

Electoral Finance Bill

Government Bill

As reported from the Justice and Electoral Committee

Commentary

Recommendation

The Justice and Electoral Committee has examined the Electoral Finance Bill and recommends by majority that it be passed with the amendments shown.

Introduction

The bill is a stand-alone bill that proposes amendments to the electoral finance regime in the areas of political donations, election expenses, third party advertising, and compliance and enforcement. It also proposes changes to the broadcasting regime for election-related broadcasting.

This commentary focuses on the main amendments we recommend to the bill and outlines the main issues we covered. It does not cover minor or technical amendments.

Minority views are included in the report only by agreement. A majority of the committee has concerns with a number of the comments of New Zealand National's minority view. Despite these concerns members respect the right of all members to participate and therefore agreement is not withheld.

The need for the bill

New Zealand has a proud history of open and participatory democracy. At present, political parties are required to identify publicly the source of donations when they are over a certain threshold, and to

declare donations as anonymous when that is not the case. There is a maximum amount that parties can spend on elections, and if third parties advocate for a particular party, any money spent must be declared and counted in the expenditure limit. Parties may not spend their own money on television and radio advertising, and may spend only funds allocated by the Electoral Commission. There is a limit on how much time parties can spend campaigning during the campaign period. Parties may not give voters money or goods in an attempt to convince them to vote for that party.

However, at the last election a number of problems emerged to show that these rules contain a number of loopholes that political parties, and third parties, were able to exploit to get around the intent of the law. The experience of the last election campaign—including the fact that the third largest known spender was the Exclusive Brethren—demonstrates a critical and urgent need to reform the laws around election campaign financing to preserve a level playing field.

Freedom of speech and fair elections

There is a fundamental need to achieve a balance between fair elections and the freedom of speech. Those who wish to unfairly influence the next election by spending millions of dollars on advertising that pushes their agenda will find that this bill restricts their ability to do so.

As the Royal Commission on the Electoral System wrote: “It is illogical to limit spending by parties if other interests are not also controlled. Supporters or opponents of a party or candidate should not be able to promote their views without restriction merely by forming campaign organisations ‘unaffiliated’ to any party. . . Nor should powerful or wealthy interest groups be able to spend without restriction during an election campaign while [the parties] are restricted” (p. 193).

The major changes to the bill

Many submitters supported the intent of the bill, but had concerns around whether it achieved the correct balance between participation and expression. We recognise that there were some unintended consequences to the bill as originally drafted, particularly as a result of the definition of election advertising. We recommend changes to that definition so that it does not affect the issues-based related advocacy that non-governmental organisations (NGOs) carry out.

Where NGOs do decide to engage directly in activity that promotes or opposes a candidate, party, or combination of candidates or parties, the expenditure limits to which they will be subject have been increased substantially. We also recommend the removal of the statutory declaration regime in the bill, which would have been overly burdensome. We have also sought to make the regime applicable to donors to political and third parties more transparent.

We have retained the original suggestion of a regulated spending period of the year of the election itself. However, taken with the more liberal approach to the definition of election advertising and the increased spending caps that will apply to it, we are satisfied that NGOs will find that we have struck a sensible balance between the preservation of freedom of expression and equality of participation in the democratic process.

We note that many submitters who supported the bill recommended these changes.

Human Rights Commission

We acknowledge the assistance of the Human Rights Commission. After hearings of evidence on this bill we requested that the Human Rights Commission consider our proceedings, speak with our advisers, and comment on our recommended amendments. We note that the Commission strongly supported a number of recommended changes relating to third party involvement and increased expenditure limits. The Commission stated that it believed the changes enhanced freedom of expression and upheld the right to participate in electoral processes. The Commission recommended that we circulate an executive summary of the report to all submitters by email when we report back to the House, so that they can be made aware of the changes before the second reading of the bill. We have made a commitment to doing so, and will include a link to the electronic report on the website. The Commission provided good feedback and constructive guidance, which we consider beneficial.

Third party legislation

Part of the purpose of this bill is to provide more transparency and accountability regarding the participants in an election. In our consideration of this bill we have given thought to how to regulate third parties, political parties, and candidates in a fair way. We note that there are differences between third parties and political parties and this is reflected in the different provisions for each. We have recommended amendments to the bill to try to ensure that the electoral

finance rules applying to each group are consistent, but also fair and reasonable in the light of that particular group's function, purpose, and role.

Participation of third parties in the electoral process

A number of submitters raised concerns that the bill may limit their ability to express their opinions and participate fully in the electoral process. In particular, many issues-based organisations were concerned that they might be required to list as third parties as their advertising might be captured by the bill, and that their ability to spend on issues-based advertising would be limited. We considered the issues raised by these submitters, and recommend a number of amendments to address their concerns.

Redefining election advertising

We recommend that the definition of "election advertisement" be amended to omit clauses 5(1)(a)(iii) and 5(2)(b). We consider that the definition in the bill as introduced is too broad and confusing. As it is drafted, election advertisement includes any form of words or graphics that can reasonably be regarded as taking a position on which a party or candidate has taken a position. We sympathise with issues-based organisations who pointed out that they may be captured by this definition, and so would have to list under the legislation as third parties, since their work routinely involves "taking a position on a proposition with which 1 or more parties or 1 or more candidates is associated", even though their intention is to raise public awareness of particular issues rather than to influence voting for or against particular parties or candidates. We consider that retaining these subclauses in any form could cause administrative difficulties and impose a compliance burden on many organisations that are not intended to be captured by the legislation.

We consider that the bill is not intended to capture all issues-based advertising and promotions without exception, and recommend the deletion of these subclauses to make this clear.

Increasing third party spending limits

We recommend that clause 103(1) be amended to increase spending limits for third parties: to \$4,000 for spending related to candidate advertising, and to \$120,000 for any other purpose. The cap on expenditure by third parties is designed to limit the potential for parallel election campaigns by third parties. A parallel campaign

could undermine the objective of setting expenditure limits for parties and candidates. It could also overwhelm communications by other individuals and organisations, and have a detrimental effect on their ability to express their opinions and participate in the democratic process. The cap on expenditure would also reduce the ability of third parties to attack a party that could not respond because it had reached its spending limit. We consider that these are important objectives, but we are concerned that the original figures were too low and note that some submitters suggested caps at a higher level. We agree with these submitters, and consider that increasing the expenditure cap to \$120,000—or five percent of the current spending limit for political parties—would ensure that third parties could express their political support adequately whilst still meeting the objectives of the expenditure cap regime.

Donations to third parties

The bill as introduced recommended that third parties should disclose any donation for election expenses above \$500. We recommend increasing this specified amount from \$500 to \$5,000 (contained in new clause 22A). This issue was raised by submitters who expressed concern about restrictions being imposed on their ability to participate. We consider this increase necessary to allow third parties to participate fully in the parliamentary electoral process. We also recommend changes to clarify that donations include goods and services tax.

We recommend the insertion of a new subclause 22(3) to avoid doubt about what constitutes a third party donation in an election campaign. A number of community and advocacy organisations expressed concerns that their ability to participate in elections and funding might be constrained by the provisions of the bill as introduced. We support these organisations' community and advocacy functions, and consider it is not the intention of the legislation to unduly restrict them. The recommended amendment clarifies which donations to third parties would be captured by the new electoral finance regime.

These amendments provide that the following would be excluded:

- donations where there is no indication that they are intended for election expenses
- donations where no intention regarding election expenses can be inferred

- donations made to fund the general functions and purposes of a third party.

Persons eligible to be third parties

We recommend that clause 14(1)(a) be amended so the phrase “registered elector” is omitted, and the clause instead provides that a New Zealand citizen or person ordinarily resident in New Zealand is eligible to be listed as a third party. This issue was raised by submitters, including the Human Rights Commission, and we agree that it is not appropriate to exclude certain members of society, such as people under the age of 18 years and New Zealand residents who are not citizens or registered electors, from listing as third parties. We consider it important that members of the community are not inadvertently excluded from listing as third parties.

Unincorporated bodies

We recommend an amendment to clause 14(1)(c) to ensure that an unincorporated body with a majority of members who are New Zealand citizens or persons ordinarily resident in New Zealand is eligible to list as a third party. Again, we consider it important that the legislation is as inclusive as possible to facilitate participation in the democratic process.

Financial agents

We are concerned that people involved in the administration of the affairs of a candidate or party might incur a conflict of interest if they were to become third parties. We recommend the insertion of new clause 14(2)(e) to prohibit any person involved in the administration of the affairs of a party, or of a candidate in relation to his or her election campaign, to register as a third party.

Parties not contesting an election

We recommend the insertion of new subclause 14(3), and an amendment to clause 14(2)(a), to allow a registered political party that is not contesting the party vote or putting up any electorate candidates to apply for listing as a third party without being deregistered as a political party. We understand that there may be registered parties who choose not to contest an election, but nevertheless wish to list as third parties. We consider that they should be entitled to do so. However, we consider that such a party should be required to sign a declaration saying that it will not contest any election while listed as a third party, and this declaration should be submitted with their

application. This change would lead to consequential amendments in clauses 16, 18, and 19 and in sections 128, 145, and 146G of the Electoral Act 1993 (effected in new clause 151A of the bill).

Listing of third parties

Clauses 14 to 21 of the bill deal with the listing of third parties.

Responsibility for listing

We recommend amendments to clause 15 to provide that the Electoral Commission would be responsible for listing third parties, and administering third party provisions. This would lead to consequential amendments to clauses 8, 16–21, 27, 28, 47, 51, 52, 111, 112, and 116–118 (clauses 117 and 118 amalgamated into new clause 117). The Electoral Commission is responsible for administering the registration of political parties; we consider that responsibility for the listing of third parties is a comparable role and it makes sense for this function to be carried out by the Electoral Commission as well.

Application to be listed as a third party

We recommend that clause 16 be amended to provide for the Electoral Commission to prescribe an application form for listing as a third party. We consider it important that the Electoral Commission be able to gather all the information that may be required from third parties. We recommend amending clause 16 to specifically include a reference to the threshold of expenditure above which a group must list as a third party (these thresholds are contained in clause 53(2)(d)). This would make the legislation clearer and more accessible to the people who would be affected by it.

Statutory declaration

We recommend that clause 16 be amended to require a third party to submit a (non-contest) statutory declaration that it is eligible to become a third party. This is a declaration that it will not contest the election. Such a declaration should accompany the application for listing as a third party, and would make it clear that the onus for determining eligibility rested clearly with the applicant.

We recommend an amendment to clause 18 to provide that an inaccurate declaration would be grounds for the Electoral Commission to refuse to list an applicant.

Cancellation of listing

We also recommend an amendment to the definition of “third party” in clause 4(1) to require third parties to file returns even if their listings have been cancelled during a regulated period. The aim of this amendment is to increase accountability for the funding of political campaigns, and to ensure that third parties that have spent money to influence elections cannot avoid declaring this by then having their listing cancelled. We recommend parallel amendments to the definition of “party”.

Decisions on the listings of third parties

We recommend amending clause 19 to clarify that a third party would need to apply to the Electoral Commission to be listed. This would make it clear that listing could be effected only after application, and the only discretion that the Electoral Commission would have to refuse applications would be where the name under which listing is sought was determined to be misleading, confusing, or offensive (set out in clause 18).

Interpretation

We recommend the amendment of some of the terminology used throughout the bill and defined in clause 4. These proposed amendments, and the reasons for them, are outlined below.

Broadcast

We recommend an amendment to ensure that it is clear that the meaning of “broadcast” in this bill is consistent with the Broadcasting Act 1989 (encompassing, for example, television and radio broadcasting). Other types of broadcasting, such as the use of loudspeakers and megaphones, would be captured by the new provision in paragraph (i).

Donation

We recommend that the definitions of “donation” and “donor” be omitted from clause 4, and instead included in clause 22. These definitions are most relevant to subpart 1 of Part 2, and their placement in clause 22 would ensure that the legislation was as logical and accessible to the public as possible.

Publication

We recommend that “publication” be replaced by “publish”, and that the definition be amended to clarify that it includes both

material printed in a newspaper or periodical as well as material inserted into a newspaper or periodical. As introduced, the clause referred only to an “insert” into such a publication. We are concerned this would mean only looseleaf flyers inserted between the pages of newspapers or periodicals were captured, and not an advertisement on the main pages of a newspaper or periodical itself as was intended. We consider that this should be made clear in the definition of “publish”.

News media

We recommend amendments to clause 5(2)(c) and (d), and the insertion of new clause 5(2)(da), to make it clear that editorials, news and current affairs programmes, and news media publications on the Internet were exempt from the definition of election advertisement. The news media play an important role in any democracy, and we consider unnecessary restriction on news publications to be undesirable.

Company communications

We recommend amendments to clause 5(2)(f) to clarify that a company’s documents published directly to its shareholders are not election advertisements. We consider it important that a company be able to communicate openly with its shareholders at any time without restriction.

Appointment of financial agents

Clauses 6, 7, and 8 require third parties, political parties, and candidates each to appoint a financial agent who would be responsible for administering financial transactions and donations in relation to election expenses.

Appointment forms

We recommend that clauses 6, 7, and 8 be amended to allow the Chief Electoral Officer and the Electoral Commission to prescribe notice-of-appointment forms to be used by financial agents, and to allow the financial agent’s contact details to be disclosed. The intention of the bill is to enhance the transparency of financial transactions related to elections, and to ensure a clear line of accountability for such transactions. We consider that a prescribed form and the disclosure of financial agents’ details would help to ensure that the Chief Electoral Officer and the Electoral Commission could obtain the necessary information.

Vacancy of a financial agent's position

We recommend that clauses 6, 7, and 8 be amended so that where no one has specifically been appointed as a financial agent, the candidate or the party secretary is deemed to be the financial agent. This amendment would ensure that someone could be held accountable under the legislation even if the administrative step of appointing a financial agent had been overlooked.

Auditors

Clauses 10, 11, and 12 outline the requirements of a third party, political party, and a candidate to appoint an auditor.

Candidate auditors

We recommend the omission of clauses 10 and 73 and consequential amendments to clauses 13, 72, 78, and 79. Clause 10 requires a candidate to appoint an auditor. We consider that the filing of a return by a candidate's financial agent is sufficient assurance of accountability and transparency, and that requiring a candidate to appoint an auditor represents a burden with no real practical value. This proposal was raised by the Hon Peter Dunne and agreed to by us.

General provisions relating to donations**Definition of "anonymous donations"**

We recommend amending the definition of "anonymous" in clause 22 to include a test of whether a financial agent could reasonably be expected to know the identity of a donor in the circumstances. We consider it necessary to extend this definition so that a financial agent could not be wilfully blind to the source of a donation.

Definition of "donation"

We recommend the amendment of "candidate donation", "party donation", and "third party donation" in clause 22, to incorporate the meaning of the term "donation" in clause 4 of the bill as introduced.

Overseas donations

We recommend inserting new clauses 25C and 25D to limit the ability of people overseas to make donations to election campaigns. 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 would not be permitted. If the financial agent were unable to ascertain the donor's eligibility, any excess over \$1,000 would be required to be returned or forwarded to the Electoral Commission or the Chief Electoral Officer to be deposited in a Crown bank account. The threshold is set at \$1,000 to enable traditional fundraising activities to be carried out, and to avoid an administrative burden on campaign fundraisers.

Clause 25D provides that wilful circumvention of these clauses would be a corrupt practice, but contravention without intention would be an illegal practice.

List candidate

We recommend inserting a definition of "list candidate" into clause 22.

Candidate and party donations

We recommend inserting new subclause 22(4) to make it clear that donations protected from disclosure, which are dealt with in new subpart 1A of Part 2, are not captured by the provisions in subpart 1 of Part 2. Inserting this provision would help to avoid conflicts between subpart 1 and new subpart 1A.

Disclosure of a donor's identity

We recommend amending clause 24 to clarify that a "person involved in the administration of the affairs of the party" may be a list candidate, and to provide that disclosure of the identity of a donor would be required only if the donation were over \$1,000.

This would put the onus on the person involved in the administration of the affairs of a candidate, political party, or third party to disclose a donor's identity, where known, if the donation were above the threshold. This threshold is intended to enable parties, candidates, and third parties to reasonably undertake traditional fundraising activities, such as cake sales and collections, without having to disclose the identity of each donor making a donation not exceeding \$1,000.

Disclosure of donors

We recommend inserting into subpart 1 of Part 2 new clauses 23A, 23B, 23C, and 23D, which would deal with the requirements for the disclosure of donors. We also recommend consequentially deleting clauses 44, 45, 46, and 47. The new clauses are substantially the

same as clauses 44 to 47 of the bill as introduced, but would apply to candidates and parties, as well as third parties.

