that a New Zealand citizen or person ordinarily resident in New Zealand is eligible to be listed as a third party (*Part 1, Clause 14, amending subclause (1)(a)*).

Unincorporated bodies

The Select Committee has recommended that an unincorporated body with a majority of members who are New Zealand citizens or persons ordinarily resident in New

² Electoral Finance Bill, 2007 No 130-2, As reported from the Justice and Electoral Committee, Commentary, p. 4.

³ A "third party means a "promoter" for the time being listed as a third party under Clause 19 of the Bill and includes a promoter who at any time during the regulated period was listed as a third party under that clause (*Part 1, Clause 4(1), amended definition of "third party"*). A "promoter" is a person on whose initiative an election advertisement is published and includes a person who enters into a contract, arrangement, or understanding with another person to the effect that the other person publish an election advertisement or who publishes an election advertisement in the absence of such a contract, arrangement, or understanding (*Part 1, Clause 4(1), definition of "promoter"*).

The term "regulated period" is defined as:

- where a general election is held in the year in which Parliament is due to expire, whichever is the longer of the following periods
 - the period that commences on 1 January of that year and ends with the close of polling day; or
 - the period that commences three months before polling day and ends with the close of polling day
- (generally) where a general election is held in any other year on the dissolution of Parliament, the period that commences three months before polling day and ends with the close of polling day (*Part 1, Clause 4, definition of "regulated period"*).

Zealand is eligible to be listed as a third party (*Part 1, Clause 14, amending subclause (1)(c)*).

Financial agents

The Select Committee has recommended that any person involved in the administration of the affairs of a party, or of a candidate in relation to his or her election campaign be ineligible to be third party (*Part 1, Clause 14 insertion of new subclause (2)(e)*).

Donations

The Select Committee has recommended a change to the definition of "anonymous" to include a test of whether a financial agent could reasonably be expected to know the identity of a donor in the circumstances (*Part 2, Clause 22(1), substituted definition of "anonymous"*). It is also recommended that overseas donations to election campaigns be limited. Donations of more than \$1,000 by individuals residing outside New Zealand would be allowed only when the donor was a New Zealand citizen or a registered elector. Donations from overseas corporations are not be permitted (*Part 2, inserting New Clauses 25C and 25D*).

Contributors

The Select Committee has recommended rules be set out in the Bill for when the identity of contributors to a candidate, third party, or political party donation must be disclosed. A contributor of more than \$1,000 to any donation to a party must also be identified to that party or financial agent. Should that person make multiple contributions through a number of larger donations that in aggregate exceed \$10,000, the party must disclose that person's identity on their return. The party return must disclose every donation over \$10,000 and each aggregate of contributions that exceeds \$10,000. Similar rules apply to third party donations, but the threshold for third party disclosure is set at \$5,000. Where a third party donation is channelled through a "transmitter" (another person or entity), the transmitter must disclose the identity of the donor. It is made an offence to accept a prohibited anonymous donation. (*Part 2, inserting New Clauses 23A - 23D, amending Clause 24, inserting New Clause 25B*).

Donations through the Electoral Commission

The Select Committee has recommended that parties be able to receive anonymous donations of up to (and including) \$1,000 directly. However, any anonymous donation in excess of \$1,000 must be made through the Electoral Commission. The donor would be required to disclose their details to the Electoral Commission, and the Commission would not be allowed to pass these details on. It is also recommended that in any three-year electoral cycle a political party or third party may receive as an anonymous donation only ten percent of the maximum total election expenses that it can spend under the proposed expenditure caps. Any individual may make donations (not anonymous) through the Electoral Commission to a political party or third party. The maximum amounts of such donations during any three year period would be 15 percent of the maximum donations passed on by the Electoral Commission (*Part 2, insertion of New Subpart 1A, insertion of Clauses 28A - 28H; Clause 84(1) ("Maximum amount of a party's election expenses")*).

Comment

The maximum amount that any political party could receive from anonymous donations under this regime in 2008 would be \$240,000. For third parties, the maximum amount for 2008 would be \$12,000. Fifteen percent of these two values would be \$36,000, and \$1,800 respectively. Therefore under this regime an individual would be able to donate a maximum of \$36,000 to a party and \$1,800 to a third party in 2008⁴.

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⁴ Electoral Finance Bill, 2007 No 130-2, As reported from the Justice and Electoral Committee, Commentary, pp. 14 and 15.