Contributors

We recommend the insertion of new clause 23A, which sets out when the identity of contributors to a candidate, third party, or political party donation must be disclosed.

At present a donation to a party of \$10,000 or more must be declared on the party's return but the contributors to that donation do not need to be identified to the party nor disclosed on the return.

This clause provides that 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.

In order to retain equity between parties and third parties, the same rules for contributors would apply to third party donations, but the threshold for third party disclosure is set at \$5,000. Candidates must disclose any donation over \$1,000 in any case, but the application of this provision to candidates would ensure that contributors who contributed more than \$1,000 in aggregate, or as part of a larger donation, were identifiable also.

Where the name and the address of the contributor, or the amount of their contribution, is not known that contribution would be treated as an anonymous donation and—if the unidentifiable contribution were over the threshold amount—be referred through the Electoral Commission or the Chief Electoral Officer. We consider this change to be in the interests of public transparency.

Transmitters

We recommend the insertion of new clause 23C, which is clause 45 in the bill as introduced. This clause ensures that if a third party donation were channelled through a "transmitter" (another person or entity), the transmitter must disclose the identity of the donor. If the transmitter could not identify the donor, the donation must be treated as anonymous. We recommend extending this clause to apply to donations to political parties and candidates also. We recommend the insertion of new clause 23D, the offence provision for breaches of the disclosure provisions, and the omission of clause 46.

Offences in relation to anonymous donations

We recommend inserting new clause 25B which would make it an offence to accept an anonymous donation prohibited by clause 25A. Wilful circumvention of these provisions would be a corrupt practice, and a breach would be an illegal practice in any other case.

Donations protected from disclosure (subpart 1A)

We have recommended amendments to establish a new comprehensive regime for anonymous donations. Under the current law a person may make an anonymous donation to any political party of any amount at any time. Parties are not required to ascertain details of donors, or disclose details of donors to the public. Many submitters raised significant concerns about whether political parties are being funded by unknown sources. These submissions argued that sources of funding need to be more transparent. A number of submissions sought very low caps on anonymous donations to political parties. Some submissions recognised that in order for very low caps to be successful, some form of State funding for political parties would be necessary. This bill does not deal with State funding, but our amendments would introduce a regime to limit anonymous donations in order to protect against any undue influence by anonymous donors in the election process.

We recommend the insertion of a new subpart 1A of Part 2, containing new clauses 28A to 28H. This subpart introduces a regime to deal specifically with donations protected from disclosure, where the donor did not want their details or the amount donated disclosed to the party, third party, or the public.

We recommend 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 would 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. This would allow members of the community to make a donation over \$1,000 without being associated with it publicly. We also recommend amendments to limit the amount that any one person can donate under protected disclosure. The details of the recommended regime are described below.

Method of making a protected disclosure donation

We recommend the insertion of new clause 28B, which describes how a person makes a donation which is protected from disclosure.

Any donation in excess of \$1,000 must be sent to the Electoral Commission, along with the name of the recipient political party or third party, the full name and address of the donor, and the details of any other people who have contributed more than \$1,000 to the donation. The Electoral Commission would also have the right to ask for any further information.

Maximum limits on donations protected from disclosure

We recommend inserting new clause 28C, specifying the limits for donations protected from disclosure. There would be two types of limits on these donations. The first would restrict the amount that any party or third party can receive as an anonymous donation. The second would restrict the amount that any individual could donate.

We recommend that in any three-year electoral cycle after the commencement of this Act, 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.

We recommend that the maximum amount that any individual could donate to a political party or a third party through the Electoral Commission during any three-year electoral period would be 15 percent of the maximum donations passed on by the Electoral Commission.

In the 2008 year, 10 percent of the maximum amount of total election expenses allowed for any party under section 28C would be \$240,000. This would be the maximum amount that any political party could receive from anonymous donations under this regime in 2008.

Ten percent of the maximum amount of total election expenses allowed for third parties would be \$12,000. This would be the maximum amount that any third party could receive from anonymous donations under this regime in 2008.

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 2008.

The aim of imposing these limits is to stop the undue influence on elections of money from undisclosed donors. The Electoral Commission would be required to provide guidance on the relevant dollar

amounts on its website and by any other means it considers appropriate.

There would be a transitional provision for the 2008 general election, where the limits would apply from 1 January 2008 and would not be retrospective.

Duties of the Electoral Commission

We recommend the insertion of new clauses 28D and 28E, which explain the duties of the Electoral Commission when it receives donations under the protected disclosure regime. In most cases the donations are to be paid to the financial agents of the party or third party monthly, except for the period between writ day and the return of the writ, when it would be weekly. This is to remove any public doubt about whether financial agents might be able to discover donors' identities inadvertently. In addition, it would be more efficient and practical for both the Electoral Commission and parties.

If a donation were received but the required information was incomplete, the Electoral Commission must in the first instance try to contact the donor and advise them, or—if this were not possible—deposit the ineligible amount into a Crown bank account. In addition the party or third party, where possible, would receive any interest accrued by the donation while it was held by the Electoral Commission. Under this new provision, the Electoral Commission would be required to publish the amount of donations protected by disclosure that it had paid.

Offences of prohibited disclosure

We recommend inserting new clause 28F, setting out the offences related to protected disclosures. Offences include disclosing the identity of the donor to anyone other than an authorised person listed in the provision. The provision provides assurance that a donor's identity would be protected from disclosure.

Reporting requirements

We recommend the insertion of new clause 28H, setting out the information to be reported by the Electoral Commission. The report must include the total amounts of received donations, the amount paid to financial agents, the amount returned to donors, and the amount paid into the Crown bank account. This should be done in each annual report and published on the Commission's website or by other appropriate means. These reports should ensure accountability

for the money the Electoral Commission would receive in protected disclosure donations.

General rules for election advertisements

Clauses 53 to 57 (subpart 5 of Part 2) outline some general rules for election advertisements.

Advertising on polling day

We recommend amending clause 53 by inserting a new subclause (1AA) containing a reference to section 197 of the Electoral Act 1993. This section refers to the prohibition of advertising on polling day, and the reference would alert readers of the bill that this particular section of the Act continues to apply under the Electoral Finance Bill regime.

Expenditure thresholds

We recommend amending clause 53 to increase the limit on what a promoter can spend on an election campaign before being required to list as a third party. We recommend that the limits be increased from \$500 to \$1,000 in the case of election advertisements that relate to a candidate and from \$5,000 to \$12,000 in any other case. We consider that increasing these limits would strike a better balance between freedom of speech and necessary regulation. It would also mean that the Electoral Commission would be better placed to recognise any breaches. We recommend consequential amendments to clause 54.

We recommend that clause 53(2) be amended to make it clear that the amounts mentioned include goods and services tax. This appears to be an oversight since all other limits expressed in dollar amounts in the bill explicitly include goods and services tax.

Statutory declarations

We recommend that the requirement for a statutory declaration in subclause 3 of clause 53 be omitted. This clause requires a promoter to make a statutory declaration where spending on election advertisements was less than \$500 in the case of a single electoral contest and \$5,000 in any other case. We consider that compliance with this clause would be expensive, patchy, and intrusive.

Offences related to section 53

We recommend that clause 54 be amended to ensure that this offence provision would apply only where an intention to circumvent the spending limits in clause 53 could be proven. This would ensure that the knowledge requirements for this offence were consistent with the other anti-collusion provisions in the bill (clauses 67(2), 86(2), and 104(2)).

Incurring election expenses

We recommend inserting a new clause 55A which would make it an offence for any person to incur election expenses exceeding the expenditure limit for third parties other than a financial agent of a candidate, party, or third party. Without this amendment it might not be possible to prosecute for corrupt practice people who did not list as third parties and spent over the expenditure limits for third parties. We consider this a significant gap that needs to be closed. This provision would not apply to financial agents of a candidate, party, or third party, as the spending cap for candidates, parties, and third parties is dealt with in clauses 62, 84, and 103.

Requirements for election advertisements

Clause 56 is intended to carry over section 219 of the Electoral Act, which relates to payment for the exhibition of election advertisements on a building or land. We recommend minor amendments to this clause, such as omitting the second use of the word “election”, to correct drafting errors.

Reporting offences

We recommend the insertion of a new clause 57A to impose a positive duty on the Chief Electoral Officer and the Electoral Commission to report the facts to the police if it is believed a breach of the general rules for election advertising has occurred. We consider it very important that these election advertising rules are complied with, and that breaches of these rules are serious offences. Anyone may report an offence under this section to the police. However this amendment would make it explicit that both the Electoral Commission and the Chief Electoral Officer are mandated to report suspected breaches.

Election expenses

Clause 59 outlines the meaning of “election expenses” for the purposes of subpart 6 of the bill. We note that, apart from the

amendments we have recommended, clause 59 is expected to carry over current legislation in this area. We understand that, whilst the clause may change the form of previous legislation in the interests of clarity and accessibility, it is not intended to change it in substance and application.

Commercial value of advertising space

We recommend amending clause 59 by inserting the phrase “of a specified kind” into clause 59(1)(b)(iii), and inserting a new sub-clause (2A) to identify specific land and buildings. The effect of these amendments would be to ensure that the cost of advertising space on particular lands and buildings would not be counted as an election expense. This amendment would ensure that only advertising on land or buildings used principally for commercial or industrial purposes would be included as an election expense. We recommend this amendment in recognition of the right of members of the community to use their own land and buildings in any manner they see fit. The amendment also recognises the practical difficulties that might arise if the cost of such advertising space were to be included as an election expense (for example, the need to determine the commercial value of such space for advertising where none may be ascertainable). We recommend similar amendments to parallel clauses 81 and 100.

We recommend inserting a new clause 119A allowing the Electoral Commission to provide guidance on the value of advertising space. This advice would not be binding, and we expect that if, for example, the Commission were provided with two quotes for advertising in the place in question, the quoted values would supersede the advice of the Electoral Commission for that particular area.

We recommend that clause 59(5) be amended to include reference to aggregate amounts. As introduced, this clause might allow a supplier to provide material or advertising space with a commercial value of less than \$200 on multiple occasions, to circumvent the accounting requirements. We consider that this would be contrary to the intention of the provision. We recommend similar amendments to clause 81(5) (which is the parallel provision for subpart 7 of Part 2) while retaining the higher commercial value of \$1,000, and clause 100(5) (which is the parallel provision for subpart 8 of Part 2).

Provision of interpreting services

We recommend the insertion of a new clause 59(2)(e) that provides that hiring an interpreter to enable a deaf or hearing impaired person

to undertake or participate in a candidate activity is not included as an election expense. We consider that to include such vital services as an expense would be unreasonable and inconsistent with the intention of the bill to promote the ability of all members of the community to participate actively in election-related matters.

Incurred election expenses

We recommend that clause 60 be replaced by new clauses 59A and 60, which specify who may incur an election expense on behalf of a candidate, and allow expenses to be apportioned between a candidate and others where appropriate. As introduced, clause 60 states that only a financial agent can incur a financial expense on behalf of a candidate. We are concerned that anomalies may occur if a party incurs an election expense on behalf of a candidate where the party and candidate have entered into a joint election advertisement under clause 65. We recommend amendments to allow other persons to incur election expenses on behalf of a candidate to prevent such anomalies arising, and to allow expenses to be apportioned where such a joint election advertisement arrangement has been entered into. We recommend that clause 82, which is the parallel provision in respect of a political party, be replaced with new clauses 81A and 82, and similar amendments to clause 100A, which is the parallel provision in respect of a third party.

Offences in relation to election expenses

We recommend amendments to reclassify the anti-collusion offences specified in clauses 67(2), 86(2), and new clause 106A (clause 104(2) in the bill as introduced) as corrupt practice rather than illegal practice. These clauses make it an offence for any persons to collude to avoid exceeding the maximum amounts that a candidate is allowed to spend on an election campaign (67(2)), that a party is allowed to spend on an election campaign (86(2)), or that a third party is allowed to spend on an election campaign. Such collusion is classified as an illegal offence. We consider collusion to be a serious offence and that it should therefore be reclassified as corrupt practice and subject to the heavier penalties that attracts.

Election expense return

We recommend that clause 72(1) be amended to clarify that a candidate's return must set out the candidate's election expenses

incurred in respect of any candidate activity undertaken during the regulated period. As introduced, the clause specifies that a candidate's financial return for election expenses is for expenses incurred during the regulated period. It might not be clear that this includes goods and services supplied during the regulated period but paid for before the regulated period began. We consider that this is contrary to the intention of the bill, which aims to regulate advertising over the period leading up to the election. The amendment recommended would clarify this issue. We recommend a similar amendment to clause 91(1), which is the parallel provision in relation to party returns, and a consequential amendment to clause 111(1).

Archiving of election expense returns

We recommend amending clauses 34, 52, 79, 97, 98 (clauses 97 and 98 to be amalgamated into new clause 97), 117, and 118 to require that returns not be destroyed at the end of the specified period, but archived (and no longer available for public inspection). This amendment would require a consequential amendment in clause 4(1), inserting a definition of "public inspection period". We consider the retention of such documents to be in the public interest.

Definitions regarding party election expenses

We recommend an amendment to the definition of "party activity", replacing "party" at paragraph 80(a)(i) with "the party secretary". This amendment is intended to remove any uncertainty about what might constitute a party activity. It would help to make it clear who is responsible and who should be held accountable for party activities, and to ensure that party secretaries are not held responsible for matters outside their control.

We considered recommending the amendment of clause 80(d) to provide guidance on the phrase "in his or her capacity as a member of Parliament", to clarify the kind of activities intended. This phrase appears in a number of statutes and is widely used in various contexts, including parliamentary proceedings. We were concerned, however, that any guidance we might provide in the context of electoral finance legislation could restrict its meaning and limit its applicability to the situations in which it is currently used. We note that the activities we expect to be covered by this phrase in the context of the Electoral Finance Bill include communications issued by members of Parliament. The activities that are permissible will

need to be confirmed by the Electoral Commission or Chief Electoral Officer case by case, but we expect that guidance on excluded communications might draw a distinction between communications that make statements of policy, and those that involve inducement to vote for a candidate or party, or soliciting financial support for membership of a political party.

Election expenses between parties

We recommend inserting a new clause, 85A, which provides for the apportionment of election expenses between political parties in a joint campaign. We also recommend inserting a new clause 105A to provide for the apportionment of election expenses between third parties. The revised clauses would ensure that parties and third parties could have election expenses fairly attributed between them when they had cooperated on election advertising.

Election advertising and government advertising

We recommend the insertion of new clause 55B to make it clear that government agencies are not entitled to engage in election advertising. The majority of us share the concern raised by submitters, and for this reason we consider it a matter which should be clearly set out in the legislation.

Issuing search warrants

We recommend that clause 121(3) be amended to provide that sections 198A and 198B of the Summary Proceedings Act 1957, which relate to search warrants associated with solicitors' records and computer files, should be available in relation to illegal practices referred to in the bill. As introduced, the clause allows a search warrant to be issued in connection with an illegal practice; but we understand that the police consider that a special search warrant power should be made available to ensure that the provisions in the bill can be enforced effectively, and that police would not have to rely on information being volunteered to investigate matters. We consider it essential that it be possible to enforce all aspects of the electoral finance regime properly, and recommend this amendment accordingly. We make a parallel recommendation for the amendment of clause 157(3).

Punishment for a corrupt practice

We recommend that clause 124(a) be amended so that the maximum term of imprisonment is increased from one year to two years. In addition, we recommend that the maximum fine for a financial agent or party secretary be increased from \$40,000 to \$100,000, and for any other person from \$15,000 to \$40,000. We recommend amendments to clause 156 to ensure that the penalties in section 224(1) of the Electoral Act 1993 are consistent with the penalties under the new electoral finance legislation. We consider that corrupt practice in relation to electoral law is a serious matter, and that the penalties for such practice should therefore be high, reflecting public concern about issues of electoral finance.

Regulations

We note that clauses 127 and 128 of the bill replicate provisions of the Electoral Act 1993, and we would expect them to operate in the same way that they have under that legislation.

New Zealand National minority view

Introduction

- 1 The National Party opposes the Electoral Finance Bill (“the Bill”) for three reasons:
 - (a) Electoral law has traditionally been developed in a cross-party manner. The last major rewrite of electoral law was in the early 1990s when both Labour and National had extensive cross party discussions. The advent of MMP means that all parties need to be involved in the development of legislation if it is to be enduring. We do not believe that it is in the public interest for this legislation to be rewritten every three years. For that reason, we think the process is as important as the content.
 - (b) Bill of Rights concerns
 - (c) Substantive objections to the Bill.

Select Committee procedures

- 2 National members think the Select Committee process has been flawed. We believe the legislation has been rushed and procedural corners have been cut in order to expedite the

hearing of submissions and consideration of the legislation. In our opinion, many witnesses did not receive a fair hearing and officials from both the Ministry of Justice and the Parliamentary Counsel Office did not have adequate time to advise on policy and draft legislation. Examples of where National members thought there were procedural failings are:

- (a) On 23 August, a majority of the Committee resolved that the Law Commission be invited to act as an adviser on the Bill. National members opposed the motion. A letter was sent to the Law Commission. Sir Geoffrey Palmer responded, however, saying that the Law Commission had not been approached informally about possible appointment as an adviser and that, if he had been, he would have said it was inappropriate for the Commission to act as an adviser on a policy matter like this and, in any event, the Commission's workload would preclude acceptance of the appointment.
- (b) On 23 August, again by a majority, the Committee resolved that submissions on the Bill be heard and that the first set of submitters wishing to be heard be booked to be heard on 6 September. This was done before the time for hearing the submissions had expired (11 September). We were also keen to travel to Auckland to hear submissions but this was overruled on cost grounds.
- (c) The Deputy Chairperson was disappointed that there was insufficient consultation between the Chairperson and him, especially after the subcommittee had agreed that such consultation take place. We think that, if ongoing consultation had occurred, many procedural difficulties could have been avoided.
- (d) On 27 September, final oral submissions were heard and the advisers agreed to provide a departmental report covering all issues raised by submissions for consideration by the Committee at its meeting on 11 October.
- (e) At the meeting on 11 October, there was some further discussion about the role of the Human Rights Commission. The Commission had prepared a substantial submission but had not been available to give oral evidence on the two occasions offered to it by the Committee Clerk. Because of the significance of the

submission, at the urging of Heather Roy MP, the Committee agreed that the Human Rights Commission be invited to give oral evidence. That evidence was provided to the Committee on Thursday 18 October at the end of which it was resolved that consideration of the Bill be deferred until the Committee received a report from officials that addressed the issues raised by the Human Rights Commission.

- (f) On Thursday 25 October, the Committee agreed that the advisers on the Bill be given the Committee's authority to consult with the Human Rights Commission on recommended amendments. The Commission provided further advice after consultation with the advisers.
- (g) On Monday 29 October, the Committee met from 9.30am until shortly after 1pm. On that day a number of motions were moved by Labour members. These dealt with a variety of issues including increasing the maximum amount of a third parties total election expenses to \$120,000 or 5% of the maximum total party spend, total threshold for expenditure on election advertising before listing as a third party be raised to \$12,000, the threshold under clause 53(3)(a) to be increased to \$1,000, increasing the spending cap for third parties in the case of election advertisements that relate to a candidate to \$4,000 and that the regulated period within the Bill remain twelve months and begin on 1 January 2008. National members believe these motions had clearly been the subject of prior discussions between government members and supporters.
- (h) National members think it is of note that at this meeting, the Green member (Metiria Turei) proposed that the Bill be amended to provide for a donations regime affecting political parties and candidates. Essentially the third party donations regime is to be extended to apply to parties and candidates. No papers were provided, no notice was given and after a lengthy discussion, advisers agreed to provide an outline of the proposal and their comments to the Committee for consideration by 5 November. No papers were provided by Ms Turei, although she admitted she had prepared an outline of the proposed scheme which she

could not provide to the National members of the Committee. The Chairperson instructed the advisers to proceed to draft the proposal. Only after lengthy discussion did the Chairperson and government members agree to the advisers writing up the proposal for the next meeting on 8 November and allowing the advisers to highlight the issues they felt needed to be discussed further.

- (i) On Thursday 1 November, the Committee met from 9.30am - 5pm. A number of papers were tabled including a summary of the donations regime and proposed draft clauses. After a lengthy discussion about a donations regime, advisers agreed to provide further information to the Committee for consideration at its meeting on Monday 5 November, including further information on:

- The disclosure regime and donations;
- The definition of “ordinarily resident”;
- Whether double incorporation of corporations was possible.

Because of the changes foreshadowed by the majority, National members were concerned to ensure that an opportunity be given to submitters, particularly the Human Rights Commission, to make further submissions on the Bill. Accordingly it was moved that the Committee circulate a copy of the revision tracked version of the Bill to submitters for consultation in accordance with the recommendations of the Human Rights Commission in paragraph 30 of its submission dated 31 October 2007. This was lost. The majority motion (successful) was that, when the Bill is reported to the House, the Committee is to advise submitters of the report back.

- (j) Given the amount of material, and given the further foreshadowed reports of the advisers, it was suggested that the Committee meeting on Monday 5 November begin at 1pm so that members could have time to consider the report to be presented by advisers that morning at 9am. This motion was defeated. Ongoing concerns had been expressed by National members at the prospect of having to discuss papers received late.

For example, on 5 November, members received a paper in the email system at 9.05am for discussion at 9.30am. A paper recording changes to be made in the revision tracked version was received at 9.37am. There was no opportunity to read the document before a discussion took place. As a consequence, there was a largely unfocussed discussion for a number of hours before the issues started to emerge.

- (k) On 5 November, Committee members learned of the case being brought by, among others, the Sensible Sentencing Trust and Rodney Hide MP in the High Court. Apparently the High Court has agreed to hear an urgent application for judicial review of aspects of the Bill and in particular the failure of the Attorney-General to provide a report under section 7 of the New Zealand Bill of Rights Act. A letter had been received by the Office of the Clerk asking whether it was proposed that the Committee deliberate and report back to the House before the date noted on the Parliamentary website (25 January 2008). The Clerk's advice was sought. She outlined the importance of confidentiality under Standing Orders but that the Committee could authorise the Chairperson to make a statement. National members wanted the Chairperson to be authorised to make a statement about the impending deliberation on 12 November and report back to the House later that week notwithstanding the date provided on the website. The majority, however, successfully moved that the Office of the Clerk reply to the letter by saying that the Committee process is something for the Committee and that the date by which the Committee was to report back was 25 January 2008.
- (l) At the meeting on 8 November, four days before the bill was due to be deliberated on, a new clause 119AA was presented to the committee by Parliamentary Counsel. The committee considered the draft clause on Thursday 8 November. On Monday 12 November, the majority resolved to remove the clause. The majority said the clause had been drafted and inserted by Parliamentary Counsel in response to a general concern raised by the majority.

- 3 National members do not think these are complaints about minor faults. They think that the Bill has not received proper consideration and that it has been a rushed and thoroughly inadequate job. They do not think that the public interest has been served.
- 4 National members exempt the advisers (including Ministry of Justice, Parliamentary Counsel, the Electoral Commission and the Office of the Clerk) from any criticism. At all times they have acted with enormous professional integrity notwithstanding the unreasonable time pressures placed on them.
- 5 National members paid close attention to a senior and respected civil servant who, on 1 November, recounted to the Committee his experience over the Parliamentary stages of the Electoral Act 1993. He indicated that, as a result of cross-party co-operation between the National and Labour parties, legislation was enacted which was enduring. He advised the Committee that its members should endeavour to reach cross-party co-operation on some of these issues. In response, Hon Marian Hobbs MP said “with respect, that’s our kaupapa”. That is certainly not the view of National members.

Bill of Rights concerns

- 6 A common theme of many of the submissions has been a concern about the way the legislation potentially breaches the New Zealand Bill of Rights Act. Notable submissions in this regard were those presented by the Human Rights Commission itself and the New Zealand Law Society. National members share their concerns.
- 7 Many submitters were critical of the failure of the Attorney-General to provide a report under section 7 of the New Zealand Bill of Rights Act. Instead of providing a report, the Attorney-General relied on advice from the Crown Law Office to the effect that electoral legislation was very much a matter for Members of Parliament and a degree of discretion needed to be given to Parliament to determine the workings of the electoral legislation. National members thought that the Crown Law Office advice was flawed and wanted to have an opportunity to discuss that advice with representatives of the Crown Law Office. The Committee resolved to write to the Attorney-General asking that advisers from the Crown Law

Office be made available to appear before the Committee to provide advice on the consistency of the Bill with the New Zealand Bill of Rights Act. By letter dated 11 September, the Attorney-General replied, saying he saw little point in having Crown Law Office officials appear to assist the Committee.

- 8 As noted above (para 2(f)), the Human Rights Commission was asked to work with officials to address their concerns with the legislation. The Commission helpfully responded on 31 October. They presented two options; have a further round of public consultation (para (30)) (the Commission's preferred option) or that a summary be provided to submitters so that they can make their views known prior to the second reading debate. National members preferred another round of consultation; the majority did not.

Substantive matters

- 9 National members are concerned at the apparent lack of policy to underpin various legislative proposals contained in the Bill. For example:
- Requirements about the auditing of candidates' expenses. No rationale was given, no evidence was provided, no mischief was outlined to justify this new procedure. Fortunately Hon Peter Dunne MP did not support this requirement and the Committee agreed to remove it from the Bill.
 - Another example is the requirement for candidates to appoint a financial agent. No Ministry of Justice official could answer any question about what mischief this proposal was seeking to address.
 - Most importantly was the issue of the 12 month regulated period. We were concerned about the length of the regulated period and the chilling effect on freedom of expression. Mr Ryall MP questioned a Ministry of Justice official on this issue extensively seeking an underlying policy. All that could be said in response was that the government wanted "an accurate and fair picture of election expenditure". Mr Ryall responded that, if this is all that was wanted, that could be achieved by a candidate or party being required to

make a declaration of expenditure. Much discussion ensued and the officials admitted that the majority of expenditure will be incurred in the last few weeks of an election campaign “for the same reason that Hallensteins advertises just before a sale”. Try as they might, National MPs simply could not obtain a rationale for the 12 month regulated period.

- 10 Proper cross party consultation could have resolved some contentious issues, for example, the donations regime. National signalled at an early stage it was willing to discuss this issue. It was apparent from many of the submissions that members of the public wanted the issue of “transparency” addressed. National members think it could have been the subject of sensible and productive cross-party discussions because it was solvable. But the way in which it was introduced, without warning, and without any accompanying papers in the Committee deliberations, was most unsatisfactory. In fact some of the only constructive discussion in the Committee on the Bill took place around this issue. Unfortunately National members think the Committee has been making decisions on a donations regime which has been drafted at the eleventh hour and which will be deliberated on the very day the policy is finalised. Another late change has been made to clause 25C to ensure that New Zealanders who are citizens but not registered voters will still be able to give even when they may not have lived in New Zealand for many years.
- 11 The key concerns of the National members are:
 - (a) First, National is unhappy with the third party regime. It objects to the very name “third party” which suggests that members of the public are observers to a process where political parties and candidates are the principals. It is the other way round. Political parties are participants in the public’s process. There is an implicit suggestion that a “third party” is some kind of interloper and must therefore be controlled. National members object to stigmatising the public in this way. They also consider that the public interest is in transparency, not in shutting down the exchange of ideas which will be the effect of the third party regime. Some improvements have been made to the definition of a third party (see clause 14) but this does not detract from the principled objection to the regime which National

members have. We also comment that the listing of third parties will be a recipe for litigation in an election year.

- (b) Secondly, National believes the regulated period is far too long and restricts freedom of expression. No reason has been advanced as to why that period needs to be 12 months. National members do not think that freedom of speech should be regulated for up to one third of the electoral cycle and think comparisons with parts of a variety of overseas models are misleading.
- (c) Thirdly, National members believe the definition of election advertisement is unsatisfactory (clause 5). As introduced, the Bill provided that an election advertisement could mean any form of words or graphics, or both, as doing one or more of the following:
 - (i) 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:
 - (ii) 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 candidate is stated:
 - (iii) taking a position on a proposition with which one or more parties or one or more candidates is associated.

This definition was contested by a huge number of submitters. In particular they said that subclause (1)(a)(iii) would effectively shut down any political debate. It was so extreme that its chances of retention were negligible. That subclause was deleted, but subclause (1)(a)(ii) is retained. National members consider this is too wide-ranging, especially given the length of the regulated period. It has the potential to give rise to much litigation. The subclause is unsatisfactory and is opposed by the National members.
- (d) Fourthly, this is a heavily regulated regime much of which is unworkable. We think the Committee has ignored much of what the New Zealand Institute of

Accountants said about auditing requirements. The Institute has essentially said that the auditing requirements are likely to prove impossible to carry out. It is likely that, in most instances, auditors will have no choice but to qualify their opinions because of the lack of procedures available to an auditor to detect income and expenses deliberately excluded. The Institute says that such an exercise would not improve public confidence in the system. It says the Bill mandates audits which will not serve any useful purpose, will add to electoral costs and will result in a large number of qualified audits. Again this will be a recipe for litigation.

- (e) The fifth major objection to the regime is that there is ongoing protection of incumbents in Parliament. By incumbency we refer to Members of Parliament generally and the government in particular. A number of concerns have been raised about, for example, clause 81 dealing with the meaning of an election expense which term does not include the cost of “any publications that relate to a member of Parliament in his or her capacity as a member of Parliament”. A number of submitters raised concerns about the meaning of the term “in his or her capacity as a member of Parliament”. The Electoral Commission and the Chief Electoral Officer have also expressed concerns about this. No endeavour has been made to clarify the position.

National members emphasise that it is not just the individual items (above) which cause concern. It is their cumulative effect which troubles us, and we agree with what the Human Rights Commission said in that regard.¹² National MPs have felt compelled to write this lengthy report outlining serious defects with the Bill and its progress through the Justice and Electoral Select Committee. The New Zealand public deserves much better than this.

Green Party minority view

The Green Party member believes that the recommended regime for anonymous donations in the bill is still too loose. A much simpler and more transparent system would simply place a \$1,000 limit on anonymous donations to parties and non-party interveners. This

would be a more effective system and ensure that all who fund political parties and political campaigns are identifiable to the public. Any donation above \$1,000 should be identifiable as to its true source including those of trusts that donated heavily at the last election.

The Green Party member also considers that in the lead up to the election political parties should be made to declare any donation over \$1,000 on a weekly basis. The current system allows for a donations return to be lodged in April each year—that is after the election. The public has a right to know who is funding the parties before voting, not afterwards. In addition, no person or entity should be able to donate more than a fixed amount to a political party in any 12 month period. Political parties should have to reach out into the community to fundraise from a large number of people and members rather than be dependent on a handful of large donors who will then have disproportionate influence on their policy. A cap on how much any one individual or entity can donate will make the parties reach out to more people.

Citizens assembly to investigate partial public funding of parties (and other issues of electoral finance)

The Green Party member believes there is an urgent need for an independent inquiry, such as a citizens' assembly, to investigate partial public funding and other issues. Campaign finance laws need to be constantly reviewed and updated in light of experience. The political parties themselves are not the best ones to lead or appoint such a review because they have a vested interest. A citizens' assembly, as was used in Canada, is a much better body to run such a review and make recommendations for law changes.

ACT New Zealand minority view

ACT New Zealand strongly opposes this bill. Freedom of speech is vital to a democratic system and this bill indefensibly restricts the ability of New Zealanders to fully participate in the political process. Any limit on expenditure for either registered political parties, or so called third parties, constitutes an abhorrent suppression of this fundamental freedom. We note that the High Court of Australia struck down an attempt at setting an electoral spending cap in the 1980's on the grounds of freedom of expression.

ACT believes that this bill is completely unnecessary. The existing donation disclosure and expenditure regime, as set out in the Electoral Act 1993, unjustifiably restricts political expression and is in breach of fundamental human rights. We note the submission from the Human Rights Commission which stated the bill could have a “chilling effect on the expression of political opinion”, and “The Bill in its current form represents a dramatic assault on two fundamental human rights that New Zealanders cherish; freedom of expression, and the right of informed citizens to participate in the election process. It requires radical change.”

We believe that most often individuals make donations to a party that best represents their own political views. The new disclosure requirements for donations will result in such individuals being publicly identified with a party. We believe that the right of citizens to cast a secret vote is compromised by such requirements.

ACT considers it entirely inappropriate for major changes to be made to Electoral Law this close to any election. The Electoral system functions to deliver democracy to New Zealand citizens and it is they who should be properly consulted over matters as far reaching as those proposed. It does Parliament no credit to be considering such changes prior to a proper process, built around public consultation and debate, being undertaken. We understand that the government is intending to introduce further amendments to this bill and we believe that it is totally repugnant that the public will not be able to make further submissions on the amended bill.

Appendix

Committee process

The Electoral Finance Bill was referred to the committee on 26 July 2007. The closing date for submissions was 11 September 2007. We received and considered 575 submissions from interested groups and individuals. We heard 101 submissions.

We received advice from the Ministry of Justice and the Electoral Commission.

Committee membership

Lynne Pillay (Chairperson)

Christopher Finlayson (Deputy Chairperson)

Chris Auchinvole

Charles Chauvel

Hone Harawira (member for this item of business)

Ann Hartley

Nándor Tánczos

Nicky Wagner

David Benson-Pope (member for this item of business)

Hon Peter Dunne (member for this item of business)

Rodney Hide (member for this item of business)

Anne Tolley (member for this item of business)

R Doug Woolerton (member for this item of business)

Key to symbols used in reprinted bill

As reported from a select committee

Struck out (majority)

Subject to this Act,

Text struck out by a majority

New (majority)

Subject to this Act,

Text inserted by a majority

<Subject to this Act,>

Words struck out by a majority

<Subject to this Act,>

Words inserted by a majority

Hon Annette King

Electoral Finance Bill

Government Bill

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The Parliament of New Zealand enacts as follows:**1 Title**

This Act is the Electoral Finance Act **2007**.

2 Commencement

This Act comes into force on the day after the date on which it receives the Royal assent.

5

Part 1
Preliminary provisions

3 Purpose

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

10

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

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4 Interpretation

- (1) In this Act, unless the context otherwise requires,—

address means,—

- (a) in relation to an individual, the full address of the place where that person usually lives:

30

- (b) in relation to a body corporate or unincorporated, the full address of its principal place of business or head office

New (majority)

broadcast has the same meaning as **broadcasting** in section 2(1) of the Broadcasting Act 1989

5

candidate means a constituency candidate, and a person who becomes a candidate is deemed to be a candidate on and from the beginning of the regulated period

candidate advertisement means any form of words or graphics that can reasonably be regarded as encouraging or persuading voters to do either or both of the following:

10

- (a) to vote for a candidate in the candidate's capacity as a candidate for an electoral district (whether or not the name of the candidate is stated):

- (b) not to vote for another candidate (whether or not the name of the candidate is stated)

15

corrupt practice means any act declared by this Act to be a corrupt practice

Struck out (majority)

donation means a donation of money or of the equivalent of money or of goods or services, or a combination of any or all of those things

20

donor means a person who makes a donation

election advertisement has the meaning given to it by **section 5**

financial agent,—

25

- (a) in **subpart 1 of Part 2**, means a financial agent appointed under **section 6, 7, or 8**:

New (majority)

- (ab) in **subpart 1A of Part 2** means a financial agent appointed under **section 7 or 8**:

- (b) in **subparts 2 and 6 of Part 2**, means a financial agent appointed under **section 6**:
- (c) in **subparts 3 and 7 of Part 2**, means a financial agent appointed under **section 7**:
- (d) in **subparts 4 and 8 of Part 2**, means a financial agent appointed under **section 8** 5

illegal practice means any act declared by this Act to be an illegal practice

Struck out (majority)

party means a political party registered under Part 4 of the Electoral Act 1993 10

New (majority)

party—

- (a) means a political party registered under Part 4 of the Electoral Act 1993; and
- (b) includes a political party that at any time during the regulated period has been registered under Part 4 of the Electoral Act 1993 15

party advertisement means any form of words or graphics that can reasonably be regarded as encouraging or persuading voters to do either or both of the following:

- (a) to vote for the party (whether or not the name of the party is stated): 20
- (b) not to vote for another party (whether or not the name of the party is stated)

New (majority)

periodical means a newspaper, magazine, or trade or professional journal that— 25

- (a) was established for purposes unrelated to the conduct of election campaigns; and
- (b) since its establishment has been—
 - (i) published at regular intervals; and
 - (ii) generally available to members of the public 30

promoter—

- (a) means a person on whose initiative an election advertisement is published; and
- (b) includes, without limitation, a person—
 - (i) who enters into a contract, arrangement, or understanding with another person to the effect that the other person publish an election advertisement; or 5
 - (ii) who publishes an election advertisement in the absence of such a contract, arrangement, or understanding 10

New (majority)

public inspection period means, in relation to a return filed under **sections 29, 35, 38, 47, 72, 91, or 111**, the period—

- (a) beginning 3 working days after the date of receipt of the duly completed return; and 15
- (b) ending with the close of polling day for the second general election that takes place after the date of receipt of the duly completed return

<publication,> <publish,> in relation to an advertisement, means to— 20

- (a) **<print or>** insert in a **<newspaper or other>** periodical published or distributed in New Zealand; or
- (b) issue, hand out, or display; or
- (c) send to any member of the public by any means; or
- (d) deliver to any member of the public, or leave at a place owned or occupied by a member of the public; or 25
- (e) broadcast; or
- (f) include in a film or video **<displayed to the public>**; or
- (g) disseminate by means of the Internet or any other electronic medium; or 30
- (h) store electronically in a way that is accessible to the public; or

New (majority)

- (i) bring to the notice of the public in any other manner

registered elector means a person registered as an elector of an electoral district

regulated period means—

- (a) where a general election is held in the year in which Parliament is due to expire, whichever is the longer of the following periods:
 - (i) the period that commences on 1 January of that year and ends with the close of polling day; or
 - (ii) the period that commences 3 months before polling day and ends with the close of polling day: 10
- (b) subject to **subsection (2)**, where a general election is held in any other year on the dissolution of Parliament, the period that commences 3 months before polling day and ends with the close of polling day 15

statutory declaration means a declaration made before a person authorised under the Oaths and Declarations Act 1957 to take declarations

Struck out (majority)

third party means a promoter for the time being listed as a third party under **section 19**. 20

New (majority)

third party—

- (a) means a promoter for the time being listed as a third party under **section 19**; and
- (b) includes a promoter who at any time during the regulated period has been listed as a third party under **section 19**. 25

- (2) Where a general election is held in a year other than a year in which Parliament is due to expire, **regulated period**, in **sections 20, 47, and 53** (which affect third parties), and **subpart 8 of Part 2** (which relates to third parties' election expenses), means the period that— 30
 - (a) commences—
 - (i) if the Prime Minister tables a statement in the House of Representatives stating that a general

- election is to be held in that year, on the later of the following days:
- (A) the day after the date on which the statement is tabled;
 - (B) the day that is 3 months before polling day; 5
and
 - (ii) in any other case, on the day after the day on which Parliament is dissolved; and
 - (b) ends with the close of polling day.
- (3) Unless the context otherwise requires, terms and expressions used and not defined in this Act, but defined in the Electoral Act 1993, have the same meaning as in that Act. 10
- 5 Meaning of election advertisement**
- (1) In this Act, **election advertisement**—
- (a) means any form of words or graphics, or both, that can reasonably be regarded as doing 1 or more of the following: 15
 - (i) 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: 20
 - (ii) 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); 25
and
- Struck out (majority)**
- (iii) taking a position on a proposition with which 1 or more parties or 1 or more candidates is associated; and 30
- (b) includes—
 - (i) a candidate advertisement; and
 - (ii) a party advertisement.
- (2) The following *<publications>* are not election advertisements: 35

- (a) an advertisement that is published by the Chief Electoral Officer, the Chief Registrar of Electors, the Electoral Commission, or any other agency charged with responsibilities in relation to the conduct of any official publicity or information campaign to be conducted on behalf of the Government of New Zealand and relating to electoral matters or the conduct of any general election or by-election and which either contains a statement indicating that the advertisement has been authorised by that officer or agency, or contains a symbol indicating that the advertisement has been authorised by that officer or agency: 5
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Struck out (majority)

- (b) an advertisement within the meaning of section 43(1) of the Citizens Initiated Referenda Act 1993: 15
- (c) any content of a newspaper or periodical that has been selected by, or with the authority of, the editor of the newspaper or periodical solely for the purpose of informing or entertaining its readership: 15
- (d) any content of a radio or television programme that has been selected by, or with the authority of, a broadcaster (within the meaning of the Broadcasting Act 1989) solely for the purpose of informing or entertaining its audience: 20

New (majority)

- (c) any editorial material, other than advertising material, in a periodical that is written by, or is selected by or with the authority of, the editor solely for the purpose of informing, enlightening, or entertaining readers: 25
- (d) any broadcast, in relation to an election, of news or of comments or of current affairs programmes: 30
- (da) any editorial material, other than advertising material, published on a news media website that is written by, or selected by or with the authority of, the editor or person responsible for the website solely for the purpose of informing, enlightening, or entertaining readers: 30

- (e) a book that is sold for no less than its commercial value, if the book was planned to be made available to the public regardless of any election:

Struck out (majority)

- (f) a document published directly by a body corporate or unincorporated to its members:

5

New (majority)

- (f) a document published directly by—
- (i) an incorporated body to its shareholders or members:
 - (ii) an unincorporated body to its members:

- (g) the publication by an individual, on a non-commercial basis, on the Internet of his or her personal political views (being the kind of publication commonly known as a blog).

10

Appointments

Struck out (majority)

6 Appointment of financial agent for candidate

15

- (1) A candidate must appoint a financial agent to be responsible for administering the candidate's financial transactions in relation to donations and his or her election expenses.

- (2) A candidate may appoint himself or herself under **subsection (1)**.

20

- (3) After appointing a financial agent, the candidate must send to the Chief Electoral Officer—

- (a) the name, and address of the financial agent; and
- (b) the financial agent's signed consent to the appointment.

- (4) If at any time a candidate appoints a new financial agent, the candidate must—

25

- (a) notify the Chief Electoral Officer; and
- (b) send to the Chief Electoral Officer—

Struck out (majority)

- (i) the name, and address of the new financial agent; and
 - (ii) the new financial agent's signed consent to the appointment.
- 7 Appointment of financial agent for party** 5
- (1) The secretary of a party must appoint a financial agent for the party to be responsible for administering the party's financial transactions in relation to donations and its election expenses.
- (2) A secretary may appoint himself or herself under **subsection (1)**.
- (3) On the registration of a party under section 67 of the Electoral Act 1993, the person named, under **section 63(2)(c)(viii)** of that Act, as the party's financial agent in the application for registration is to be taken to have been appointed under **subsection (1)**. 10
- (4) If at any time a secretary appoints a new financial agent, the secretary must— 15
- (a) notify the Electoral Commission; and
 - (b) send to the Electoral Commission— 20
 - (i) the name, and address of the new financial agent; and
 - (ii) the new financial agent's signed consent to the appointment.

New (majority)

- 6 Appointment of financial agent for candidate**
- (1) A candidate must appoint a financial agent to be responsible for administering the candidate's finances in relation to the candidate's election campaign. 25
- (2) A candidate who is eligible to be appointed as a financial agent is deemed to have appointed himself or herself under **subsection (1)** if—
- (a) the candidate has not appointed any other person under **subsection (1)**; or 30
 - (b) the person appointed under **subsection (1)**—
 - (i) becomes ineligible to be appointed as a financial agent; or

New (majority)

- | | | |
|----------|--|-----------|
| | <ul style="list-style-type: none"> (ii) is absent from New Zealand; or (iii) becomes incapacitated; or (iv) dies. | |
| (3) | After appointing a financial agent, the candidate must send to the Chief Electoral Officer— | 5 |
| | <ul style="list-style-type: none"> (a) the name, address, and contact details of the financial agent in the form required by the Chief Electoral Officer; and (b) the financial agent's signed consent to the appointment. | |
| (4) | A candidate may at any time appoint a new financial agent. | 10 |
| (5) | If at any time a candidate appoints a new financial agent, the candidate must— | |
| | <ul style="list-style-type: none"> (a) notify the Chief Electoral Officer; and (b) send to the Chief Electoral Officer— <ul style="list-style-type: none"> (i) the name, address, and contact details of the new financial agent in the form required by the Chief Electoral Officer; and (ii) the new financial agent's signed consent to the appointment. | 15 |
| 7 | Appointment of financial agent for party | 20 |
| (1) | The secretary of a party must appoint a financial agent to be responsible for administering the party's finances in relation to the party's election campaign. | |
| (2) | The secretary of a party that was registered under Part 4 of the Electoral Act 1993 before the commencement of the Electoral Finance Act 2007 who is eligible to be appointed as a financial agent is deemed to have appointed himself or herself under subsection (1) , if— | 25 |
| | <ul style="list-style-type: none"> (a) the secretary has not appointed any other person under subsection (1); or (b) the person appointed under subsection (1)— <ul style="list-style-type: none"> (i) becomes ineligible to be appointed as a financial agent; or (ii) is absent from New Zealand; or (iii) becomes incapacitated; or (iv) dies. | 30 |
| | | 35 |

New (majority)

- (3) On the registration of a party under section 67 of the Electoral Act 1993 after the commencement of the Electoral Finance Act 2007, the person named, under **section 63(2)(c)(viii)** of that Act, as the party's financial agent in the application for registration is to be taken to have been appointed under **subsection (1)**. 5
- (4) A secretary may at any time appoint a new financial agent for the party.
- (5) If at any time a secretary appoints a new financial agent, the secretary must— 10
- (a) notify the Electoral Commission; and
- (b) send to the Electoral Commission—
- (i) the name, address, and contact details of the new financial agent in the form required by the Electoral Commission; and 15
- (ii) the new financial agent's signed consent to the appointment.

8 Appointment of financial agent for third party

- (1) A third party must appoint a financial agent to be responsible for administering the third party's *financial transactions for its* *finances in relation to the* promotion of election advertisements. 20
- (2) If the third party is an individual, the third party may appoint himself or herself under **subsection (1)**.
- (3) On the listing of a third party under **section 19**, the person named, under **section <16(2)(d)> <16(3)(b)(i)>**, as the third party's financial agent in the application for the listing is to be taken to have been appointed under **subsection (1)**. 25
- (4) If at any time a third party appoints a new financial agent, the third party must— 30
- (a) notify the *Chief Electoral Officer* *Electoral Commission*; and
- (b) send to the *Chief Electoral Officer* *Electoral Commission*—
- (i) the name, *and* address, *and contact details* of the new financial agent *in the form required by the Electoral Commission*; and 35

- (ii) the new financial agent's signed consent to the appointment.

9 Persons eligible to be appointed as financial agent

A person is eligible to be appointed as a financial agent under **section 6, 7, or 8** if the person—

- (a) is a registered elector; and
- (b) is resident in New Zealand; and
- (c) has not been convicted of—
 - (i) a crime involving dishonesty (within the meaning of section 2(1) of the Crimes Act 1961); or
 - (ii) a corrupt practice under this Act or the Electoral Act 1993.

Struck out (majority)

10 Appointment of auditor for candidate

- (1) A candidate must appoint an auditor if the candidate is required by **section 73** to obtain an auditor's report on his or her return of election expenses. 15
- (2) A candidate must without delay appoint another auditor if an auditor appointed by the candidate under **subsection (1)**—
 - (a) does not for any reason commence to hold office; or
 - (b) ceases to hold office; or
 - (c) becomes ineligible to hold office. 20

11 Appointment of auditor for party

- (1) A party must appoint an auditor.
- (2) On the registration of a party under section 67 of the Electoral Act 1993, the person named, under section 63(2)(c)(v) of that Act, as the party's auditor in the application for the registration is to be taken to have been appointed under **subsection (1)**. 25
- (3) A party must without delay appoint another auditor if the auditor appointed by the party under **subsection (1)**, or taken to have been appointed under **subsection (2)**,—
 - (a) does not for any reason commence to hold office; or
 - (b) ceases to hold office; or
 - (c) becomes ineligible to hold office. 30

New (majority)

- | | | |
|---|---|----|
| (4) | If at any time a party appoints a new auditor under subsection (3) , the party must— | |
| | (a) notify the Electoral Commission; and | |
| | (b) send to the Electoral Commission— | |
| | (i) the name, address, and contact details of the new auditor; and | 5 |
| | (ii) the new auditor's signed consent to the appointment. | |
| | | |
| 12 Appointment of auditor for third party | | |
| (1) | A third party must appoint an auditor if the third party is required by section 112 to obtain an auditor's report on his, her, or its return of election expenses. | 10 |
| (2) | A third party must without delay appoint another auditor if the auditor appointed by the third party under subsection (1) — | |
| | (a) does not for any reason commence to hold office; or | 15 |
| | (b) ceases to hold office; or | |
| | (c) becomes ineligible to hold office. | |
| 13 Persons eligible to be appointed as auditor | | |
| | A person is eligible to be appointed as an auditor under section <10,> 11 or 12 if that person is not— | 20 |
| | (a) a candidate; or | |
| | (b) a person whose name is specified in a party list submitted under section 127 of the Electoral Act 1993; or | |
| | (c) an employee or partner of a candidate or a person referred to in paragraph (b) ; or | 25 |
| | (d) an officer or employee of a party or third party; or | |
| | (e) a body corporate; or | |
| | (f) a person who, by virtue of section 199(1) of the Companies Act 1993, may not be appointed to act as an auditor of a company; or | 30 |
| | (g) a financial agent appointed under section 6, 7, or 8 ; or | |
| | (h) a Returning Officer. | |

*Listing of third parties***14 Persons eligible to be third party**

- (1) A person is eligible to be <listed as> a third party if the person is—
- (a) a <registered elector> <New Zealand citizen or ordinarily resident in New Zealand>; or 5
 - (b) a body corporate that is not an overseas person within the meaning of the Overseas Investment Act 2005; or
 - (c) an unincorporated body <all of whose members are registered electors> <of which the majority of its members are persons described in **paragraph (a)**>. 10
- (2) The following are ineligible to be a third party:
- (a) a party <(other than a non-contesting party)>;
 - (b) a candidate;
 - (c) a person whose name is specified in a party list submitted under section 127 of the Electoral Act 1993: 15
 - (d) the financial agent of a party or a candidate:

New (majority)

- (e) each of the following persons or bodies:
 - (i) the chief executive (however described) of a department of State or Crown entity: 20
 - (ii) a department of State;
 - (iii) a Crown entity;
 - (iv) a State enterprise (within the meaning of section 2 of the State-Owned Enterprises Act 1986) or a Crown-owned company: 25
 - (v) any other instrument of the Crown;
 - (f) a person involved in the administration of—
 - (i) the affairs of a party; or
 - (ii) the affairs of a candidate in relation to his or her election campaign. 30
- (3) For the purposes of this section, a non-contesting party is a party that—
- (a) is listed as a third party under **section 19** (being a party that has submitted a non-contest declaration under **section 16(4)**); or 35
 - (b) has submitted a non-contest declaration under **section 16(4)** and is awaiting a decision on whether it is to be listed as a third party under **section 19**.

15 *<Chief Electoral Officer> <Electoral Commission> to establish, maintain, and publish list of third parties*

- (1) The *<Chief Electoral Officer> <Electoral Commission>* must establish and maintain a list that contains the names of the third parties listed under **section 19**. 5
- (2) The *<Chief Electoral Officer> <Electoral Commission>* must publish the list in any manner that the *<Chief Electoral Officer> <Electoral Commission>* considers appropriate.

Struck out (majority)

16 **Application to be listed as third party**

- (1) An application by a promoter to be listed as a third party may be made to the Chief Electoral Officer— 10
- (a) if the promoter is an individual, by that individual; or
- (b) if the promoter is a body corporate, by a person who is duly authorised by the board or other governing body of the body corporate to make the application; or 15
- (c) if the promoter is an unincorporated body, by the representative of the body who is, or appears to be, authorised by the body for the purpose.
- (2) An application to be listed as a third party must— 20
- (a) be in writing; and
- (b) be signed by the promoter; and
- (c) set out the name, address, and contact details of the promoter; and
- (d) set out the name, address, and contact details of the individual, being an individual who is eligible for appointment under **section 9**, who is to be appointed as the financial agent of the third party, and be accompanied by that person's signed consent to the appointment. 25

New (majority)

16 **Application to be listed as third party**

- (1) A person who proposes to become a promoter and who anticipates incurring expenses in relation to election advertisements that exceed the amounts specified in **section 53(2)(d)** must apply to the Electoral Commission to be listed as a third party. 30
- (2) An application under **subsection (1)** must be made,—

New (majority)

- | | | |
|-------|---|----|
| (a) | if the promoter is an individual, by that individual; or | |
| (b) | if the promoter is a body corporate, by a person who is duly authorised by the board or other governing body of the body corporate to make the application; or | |
| (c) | if the promoter is an unincorporated body, by the representative of the body who is, or appears to be, authorised by the body for the purpose. | 5 |
| (3) | An application to be listed as a third party must— | |
| (a) | be in the form required by the Electoral Commission; and | 10 |
| (b) | be accompanied by— | |
| (i) | a notice in the form required by the Electoral Commission setting out the name, address, and contact details of the person (being a person who is eligible for appointment under section 9) who is to be appointed as the financial agent of the third party; and | 15 |
| (ii) | the signed consent to the appointment of the person referred to in subparagraph (i) ; and | |
| (iii) | a statutory declaration made by the applicant declaring that to the best of the applicant's knowledge the application complies with section 14 . | 20 |
| (4) | An application by or on behalf of a political party to be listed as a third party must, in addition to satisfying the requirements in subsection (3) , be accompanied by a statutory declaration (a non-contest declaration) that— | 25 |
| (a) | the secretary of the party will not, while the party is listed as a third party— | |
| (i) | submit a list of candidates under section 127 of the Electoral Act 1993: | 30 |
| (ii) | lodge a bulk nomination of constituency candidates with the Chief Electoral Officer under section 146B of that Act: | |
| (iii) | allow any constituency candidate to contest any election using the party's logo or any other form of nomenclature; and | 35 |
| (b) | the secretary of the party has not— | |

New (majority)

- | | | |
|-------|---|----|
| (i) | submitted a list of candidates under section 127 of the Electoral Act 1993 in connection with any forthcoming election: | |
| (ii) | lodged a bulk nomination of candidates under section 146B of that Act in connection with any forthcoming election: | 5 |
| (iii) | allowed any constituency candidate to be nominated using the party's logo or any other form of nomenclature associated with the party, in connection with any forthcoming election. | 10 |

17 Times when listing prohibited

When an election is to be held, the *<Chief Electoral Officer>* *<Electoral Commission>* may not list a promoter in the period that—

- | | | |
|------|---|----|
| (a) | commences,— | 15 |
| (i) | in the case of a general election that is held in a year in which Parliament is due to expire, on writ day: | |
| (ii) | in the case of any other election, on the 14th day before polling day; and | 20 |
| (b) | ends with the day appointed as the latest day for the return of the writ. | |

18 Grounds on which listing must be refused

- | | | |
|-----|---|----|
| (1) | The <i><Chief Electoral Officer></i> <i><Electoral Commission></i> must refuse an application by a promoter to be listed as a third party if— | 25 |
| (a) | the application does not comply with section 16 ; or | |

New (majority)

- | | | |
|------|--|----|
| (ab) | in the case of an application to which section 16(4) applies, the declaration given under section 16(4)(b) is incorrect: or | 30 |
| (b) | the <i><Chief Electoral Officer></i> <i><Electoral Commission></i> is not satisfied, on the basis of the application, that the applicant is eligible to be listed as a third party; or | |

- (c) the name of the promoter is—
 - (i) offensive; or
 - (ii) likely to cause confusion *<or mislead electors.>*
<with the name of a candidate or a party; or>

New (majority)

- | | |
|--|---|
| (iii) likely to mislead members of the public. | 5 |
|--|---|

- (2) Unless **section 17 or subsection (1)** applies, the *<Chief Electoral Officer>* *<Electoral Commission>* must list the promoter as a third party.

19 Listing of, or refusal to list, third party

- (1) If the *<Chief Electoral Officer determines that a promoter should be listed as a third party,>* *<Electoral Commission determines that there are no grounds under section 18 for refusing an application to be listed as a third party,>* the *<Chief Electoral Officer>* *<Electoral Commission>* must—
 - (a) list the promoter as a third party; and
 - (b) give written notice to the third party of the listing.
- (2) If the *<Chief Electoral Officer>* *<Electoral Commission>* determines *<that>* *<there are grounds under section 18 to refuse>* an application *<for the listing of a promoter as a third party should be refused,>* *<to be listed as a third party,>* the *<Chief Electoral Officer>* *<Electoral Commission>* must, as soon as is reasonably practicable, and in any case not later than 10 working days after the date of the determination, give the promoter written notice that the *<Chief Electoral Officer>* *<Electoral Commission>* has refused the application, and set out the reasons for the refusal.

20 Changes to be notified to *<Chief Electoral Officer>* *<Electoral Commission>*

- (1) If there is a change in any of the particulars given for a third party under **section *<16(2)(c) or (d)>* *<16(3)(b)(i)>***, the financial agent of the third party must promptly notify the *<Chief Electoral Officer>* *<Electoral Commission>* of the change.
- (2) Every financial agent of a third party that is listed as at the first day of any regulated period must, within 20 working days of

that date, give the *Chief Electoral Officer* Electoral Commission a written notice that—

- (a) confirms that the particulars of the third party recorded in the *Chief Electoral Officer's* Electoral Commission's list are still correct; or
- (b) corrects the particulars that are incorrect.

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21 Cancellation of listing

(1) The *Chief Electoral Officer* Electoral Commission must cancel the listing of a third party if—

- (a) the third party's financial agent, or a person duly authorised by the third party's board or other governing body, or the representative of an unincorporated third party, or the third party himself or herself (if an individual) requests the *Chief Electoral Officer* Electoral Commission to do so; or

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(b) the *Chief Electoral Officer* Electoral Commission is satisfied that—

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- (i) the third party is not eligible to be listed; or
- (ii) the third party does not have a financial agent; or
- (iii) the *Chief Electoral Officer* Electoral Commission has not received the written confirmation that the *Chief Electoral Officer* Electoral Commission should have received under **section 20(2)**.

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(2) If the *Chief Electoral Officer* Electoral Commission cancels the listing of a third party under **subsection (1)(b)**, the *Chief Electoral Officer* Electoral Commission must, as soon as is reasonably practicable, and in any case not later than 10 working days after the date of the cancellation, give the financial agent or the third party written notice that the *Chief Electoral Officer* Electoral Commission has cancelled the listing, and set out the reasons for the cancellation.

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Part 2 Election campaigns

Subpart 1—General provisions relating to donations

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22 Interpretation

(1) In this subpart, unless the context otherwise requires, **donation** means—

- (a) a candidate donation; or
 - (b) a party donation; or
 - (c) a third party donation.
- (2) In this subpart and **subparts <2> <1A> to 4**, unless the context otherwise requires,—

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Struck out (majority)

anonymous, in relation to a donation, means a donation that is made in such a way that the financial agent who receives the donation does not know who made the donation

New (majority)

anonymous, in relation to a donation, means a donation that is made in such a way that the financial agent who receives the donation—

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- (a) does not know the identity of the donor; or
- (b) could not, in the circumstances, reasonably be expected to know the identity of the donor

candidate donation means a donation <(whether of money or of the equivalent of money or of goods or services or of a combination of those things)> that is made to a candidate, or to any person on the candidate’s behalf, for use in the candidate’s campaign for election and—

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- (a) includes,—
 - (i) where goods or services are provided to a candidate, or to any person on the candidate’s behalf, under a contract <or arrangement> at <a value> less than their reasonable market value, <the latter> being a value which exceeds \$200, the amount of the difference between the <contract price of the goods or services> <former value> and the reasonable market value of those goods or services; and
 - (ii) where goods or services are provided by a candidate under a contract or arrangement at a value that is more than their reasonable market value, the amount of the difference between that value

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- and the reasonable market value of those goods or services; and
- (iii) where credit is provided to a candidate on terms and conditions substantially more favourable than the commercial terms and conditions prevailing at the time for the same or similar credit, the value to the candidate of those more favourable terms and conditions; but 5
- (b) excludes the labour of any person that is provided to a candidate free of charge by that person 10

New (majority)

donor means a person who makes a donation

election expense, in relation to a third party, has the meaning given to it by **section 100**

New (majority)

list candidate means any person whose name is specified in a party list submitted to the Chief Electoral Officer under section 127 of the Electoral Act 1993 15

party donation means a donation <(whether of money or of the equivalent of money or of goods or services or of a combination of those things)> that is made to a party, or to any person or body of persons on behalf of the party who are involved in the administration of the affairs of the party, and— 20

- (a) includes,—
- (i) where goods or services are provided to a party, or to any person on the party's behalf, under a contract <or arrangement> at <a value> less than their reasonable market value, <the latter> being a value which exceeds \$1,000, the amount of the difference between the <contract price of the goods or services> <former value> and the reasonable market value of those goods or services; and 25
- (ii) where goods or services are provided by a party under a contract or arrangement at a value that is 30

- more than their reasonable market value, the amount of the difference between that value and the reasonable market value of those goods or services; and
- (iii) where credit is provided to a party on terms and conditions substantially more favourable than the commercial terms and conditions prevailing at the time for the same or similar credit, the value to the party of those more favourable terms and conditions; but 5
- (b) excludes— 10
- (i) the labour of any person that is provided to a party free of charge by that person; and
- (ii) any candidate donation that is included in a return made by a candidate under **section 72** 15
- receive**, in relation to a donation, means to get a donation that has been given or sent by—
- (a) the donor directly; or
- (b) the donor indirectly, via a transmitter

Struck out (majority)

- specified amount**— 20
- (a) in relation to a candidate donation, means \$1,000 in sum or value (inclusive of goods and services tax):
- (b) in relation to a party donation, means \$10,000 in sum or value (inclusive of goods and services tax):
- (c) in relation to a third party donation, means \$500 in sum or value (inclusive of goods and services tax) 25

New (majority)

specified amount has the meaning given to it by **section 22A**

- third party donation** means a donation <(whether of money or of the equivalent of money or of goods or services or of a combination of those things)> that is made to a third party, or to any person on the third party's behalf, to fund, or to contribute directly or indirectly towards the funding of, the election expenses of the third party and— 30
- (a) includes,—

- (i) where goods or services are provided to a third party, or to any person on the third party's behalf, under a contract <or arrangement> at <a value> less than their reasonable market value, <the latter> being a value which exceeds \$200, the amount of the difference between the <contract price of the goods or services> <former value> and the reasonable market value of those goods or services; and 5
- (ii) where goods or services are provided by a third party under a contract or arrangement at a value that is more than their reasonable market value, the amount of the difference between that value and the reasonable market value of those goods or services; and 10 15
- (iii) where credit is provided to a third party on terms and conditions substantially more favourable than the commercial terms and conditions prevailing at the time for the same or similar credit, the value to the third party of those more favourable terms and conditions; but 20
- (b) excludes the labour of any person that is provided to a third party free of charge by that person
- transmitter** means a person to whom a donor gives or sends a donation for transmittal to a candidate, party, or third party. 25

New (majority)

- (3) To avoid doubt, a third party donation does not include a donation that—
- (a) is made with no indication from the donor that it is, or includes, a contribution towards the funding of third party election expenses; and 30
- (b) is made in circumstances where no such purpose can reasonably be inferred; and
- (c) is made—
- (i) for any general purposes of the third party or for any purpose the third party considers appropriate; 35
or
- (ii) with no indication as to the use to which the donation may be put; or

New (majority)

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| | (iii) for use for a specified purpose that does not include a contribution towards the funding of the third party's election expenses. | |
| (4) | For the purpose of sections 23, 23A, 23C, 24, 25A, and 38 — | |
| | (a) donation does not include a donation protected from disclosure (as defined in section 28A); and | 5 |
| | (b) party donation does not include a donation protected from disclosure (as defined in section 28A); and | |
| | (c) third party donation does not include a donation protected from disclosure (as defined in section 28A). | 10 |

22A Meaning of specified amount

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| (1) | In this subpart and subparts 2 to 4 , specified amount means,— | |
| | (a) in relation to a candidate donation, \$1,000 in sum or value: | |
| | (b) in relation to a party donation, \$10,000 in sum or value: | 15 |
| | (c) in relation to a third party donation, \$5,000 in sum or value. | |
| (2) | The amounts specified in subsection (1) are inclusive of any goods and services tax incurred by the donor in respect of the goods or service donated. | 20 |

23 Donations to be transmitted to financial agent

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| (1) | Every person to whom a candidate donation is given or sent must, within 10 working days after receiving the donation, transmit the donation to the candidate's financial agent. | |
| (2) | Every person to whom a party donation is given or sent must, within 10 working days after receiving the donation, transmit the donation to the party's financial agent. | 25 |
| (3) | Every person to whom a third party donation is given or sent must, within 10 working days after receiving the donation, transmit the donation to the third party's financial agent. | 30 |

New (majority)

23A	Contributors to be identified, if known	
(1)	This section applies where a donation comprises in whole or in part funds contributed by 1 or more other persons (contributors) that the contributors require or expect (whether under a trust, agreement, or understanding) to be applied as a donation.	5
(2)	Where this section applies the donor must, at the time of making the donation, disclose—	
	(a) the fact that the donation comprises in whole or in part funds provided by contributors; and	10
	(b) the information specified in subsection (3) , if known or ascertainable, in respect of each contributor whose contribution exceeds \$1,000.	
(3)	The information referred to in subsection (2)(b) is—	
	(a) the name and address of the contributor; and	15
	(b) the amount of funds provided by the contributor.	
(4)	Where a donor does not disclose the information required by subsection (2)(a) , then the entire donation must be treated as an anonymous donation.	
(5)	Where a donor discloses the information required by subsection (2)(a) but does not disclose, or is unable to disclose, the information required by subsections (2)(b) and (3) in respect of any contributor, then the amount of funds provided by that contributor must be treated as an anonymous donation.	20
23B	Offence relating to contravention of section 23A	25
	A donor who fails to comply with section 23A with the intention of concealing the identity of any or all of the contributors commits an offence and is liable on summary conviction to a fine not exceeding \$40,000.	
23C	Identity of donor to be disclosed by transmitter, if known	30
(1)	When a transmitter transmits a donation to the financial agent on behalf of the donor, the transmitter must disclose to the financial agent—	
	(a) the fact that the donation is transmitted on behalf of the donor; and	35

New (majority)

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| <ul style="list-style-type: none"> (b) the name and address of the donor; and (c) whether section 23A applies to the donation and, if so, all information disclosed by the donor under subsections (2) and (3) of that section. <p>(2) Where a transmitter does not disclose, or is unable to disclose, the information required by subsection (1)(b) or (c), then the donation must be treated as an anonymous donation.</p> | 5 |
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23D Offence relating to contravention of section 23C

<p>A transmitter who fails to comply with section 23C with the intention of concealing the identity of the donor or any or all of the contributors commits an offence and is liable on summary conviction to a fine not exceeding \$40,000.</p>	10
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24 Disclosure of identity of donor**Struck out (majority)**

<p>Where any person involved in the administration of the affairs of a candidate, party, or third party knows the name and address of the donor of an anonymous donation, that person must disclose the name and address of the donor to the financial agent of the candidate, party, or third party.</p>	15
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New (majority)

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| <p>(1) Where a candidate or any person involved in the administration of the affairs of a candidate in relation to his or her election campaign knows the identity of the donor of an anonymous candidate donation exceeding \$1,000, the candidate or person must disclose the identity of the donor to the candidate's financial agent.</p> | 20 |
| <p>(2) Where a party secretary, list candidate, or any person involved in the administration of the affairs of the party knows the identity of the donor of an anonymous party donation exceeding \$1,000, the party secretary, list candidate, or person must disclose the identity of the donor to the party's financial agent.</p> | 25 |

New (majority)

- (3) Where any person involved in the administration of the affairs of a third party knows the identity of the donor of an anonymous third party donation exceeding \$1,000, the person must disclose the identity of the donor to third party's financial agent.

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25 Offence relating to contravention of section 24

A person who fails to comply with **section 24** with the intention of concealing the identity of the donor commits an offence and is liable on summary conviction to a fine not exceeding \$40,000.

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New (majority)**25A Anonymous donation may not exceed \$1,000**

- (1) If an anonymous candidate donation exceeding \$1,000 is received by a candidate's financial agent, the financial agent must, within 20 working days of receipt of the donation, pay to the Chief Electoral Officer the amount of the donation, or its value, less \$1,000.
- (2) If an anonymous party donation exceeding \$1,000 is received by a party's financial agent, the financial agent must, within 20 working days of receipt of the donation, pay to the Electoral Commission the amount of the donation, or its value, less \$1,000.
- (3) If an anonymous third party donation exceeding \$1,000 is received by a third party's financial agent, the financial agent must, within 20 working days of receipt of the donation, pay to the Electoral Commission the amount of the donation, or its value, less \$1,000.
- (4) All amounts received by the Chief Electoral Officer and the Electoral Commission under this section must be paid into a Crown bank account.

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25B Offence relating to anonymous donation

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- (1) Every person who enters into an agreement or enters into an arrangement or understanding with any other person which

New (majority)

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| has the effect of circumventing section 25A(1), (2), or (3) is guilty of— | |
| (a) a corrupt practice if the circumvention is wilful; and | |
| (b) an illegal practice in any other case. | |
| (2) A financial agent who contravenes section 25A is guilty of an illegal practice. | 5 |
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| 25C Overseas donation may not exceed \$1,000 | |
| (1) For the purposes of this section— | |
| contribution means a contribution to a donation | |
| donation includes a contribution | 10 |
| overseas person means— | |
| (a) an individual who— | |
| (i) resides outside New Zealand; and | |
| (ii) is not a New Zealand citizen or registered as an elector; or | 15 |
| (b) a body corporate incorporated outside New Zealand; or | |
| (c) an unincorporated body that has its head office or principal place of business outside New Zealand. | |
| (2) If a donation exceeding \$1,000 is received from an overseas person by a financial agent, the financial agent must, within 20 working days of receipt of the donation,— | 20 |
| (a) return to the overseas person the amount of the donation, or its value, less \$1,000; or | |
| (b) if this is not possible, pay the amount of the donation, or its value, less \$1,000— | 25 |
| (i) to the Chief Electoral Officer, in the case of a candidate donation; or | |
| (ii) to the Electoral Commission, in the case of a party donation, or third party donation. | |
| (3) All amounts received by the Chief Electoral Officer and the Electoral Commission under subsection (2) must be paid into a Crown bank account. | 30 |

New (majority)

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| 25D Offence relating to overseas donation | |
| (1) Every person who enters into an agreement or enters into an arrangement or understanding with any other person which has the effect of circumventing section 25C(2) is guilty of— | |
| (a) a corrupt practice if the circumvention is wilful; and | 5 |
| (b) an illegal practice in any other case. | |
| (2) A financial agent who contravenes section 25C(3) is guilty of an illegal practice. | |
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| 26 Records of donations | |
| (1) Every financial agent must keep proper records of all donations received by him or her. | 10 |
| (2) Every financial agent who fails, without reasonable excuse, to comply with subsection (1) commits an offence and is liable on summary conviction to a fine not exceeding \$40,000. | |
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| 27 Duty of Chief Electoral Officer <in relation to donations> | 15 |
| If the Chief Electoral Officer believes that any person has committed an offence against <subpart 2 or 4> <this subpart in relation to candidate donations or subpart 2> , the Chief Electoral Officer must report the facts upon which that belief is based to the New Zealand Police. | 20 |
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| 28 Duty of Electoral Commission <in relation to donations> | |
| If the Electoral Commission believes that any person has committed an offence against <subpart 3> <this subpart in relation to party donations or third party donations or subpart 1A, 3, or 4,> the Electoral Commission must report the facts upon which that belief is based to the New Zealand Police. | 25 |

New (majority)

Subpart 1A—Donations protected from disclosure

28A Interpretation

In this subpart, unless the context otherwise requires,—

authorised person has the meaning set out in **section 28G**

donation protected from disclosure means a donation made under **section 28B(2)** in accordance with **section 28B(3)**. 5

28B Method of making donation protected from disclosure

(1) This section applies to any person who intends to make a donation in excess of \$1,000 in sum or value to a political party or third party while preventing the disclosure of the person's identity to— 10

- (a) the political party or third party concerned; and
- (b) the public generally.

(2) A person to whom this section applies may send a donation in excess of \$1,000 in sum and value to the Electoral Commission. 15

(3) A donation under **subsection (2)** must be accompanied by a statement identifying—

- (a) the name of the political party or third party who is to receive the donation; and 20
- (b) the full name and address of the donor; and
- (c) if the donation made by the donor includes or comprises contributions from others, the name and address of every person who has contributed in excess of \$1,000 in sum or value. 25

(4) The Electoral Commission may request the donor to provide any further information the Commission considers necessary to confirm the identification of the donor or other details provided by the donor, and the donor must take all reasonable steps to comply with such a request as soon as is practicable. 30

28C Maximum limit on donations protected from disclosure

(1) The maximum amount that a political party may be paid in donations made to the Electoral Commission for the benefit of that party during a specified period is 10% in sum or value

New (majority)

- (excluding any interest paid under **section 28F(2)**) of the maximum amount of election expenses allowed under **section 84(1)** to be incurred, in respect of any regulated period, by a political party that is listed in the part of the ballot paper that relates to the party vote and that has a candidate contesting every electoral district. 5
- (2) The maximum amount that a third party may be paid in donations made to the Electoral Commission for the benefit of that third party during a specified period is 10% in sum or value (excluding any interest paid under **section 28F(2)**) of the maximum amount of election expenses allowed under **section 103** to be incurred, in respect of any regulated period, by a third party. 10
- (3) The maximum amount that a political party may be paid in donations made to the Electoral Commission for the benefit of the party from the same donor during any specified period is 15% in sum or value (excluding any interest paid under **section 28F(2)**) of the amount that may be paid to that party under **subsection (1)**. 15
- (4) The maximum amount that a third party may be paid in donations made to the Electoral Commission for the benefit of the third party from the same donor during any specified period is 15% in sum or value (excluding any interest paid under **section 28F(2)**) of the amount that may be paid to that party under **subsection (2)**. 20
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- (5) For the purposes of this section—
- (a) a **specified period** is—
- (i) the period beginning with the commencement of this Act and ending with the close of the day before polling day for the general election due to be held in 2008; and 30
- (ii) any subsequent period between polling day at one general election and polling day at the following general election:
- (b) if a donor that is a body corporate changes its name it is to be treated as the same donor as it was prior to the change of name: 35

New (majority)

(c)	if a political party changes its name it is to be treated as the same political party as it was prior to the change of name.	
28D	Duty of Electoral Commission to provide advice on actual figures under section 28C	5
	The Electoral Commission—	
(a)	must, as soon as practicable after the commencement of this Act, publish on its website, and by any other means the Commission considers appropriate, guidance specifying the relevant figures that constitute the maximum amounts referred to in section 28C(1), (2), (3), and (4) ; and	10
(b)	may alter that guidance from time to time to reflect any changes in the relevant figures.	
28E	Duties of Electoral Commission on receipt of donation	
(1)	The Electoral Commission, on receiving a donation under section 28B(2) , must pay it to the financial agent of a political party or third party for whom it is intended, unless—	15
(a)	the requirements of section 28B(3) or (4) have not been complied with; or	
(b)	payment of the donation would contravene a maximum limit set out in section 28D .	20
(2)	If subsection (1)(a) applies, the Electoral Commission must,—	
(a)	if the name and contact details of the donor is known or can be readily ascertained, return the donation to the donor:	25
(b)	in any other case, pay the donation into the Crown bank account.	
(3)	If subsection (1)(b) applies the Electoral Commission must—	
(a)	if the name and contact details of the donor is known or can be readily ascertained, return any portion of the donation that exceeds a maximum limit set out in section 28D to the donor:	30
(b)	in any other case pay any portion of the donation that exceeds a maximum limit set out in section 28D into the Crown bank account.	35

New (majority)

28F	Timing of payment to political parties and third parties	
(1)	The Electoral Commission must pay all outstanding amounts due to a political party or third party under section 28E(1) —	
	(a) weekly, during the period between writ day and the return of the writ, at any general election:	5
	(b) monthly, at any other time.	
(2)	If any interest is earned on a donation received under section 28B(2) for a political party or third party, that interest, so far as it can reasonably be calculated, must be added to—	
	(a) any sum paid by the Electoral Commission to the financial agent of that political party or third party; or	10
	(b) any sum returned by the Electoral Commission to the donor; or	
	(c) any sum paid by the Electoral Commission into the Crown bank account.	15
28G	Offence of prohibited disclosure	
(1)	No person may disclose the name or other identifying details of a donor or contributor in respect of a donation made, or proposed to be made, under section 28B(2) in a manner that indicates or suggests that the person has made, or proposes to make, such a donation or contribution, to—	20
	(a) any financial agent, office holder, or other person involved in the administration of the political party or third party for whom the donation is intended; or	
	(b) any other person (other than an authorised person).	25
(2)	Every person who contravenes subsection (1) without reasonable excuse commits an offence and is guilty of an illegal practice.	
(3)	In this section, authorised person means—	
	(a) a member or employee or other person engaged by the Electoral Commission:	30
	(b) a donor or contributor and any officer, employee, relative, adviser, or agent of the donor or contributor:	
	(c) any other person to whom the identifying details must be supplied to enable the donation to be made (eg, an employee of a bank who processes a cheque by which the donation is made):	35

New (majority)

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| <ul style="list-style-type: none"> (d) any person to whom the identifying details must be supplied to comply with one or more of the Inland Revenue Acts (within the meaning of section 3(1) of the Tax Administration Act 1994): (e) the Auditor-General: (f) any other person entitled to the information in question in accordance with any search warrant, summons, or any process under rules of court, or in the course of any proceedings. | 5 |
| <p>(4) Except as provided in this section, if there is any inconsistency between subsection (1) and any other enactment, subsection (1) prevails.</p> | 10 |
| 28H Duty of Electoral Commission to report | |
| <p>(1) The Electoral Commission must, in the manner required by subsection (2), report on—</p> <ul style="list-style-type: none"> (a) the total amounts received in donations under section 28B(2): (b) the amounts paid to the financial agent of any political party or third party under section 28E(1) during the period being reported on: (c) the amount of money returned to donors under section 28E(2)(a) or (3)(a) during the period being reported on: (d) the amount of money paid to the Crown bank account under section 28E(2)(b) or (3)(b) during the period being reported on. | 15 |
| <p>(2) The Electoral Commission must report on the matters set out in subsection (1)—</p> <ul style="list-style-type: none"> (a) in each annual report, in relation to the financial year to which the report relates; and (b) quarterly, by publication on the Commission’s website and by any other means the Commission considers appropriate, in respect of the preceding 3-month period. | 20 |
| <ul style="list-style-type: none"> (a) in each annual report, in relation to the financial year to which the report relates; and (b) quarterly, by publication on the Commission’s website and by any other means the Commission considers appropriate, in respect of the preceding 3-month period. | 25 |
| <ul style="list-style-type: none"> (a) in each annual report, in relation to the financial year to which the report relates; and (b) quarterly, by publication on the Commission’s website and by any other means the Commission considers appropriate, in respect of the preceding 3-month period. | 30 |

Subpart 2—Disclosure of candidate donations

29 Return of candidate donations

- (1) A financial agent of a candidate must, at the same time as filing a return under **section 72**, file with the Chief Electoral Officer a return *<setting out>*—
- (a) *<setting out>* the details specified in **subsection (2)** in respect of every candidate donation (other than *<an anonymous candidate donation>* *<a donation of the kind referred to in paragraphs (b) and (c)>*) received by him or her that either on its own, or when aggregated with all other donations made by or on behalf of the same donor for use in the same campaign, exceeds the specified amount; and

New (majority)

- (ab) whether **section 23A** applies to any donation, and if so, the details specified in **subsection (2A)** in respect of every contribution referred to in **section 23A** notified to him or her that either on its own or when aggregated with other contributions made by or on behalf of the same person during the regulated period exceeds \$1,000; and
- (b) *<setting out>* the details specified in **subsection (3)** in respect of every anonymous candidate donation *<received by him or her that exceeds the specified amount>* *<received by him or her exceeding \$1,000; and>*

New (majority)

- (c) the details specified in **subsection (3A)** in respect of every candidate donation, or contribution to a candidate donation, received by him or her from an overseas person exceeding \$1,000.
- (2) The details referred to in **subsection (1)(a)** are—
- (a) the name of the donor; and
- (b) the address of the donor; and
- (c) the amount of the donation; and
- (d) the date the donation was received.

New (majority)

- (2A) The details referred to in **subsection (1)(ab)** are—
 - (a) the name of the contributor; and
 - (b) the address of the contributor; and
 - (c) the amount of each contribution made by the contributor; and
 - (d) the date on which the donation to which the contribution forms part of was made.

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- (3) The details referred to in **subsection (1)(b)** are—

Struck out (majority)

- (a) the amount of the donation; and
- (b) the date the donation was received.

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New (majority)

- (a) the date the donation was received; and
 - (b) the amount of the donation; and
 - (c) the amount paid to the Chief Electoral Officer under **section 25A(1)**, and the date that payment was made.
- (3A) The details referred to in **subsection (1)(c)** are—
 - (a) the date the donation or contribution was received; and
 - (b) the amount of the donation or contribution; and
 - (c) the amount paid to the overseas person or to the Chief Electoral Officer under **section 25B(2)**, and the date that payment was made.

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- (4) Every return filed under **subsection (1)** must be in the form required by the Chief Electoral Officer and include a statutory declaration made by the financial agent and the candidate, each declaring that to the best of his or her knowledge and belief—
 - (a) the return correctly sets out all the details required by **subsections (2) <and (3)> <to (3A)>**; and
 - (b) a fair assessment has been made of the reasonable market value of donations, if any, of the kind described in **paragraph (a)(i) or (ii)** of the definition of **candidate donation** in **section 22(2)**.

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- 30 Nil return**
Where a financial agent considers there is no relevant information to disclose under **section 29**, the financial agent must file a nil return under that section.
- 31 Obligation to retain records necessary to verify return of candidate donations** 5
- (1) A financial agent must take all reasonable steps to ensure that all records, documents, and accounts that are necessary to enable a return under **section 29** to be verified are retained until the expiry of the period within which a prosecution may be commenced under this Act in relation to the return or in relation to any matter to which the return relates. 10
- (2) Every financial agent who fails, without reasonable excuse, to comply with **subsection (1)** commits an offence and is liable on summary conviction to a fine not exceeding \$40,000. 15
- 32 Offences relating to return of candidate donations**
- (1) Every financial agent who fails, without reasonable excuse, to comply with **section 29** commits an offence and is liable on summary conviction to a fine not exceeding \$40,000.
- (2) Where a candidate who is his or her own financial agent and who has been elected fails, without reasonable excuse, to comply with **section 29**, the candidate is liable on summary conviction to— 20
- (a) the penalty in **subsection (1)**; and
- (b) a further fine not exceeding \$400 for every day he or she sits or votes in the House of Representatives until the return is filed. 25
- (3) Every financial agent who files a return under **section 29** that is false in any material particular is guilty of— 30
- (a) a corrupt practice if the financial agent filed the return knowing it to be false in any material particular:
- (b) an illegal practice in any other case unless the financial agent proves— 35
- (i) that he or she had no intention to misstate or conceal the facts; and
- (ii) that he or she took all reasonable steps in the circumstances to ensure that the information in the return was accurate.

Struck out (majority)

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| 33 | Return of candidate donations to be available for public inspection | |
| (1) | As soon as practicable after receiving a return of a candidate's donations filed under section 29 , the Chief Electoral Officer must send a copy of the return to the Electoral Commission. | 5 |
| (2) | The Chief Electoral Officer— | |
| | (a) must make a copy of every return of a candidate's donations available for public inspection by any person on payment of any charges that may be made under the Official Information Act 1982; and | 10 |
| | (b) may publish every return of a candidate's donations in any manner that the Chief Electoral Officer considers appropriate. | |
| 34 | Return of candidate donations to be kept for certain period | 15 |
| (1) | The Chief Electoral Officer and the Electoral Commission must keep every return of a candidate's donations for the period— | |
| | (a) beginning with the date of receipt of the return; and | |
| | (b) ending with the close of polling day for the second general election that takes place after the date of receipt of the return. | 20 |
| (2) | On the expiry of the period referred to in subsection (1) , the Chief Electoral Officer and the Electoral Commission must destroy, or cause to be destroyed, the return. | 25 |

New (majority)

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| 33 | Return of candidate donations to be sent by Chief Electoral Officer to Electoral Commission | |
| | As soon as practicable after receiving a return filed under section 29 , the Chief Electoral Officer must send a copy of the return to the Electoral Commission. | 30 |

New (majority)

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| 34 | Return of candidate donations to be publicly available | |
| (1) | The Chief Electoral Officer may publish, in any manner that the Chief Electoral Officer considers appropriate, every return filed under section 29 . | |
| (2) | The Electoral Commission may publish, in any manner that the Electoral Commission considers appropriate, every return received from the Chief Electoral Officer under section 33 . | 5 |
| (3) | During the public inspection period, the Chief Electoral Officer must make available for public inspection a copy of every return filed under section 29 . | 10 |
| (4) | The Chief Electoral Officer may make inspection under subsection (3) subject to the payment of any charges that may be made under the Official Information Act 1982. | |

Subpart 3—Disclosure of party donations

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| 35 | Annual return of party donations | 15 |
| (1) | A financial agent of a party must file with the Electoral Commission, by 30 April in each year, a return of the party donations setting out, for the year ending with the immediately preceding 31 December,— | |
| (a) | the details specified in subsection (2) for every party donation (other than <i><an anonymous party donation></i> <u><a donation of the kind referred to in paragraphs (b) to (d)></u>) received by him or her that either on its own, or when aggregated with all other donations made by or on behalf of the same donor during the year, exceeds the specified amount; and | 20
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New (majority)

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| (ab) | whether section 23A applies to any donation, and if so, the details specified in subsection (2A) in respect of every contribution referred to in section 23A notified to him or her that either on its own or when aggregated with other contributions made by or on behalf of the same person during the period covered by the return exceeds \$10,000: | 30 |
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- (b) the details specified in **subsection (3)** *<for>* *<in respect of>* every anonymous party donation received by him or her *<that exceeds the specified amount>* *<exceeding \$1,000; and>*

New (majority)

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| (c) | the details specified in subsection (3A) in respect of every party donation, or contribution to a party donation, received by him or her from an overseas person exceeding \$1,000; and | 5 |
| (d) | the details specified in subsection (3B) in respect of each payment of donations received from the Electoral Commission under section 28E . | 10 |

- (2) The details referred to in **subsection (1)(a)** are—

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| (a) | the name of the donor; and | |
| (b) | the address of the donor; and | |
| (c) | the amount of the donation; and | 15 |
| (d) | the date the donation was received. | |

New (majority)

- (2A) The details referred to in **subsection (1)(ab)** are—

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| (a) | the name of the contributor; and | |
| (b) | the address of the contributor; and | |
| (c) | the amount of each contribution made by the contributor; and | 20 |
| (d) | the date on which the donation to which the contribution forms part of was made. | |

- (3) The details referred to in **subsection (1)(b)** are—

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| (a) | the amount of the donation; and | 25 |
| (b) | the date the donation was received. | |

New (majority)

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| (a) | the date the donation was received; and | |
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New (majority)

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| <ul style="list-style-type: none"> (b) the amount of the donation; and (c) the amount paid to the Electoral Commission under section 25A(2), and the date that payment was made. | 5 |
| <p>(3A) The details referred to in subsection (1)(c) are—</p> <ul style="list-style-type: none"> (a) the date the donation or contribution was received; and (b) the amount of the donation or contribution; and (c) the amount paid to the overseas person or to the Electoral Commission under section 25B(2), and the date that payment was made. | 5 |
| <p>(3B) The details referred to in subsection (1)(d) are—</p> <ul style="list-style-type: none"> (a) the date the payment was received; and (b) the amount of the payment; and (c) the amount of interest included in the payment. | 10 |
| <p>(4) Every return filed under subsection (1) must be—</p> <ul style="list-style-type: none"> (a) in the form required by the Electoral Commission and include a statutory declaration made by the financial agent and the party secretary, each declaring that to the best of his or her knowledge and belief— <ul style="list-style-type: none"> (i) the return correctly sets out all the details required by subsections (2) <and (3)> <to (3B)>; and (ii) a fair assessment has been made of the reasonable market value of donations, if any, of the kind described in paragraph (a)(i) or (ii) of the definition of party donation in section 22(2); and (b) accompanied by an auditor's report obtained under section 36. | 15
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| <p>(5) Despite anything in subsection (1), where a financial agent is required to file under that subsection a return of party donations that relates to the year in which the party became registered under Part 4 of the Electoral Act 1993, that return is to relate to the period beginning with the date of registration of the party and ending with 31 December of that year.</p> | 30 |
| <p>36 Auditor's report on annual return of party donations</p> | |
| <p>(1) Every financial agent must, before the Electoral Commission receives the return required by section 35, obtain from the auditor appointed under section 11 a report on the return.</p> | 35 |

- (2) The auditor must state in the report whether or not, in the auditor's opinion, the return fairly reflects the party donations received by the financial agent.
- (3) The auditor must make any examinations that the auditor considers necessary. 5
- (4) The auditor must specify in the report any case in which—
- (a) the return does not, in the auditor's opinion, fairly reflect the party donations received by the financial agent:
 - (b) the auditor has not received from the financial agent all the information that the auditor requires to carry out his or her duties: 10
 - (c) proper records of party donations have not, in the auditor's opinion, been kept by the financial agent.
- (5) The auditor— 15
- (a) must have access at all reasonable times to all records, documents, and accounts that relate to the party donations and that are held by the financial agent; and
 - (b) may require the financial agent to provide any information and explanations that, in the auditor's opinion, may be necessary to enable the auditor to prepare the report. 20

37 Nil return

Where a financial agent considers there is no relevant information to disclose under **section 35**, the financial agent must file a nil return under that section. 25

38 Return of party donation received from same donor exceeding \$20,000

- (1) Every financial agent must file with the Electoral Commission a return in respect of every party donation that exceeds \$20,000. 30
- (2) Every financial agent must file with the Electoral Commission a return in respect of every party donation that—
- (a) the financial agent knows is from a donor who in the *<last>* 12 months *<immediately preceding the date of receipt of the donation (the last 12 months)>* has made 1 or more previous donations; and 35
 - (b) when aggregated with all previous donations received from the donor in the last 12 months exceeds *<a multiple of>* \$20,000.

New (majority)

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| (2A) If a return is made under subsection (2) , the donations disclosed in that return must be disregarded when applying this section in relation to a party donation that is made after that return is filed. | |
| (3) A return filed under subsection (1) must be in the form required by the Electoral Commission and set out— | 5 |
| (a) the name of the donor (if known); and | |
| (b) the address of the donor (if known); and | |
| (c) the amount of the donation; and | |
| (d) the date the donation was received. | 10 |
| (4) A return filed under subsection (2) must be in the form required by the Electoral Commission and set out— | |
| (a) the name of the donor; and | |
| (b) the address of the donor; and | |
| (c) the amount of the donation; and | 15 |
| (d) the amounts of all previous donations; and | |
| (e) the date the donation was received; and | |
| (f) the dates all previous donations were received. | |
| (5) A return must be filed under subsection (1) or (2) within 10 working days of the donation being received by the financial agent. | 20 |
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| Obligation to retain records necessary to verify returns of party donations | |
| (1) A financial agent must take all reasonable steps to ensure that all records, documents, and accounts that are necessary to enable returns under sections 35 and 38 to be verified are retained until the expiry of the period within which a prosecution may be commenced under this Act in relation to the returns or in relation to any matter to which the returns relate. | 25 |
| (2) Every financial agent who fails, without reasonable excuse, to comply with subsection (1) commits an offence and is liable on summary conviction to a fine not exceeding \$40,000. | 30 |
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| Offences relating to returns of party donations | |
| (1) Every financial agent who fails, without reasonable excuse, to comply with section 35 or 38 commits an offence and is liable on summary conviction to a fine not exceeding \$40,000. | 35 |

- (2) Every financial agent who files a return under **section 35 or 38** that is false in any material particular is guilty of—
- (a) a corrupt practice if the financial agent filed the return knowing it to be false in any material particular:
 - (b) an illegal practice in any other case unless the financial agent proves—
 - (i) that he or she had no intention to misstate or conceal the facts; and
 - (ii) that he or she took all reasonable steps in the circumstances to ensure that the information in the return was accurate.

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41 Return of party donations to be available for public inspection

- (1) The Electoral Commission must, 3 working days after receipt, make copies of the following returns and reports available for public inspection by any person on payment of any charges that may be made under the Official Information Act 1982:
- (a) an annual return of party donations and accompanying auditor's report filed under **section 35**; and
 - (b) a return of party donations filed under **section 38**.
- (2) The Electoral Commission may publish the returns and reports specified in **subsection (1)** in any manner that the Electoral Commission considers appropriate.

New (majority)

41 Return of party donations to be publicly available

- (1) The Electoral Commission may publish, in any manner that the Electoral Commission considers appropriate, the following returns and reports:
- (a) a return filed under **section 35**; and
 - (b) a report obtained under **section 36** accompanying the return referred to in **paragraph (a)**; and
 - (c) a return filed under **section 38**.
- (2) During the public inspection period, the Electoral Commission must make available for public inspection a copy of every return and report referred to in **subsection (1)**.

New (majority)

- (3) The Electoral Commission may make inspection under **subsection (2)** subject to the payment of any charges that may be made under the Official Information Act 1982.

Subpart 4—Disclosure of third party donations

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- 42 Anonymous third party donation** 5
- (1) An anonymous third party donation may not exceed the specified amount.
- (2) Where an anonymous third party donation exceeds the specified amount, the whole donation, or the amount of its value, must be paid to the Chief Electoral Officer. 10
- (3) An anonymous third party donation, or the amount of its value, must be paid to the Chief Electoral Officer under **subsection (2)** by a financial agent within 30 days of the donation being received by the financial agent.
- (4) All amounts received by the Chief Electoral Officer under **subsection (3)** must be paid into a Crown Bank Account. 15
- 43 Offence in relation to anonymous third party donation**
- (1) A person may not enter into an agreement or enter into an arrangement or understanding that would have the effect of avoiding the prohibition in **section 42(1)**. 20
- (2) Every person is guilty of—
- (a) a corrupt practice who wilfully contravenes **subsection (1)**; and
- (b) an illegal practice who contravenes **subsection (1)** in any other case. 25
- (3) A financial agent who contravenes **section 42(3)** is guilty of an illegal practice.
- 44 Contributors to be identified, if known**
- (1) This section applies where a third party donation comprises in whole or in part funds contributed by 1 or more other persons (**contributors**) that the contributors require or expect 30

Struck out (majority)

- (whether under a trust, agreement, or understanding) to be applied as a donation.
- (2) Where this section applies the donor must, at the time of making the donation, disclose—
- (a) the fact that the donation comprises in whole or in part funds provided by contributors; and 5
- (b) the following information, if known or ascertainable, in respect of each contributor whose contribution exceeds the specified amount:
- (i) the name and address of the contributor; and 10
- (ii) the amount of funds provided by the contributor.
- (3) Where a donor does not disclose, or is unable to disclose, all of the information required by **subsection (2)(b)**, then the donation must be treated as an anonymous third party donation.
- (4) A donor who fails to comply with **subsection (2)** with the intention of concealing the identity of any or all of the contributors commits an offence and is liable on summary conviction to a fine not exceeding \$40,000. 15
- 45 Identity of donor to be disclosed by transmitter, if known** 20
- (1) When a transmitter transmits a third party donation to the financial agent on behalf of the donor, the transmitter must disclose to the financial agent—
- (a) the fact that the donation is transmitted on behalf of the donor; and 25
- (b) the name and address of the donor; and
- (c) whether **section 44** applies to the donation and, if so, all information disclosed by the donor under **subsection (2)** of that section.
- (2) Where a transmitter does not disclose, or is unable to disclose, the information required by **subsection (1)(b) or (c)**, then the donation must be treated as an anonymous third party donation. 30

Struck out (majority)**46 Offence relating to contravention of section 45**

A transmitter who fails to comply with **section 45** with the intention of concealing the identity of the donor or any or all of the contributors commits an offence and is liable on summary conviction to a fine not exceeding \$40,000.

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47 Return of third party donations**Struck out (majority)**

- (1) A financial agent of a third party must, at the same time as filing a return under **section 111**, file with the Chief Electoral Officer a return setting out the details specified in **subsection (2)** in respect of every third party donation received by him or her that either on its own, or when aggregated with all other donations made by or on behalf of the same donor during the regulated period, exceeds the specified amount.

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New (majority)

- (1) A financial agent of a third party must, at the same time as filing a return under **section 111**, file with the Electoral Commission a return setting out—
- (a) the details specified in **subsection (2)** in respect of every third party donation (other than a donation of the kind referred to in **paragraphs (b) to (d)**) received by him or her that either on its own, or when aggregated with all other donations made by or on behalf of the same donor during the regulated period, exceeds the specified amount; and
 - (ab) whether **section 23A** applies to any donation, and if so, the details specified in **subsection (2AA)** in respect of every contribution referred to in **section 23A** to him or her that either on its own or when aggregated with other contributions made by or on behalf of the same person during the regulated period exceeds \$5,000:

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New (majority)

- (b) the details specified in **subsection (2A)** in respect of every anonymous third party donation received by him or her exceeding \$1,000; and
- (c) the details specified in **subsection (2B)** in respect of every third party donation, or contribution to a third party donation, received by him or her from an overseas person exceeding \$1,000; and
- (d) the details specified in **subsection (2C)** in respect of each payment of donations received from the Electoral Commission under **section 28E**.

- (2) The details referred to in **subsection (1)<(a)>** are—
 - (a) the name of the donor; and
 - (b) the address of the donor; and
 - (c) the amount of the donation; and
 - (d) the date the donation was received.

Struck out (majority)

- (e) in the case of a donation paid to the Chief Electoral Officer under **section 42(2)**, the date the donation was paid; and
- (f) whether **section 44** applies to the donation and, if so, all information disclosed by the donor under **subsection (2)** of that section.

New (majority)

- (e) whether **section 23A** applies to the donation and, if so, all information disclosed by the donor under **subsections (2) and (3)** of that section.
- (2AA) The details referred to in **subsection (1)(ab)** are—
 - (a) the name of the contributor; and
 - (b) the address of the contributor; and
 - (c) the amount of each contribution made by the contributor; and
 - (d) the date on which the donation to which the contribution forms part was made.
- (2A) The details referred to in **subsection (1)(b)** are—

New (majority)

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| <ul style="list-style-type: none"> (a) the date the donation was received; and (b) the amount of the donation; and (c) the amount paid to the Electoral Commission under section 25A(3), and the date that payment was made. <p>(2B) The details referred to in subsection (1)(c) are—</p> <ul style="list-style-type: none"> (a) the date the donation or contribution was received; and (b) the amount of the donation or contribution; and (c) the amount paid to the overseas person or to the Electoral Commission under section 25C(2), and the date that payment was made. <p>(2C) The details referred to in subsection (1)(d) are—</p> <ul style="list-style-type: none"> (a) the date the payment was received; and (b) the amount of the payment; and (c) the amount of interest included in the payment. | <p>5</p> <p>10</p> <p>15</p> <p>20</p> <p>25</p> |
| <p>(3) Every return filed under subsection (1) must be in the form required by the <i><Chief Electoral Officer></i> <i><Electoral Commission></i> and include a statutory declaration made by the financial agent and the person who made the application for the third party listing each declaring that to the best of his or her or its knowledge and belief—</p> <ul style="list-style-type: none"> (a) the return correctly sets out all the details required by <i><subsection (2)></i> <i><subsections (2) to (2C)></i>; and (b) a fair assessment has been made of the reasonable market value of donations, if any, of the kind described in paragraph (a)(i) or (ii) of the definition of third party donation in section 22(2). | <p>15</p> <p>20</p> <p>25</p> |
| <p>48 Nil return</p> <p>Where a financial agent considers there is no relevant information to disclose under section 47, the financial agent must file a nil return under that section.</p> | <p>30</p> |
| <p>49 Obligation to retain records necessary to verify return of third party donations</p> <p>(1) A financial agent must take all reasonable steps to ensure that all records, documents, and accounts that are necessary to enable a return under section 47 to be verified are retained until the expiry of the period within which a prosecution may be</p> | <p>35</p> |

- commenced under this Act in relation to the return or in relation to any matter to which the return relates.
- (2) Every financial agent who fails, without reasonable excuse, to comply with **subsection (1)** commits an offence and is liable on summary conviction to a fine not exceeding \$40,000. 5
- 50 Offences relating to return of third party donations**
- (1) Every financial agent who fails, without reasonable excuse, to comply with **section 47** commits an offence and is liable on summary conviction to a fine not exceeding \$40,000.
- (2) Every financial agent who files a return under **section 47** that is false in any material particular is guilty of— 10
- (a) a corrupt practice if the financial agent filed the return knowing it to be false in any material particular:
- (b) an illegal practice in any other case unless the financial agent proves— 15
- (i) that he or she had no intention to misstate or conceal the facts; and
- (ii) that he or she took all reasonable steps in the circumstances to ensure that the information in the return was accurate. 20

Struck out (majority)

- 51 Return of third party donations to be available for public inspection**
- (1) As soon as practicable after receiving a return of a third party's donations filed under **section 47**, the Chief Electoral Officer must send a copy of the return to the Electoral Commission. 25
- (2) The Chief Electoral Officer must make a copy of every return of a third party's donations available for public inspection by any person on payment of any charges that may be made under the Official Information Act 1982. 30
- (3) The Chief Electoral Officer may publish every return of a third party's donations in any manner that the Chief Electoral Officer considers appropriate.

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- 52 Return of third party donations to be kept for certain period**
- (1) The Chief Electoral Officer and the Electoral Commission must keep every return of a third party's donations for the period—
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- (a) beginning with the date of receipt of the return; and
- (b) ending with the close of polling day for the second general election that takes place after the date of receipt of the return.
- (2) On the expiry of the period referred to in **subsection (1)**, the Chief Electoral Officer and the Electoral Commission must destroy, or cause to be destroyed, the return.
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New (majority)

- 52 Return of third party donations to be publicly available**
- (1) The Electoral Commission may publish, in any manner that the Electoral Commission considers appropriate, every return filed under **section 47**.
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- (2) During the public inspection period, the Electoral Commission must make available for public inspection a copy of every return filed under **section 47**.
- (3) The Electoral Commission may make inspection under **subsection (2)** subject to the payment of any charges that may be made under the Official Information Act 1982.
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Subpart 5—General rules governing election advertisements

- 53 Election advertisements not to be published in regulated period unless certain conditions met**
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New (majority)

- (1AA) Despite references in this section to a regulated period, this section does not apply to polling day. Section 197 of the Electoral Act 1993 applies to polling day.

- (1) No person may, during a regulated period, publish or cause or permit to be published any election advertisement unless—
- (a) the advertisement contains a statement that sets out the name and address of the promoter of the advertisement; and 5
 - (b) the promoter is entitled to promote the advertisement.
- (2) For the purposes of **subsection (1)(b)**, a promoter is entitled to promote an election advertisement if the promoter is—
- (a) the financial agent of a party, but only if the advertisement is a party advertisement promoted by, or on behalf of, that party; or 10
 - (b) the financial agent of a candidate, but only if the advertisement is a candidate advertisement promoted by, or on behalf of, 1 or more candidates; or
 - (c) ~~the financial agent of~~ a third party; or 15

Struck out (majority)

- (d) a promoter to whom **subsection (3)** applies.

New (majority)

- (d) a promoter who promotes election advertisements during the regulated period in respect of which expenses are incurred that—
- (i) in total do not exceed \$12,000 (inclusive of goods and services tax); and 20
 - (ii) in the case of advertisements that relate to a candidate in the candidate's capacity as a candidate for an electoral district (whether or not the name of the candidate is stated), do not exceed \$1,000 (inclusive of goods and services tax). 25

Struck out (majority)

- (3) This subsection applies to a promoter if, before the publication of the election advertisement, the promoter gives the publisher a declaration completed by the promoter, in the manner provided by section 9 of the Oaths and Declarations Act 1957, to the effect that the expenses incurred in respect of 30

Struck out (majority)

- all election advertisements promoted by the promoter that have been and are to be published during the regulated period—
- (a) do not exceed \$500, in the case of election advertisements that relate to a candidate in the candidate's capacity as a candidate for an electoral district (whether or not the name of the candidate is stated); and 5
 - (b) do not in any case exceed \$5,000.
- (4) A declaration given under **subsection (3)** must specify the full name, address, and contact details of the promoter. 10
- (5) Every person is guilty of an illegal practice who wilfully contravenes any provision of **subsection <(1)> <(2)>**.
- 54 Offence to avoid limits set out in section 53**
- (1) A person may not enter into an agreement or enter into an arrangement or understanding *<that would have the effect of avoiding the limit of \$500 set by **section 53(3)(a)** or the limit of \$5,000 set by **section 53(3)(b)**>* *<with any other person for the purpose of circumventing either of the maximum amounts prescribed in **section 53(2)(d)**>*. 15
 - (2) A body corporate or unincorporated may not split itself into 2 or more bodies for the purpose of *<avoiding the limit of \$500 set by **section 53(3)(a)** or the limit of \$5,000 set by **section 53(3)(b)**>* *<circumventing either of the maximum amounts prescribed in limits set by **section 53(2)(d)**>*. 20
 - (3) Every person is guilty of an illegal practice who wilfully contravenes **subsection (1) or (2)**. 25
- 55 Requirements for election advertisements that promote parties or candidates**
- (1) *<No person may>* *<A promoter must not>* publish, or cause or permit to be published, an election advertisement that encourages or persuades, or appears to encourage or persuade, voters to vote for a party unless the advertisement— 30
 - (a) is authorised in writing by the financial agent of the party; and
 - (b) contains a statement that sets out the name and address of the promoter of the advertisement. 35

- (2) *<No person may>* *<A promoter must not>* publish, or cause or permit to be published, an election advertisement that encourages or persuades, or appears to encourage or persuade, voters to vote for a candidate unless the advertisement—
- (a) is authorised in writing by the financial agent of that candidate; and 5
- (b) contains a statement that sets out the name and address of the promoter of the advertisement.
- (3) *<No person may>* *<A promoter must not>* publish, or cause or permit to be published, an election advertisement that encourages or persuades, or appears to encourage or persuade, voters to vote for 2 or more candidates unless the advertisement—
- (a) is authorised in writing either by the financial agent of each of those candidates or by the financial agent of the party to which those candidates belong; and 10
- (b) contains a statement that sets out the name and address of the promoter of the advertisement. 15
- (4) Every *<person>* *<promoter>* is guilty of an illegal practice who wilfully contravenes any provision of this section.

New (majority)

- 55A Offence to incur election expenses exceeding maximum amounts prescribed by section 103(1)** 20
- (1) Every person who promotes election advertisements during the regulated period and incurs election expenses that exceed either of the maximum amounts prescribed by **section 103(1)** is guilty of a corrupt practice. 25
- (2) This section does not apply to a person who is—
- (a) the financial agent of a candidate acting in that capacity; or
- (b) the financial agent of a party acting in that capacity; or
- (c) the financial agent of a third party acting in that capacity. 30
- (3) In this section, **election expense** has the meaning given to it by **section 100(1)(b) to (6)**.

New (majority)

- 55B Certain persons and bodies may not promote an election advertisement**
- The following persons and bodies may not publish or cause or permit to be published any election advertisement:
- (a) the chief executive (however described) of a department of State or a Crown entity: 5
 - (b) a department of State:
 - (c) a Crown entity:
 - (d) a State enterprise (within the meaning of section 2 of the State Owned Enterprises Act 1986) or a Crown owned company: 10
 - (e) any other instrument of the Crown.
- 56 Payments for exhibition of election advertisements**
- (1) No payment or contract for payment may be made to any *<person>* *<elector>* on account of the exhibition of, or the use of any house, land, building, or premises for the exhibition of, any election advertisement, unless it is the ordinary business of the *<person>* *<elector>* to exhibit *<election>* advertisements for payment and the payment or contract is made in the ordinary course of that business. 15
20
 - (2) If any payment or contract for payment is knowingly made in contravention of this section before, during, or after an election, the person making the payment or contract and, if he or she knew it to be in contravention of this Act, any person receiving the payment or being a party to the contract is guilty of an illegal practice. 25
- 57 Display of advertisement of a specified kind**
- (1) During the period beginning 2 months before polling day and ending with the close of the day before polling day, the display of an advertisement of a specified kind is not subject to— 30
 - (a) any prohibition or restriction imposed in any other enactment or bylaw, or imposed by any local authority, that applies in relation to the period when an advertisement of a specified kind may be displayed; or
 - (b) any prohibition or restriction imposed in any bylaw, or imposed by any local authority, that applies in relation 35

- to the content or language used in an advertisement of a specified kind.
- (2) In this section **advertisement of a specified kind** means an advertisement displayed in a public place or on private property that does not exceed 3 square metres in size and that— 5
- (a) encourages or persuades or appears to encourage or persuade voters to vote for a party; or
 - (b) is used or appears to be used to promote or procure the election of a candidate; but
 - (c) does not include— 10
 - (i) an advertisement published in any newspaper, periodical, or handbill, or in any poster less than 150 square centimetres in size; or
 - (ii) an advertisement broadcast over any television station or by any electronic means of communication. 15
- (3) Nothing in this section limits or prevents the display before polling day of any advertisement relating to an election that complies with any prohibition or restriction imposed in any enactment or bylaw, or imposed by any local authority. 20

New (majority)

57A Duties of Chief Electoral Officer and Electoral Commission

If either the Chief Electoral Officer or the Electoral Commission believe that any person has committed an offence against this subpart, the Chief Electoral Officer or the Electoral Commission, as the case may be, must report the facts upon which that belief is based to the New Zealand Police. 25

Subpart 6—Candidates' election expenses

58 Interpretation

In this subpart, unless the context otherwise requires,— 30

candidate activity, in relation to a candidate at an election in any district, means an activity—

- (a) that is undertaken by, or with the authority of,—
 - (i) the candidate; or
 - (ii) the candidate's financial agent; and 35

- (b) that *<comprises the publication of>* *<constitutes publishing>* a candidate advertisement in any form (for example, in the form of a radio or television broadcast, notice, poster, pamphlet, billboard, or electronic message); and 5
- (c) that relates to the campaign for the return of the candidate in the candidate's capacity as a candidate for the district and not to the candidate—
- (i) in his or her capacity as a member of Parliament or as the holder of any other office; or 10
- (ii) in any other capacity; and
- (d) that is undertaken, or deemed by **section 63** to have been undertaken, during the regulated period
- candidate advertisement** has the meaning given to it by **section 4** 15

New (majority)

candidate's election expenses has the meaning given to it by **section 59A**

election expense has the meaning given to it by **section 59**
*<publication>**<publish>* has the meaning given to it by **section 4** 20

regulated period includes, in the case of a by-election, the period that commences 3 months before the polling day appointed for the by-election and ends with the close of that polling day.

- 59 Meaning of election expense** 25
- (1) In this subpart, **election expense** means an expense that—
- (a) is incurred in undertaking a candidate activity; and
- (b) is incurred in respect of any of the following costs:
- (i) the cost of the preparation, design, composition, printing, distribution, postage, and *<publication of>* *<publishing>* a candidate advertisement: 30
- (ii) the cost of any material used for or applied towards a candidate advertisement:
- (iii) the cost of displaying a candidate advertisement on any advertising space on any land or building 35

⟨of a specified kind⟩ that is used solely or principally for commercial or industrial purposes.

- (2) Despite **subsection (1)(b)**, **election expense** does not include the cost of—
- (a) travel: 5
 - (b) the conduct of any survey or public opinion poll:
 - (c) the labour of any person that is provided free of charge by that person:
 - (d) the replacement of any material used in respect of a candidate advertisement which has been destroyed or rendered unusable by 1 or more persons (other than the candidate or any person acting on his or her behalf) or by the occurrence of an event beyond the control of the candidate and any person acting on his or her behalf: 10

New (majority)

- (e) the cost incurred by any person in hiring an interpreter to enable a candidate who is deaf or who suffers from impaired hearing to undertake or participate in a candidate activity. 15
- (2A) For the purposes of **subsection (1)(b)(iii)**, any **land or building of a specified kind**— 20
- (a) means any land or building situated in a city, town, or village where 50 or more people are ordinarily resident; but
 - (b) does not include—
 - (i) any land or building used principally or solely for agricultural purposes: 25
 - (ii) any land or building used principally or solely as a residential dwelling:
 - (iii) any land or building used principally or solely as a place of worship, school, or hospital: 30
 - (iv) any land or building owned and occupied by the Crown:
 - (v) any land or building owned and occupied by a local authority within the meaning of section 5(1) of the Local Government Act 2002: 35
 - (vi) any road or road reserve:

New (majority)

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| <ul style="list-style-type: none"> (vii) any land that is a conservation area within the meaning of section 2(1) of the Conservation Act 1987: (viii) any land that is a reserve within the meaning of section 2(1) of the Reserves Act 1977: (ix) any other kind of land or buildings declared by regulations made under section 129 not to be land or a building of a specified kind for the purposes of section 59. | 5 |
| <hr/> | |
| <ul style="list-style-type: none"> (3) Where any material referred to in subsection (1)(b)(ii) or any advertising space referred to in subsection (1)(b)(iii) is provided free of charge, the commercial value of that material or advertising space must be included as an election expense. (4) Where any material referred to in subsection (1)(b)(ii) or any advertising space referred to in subsection (1)(b)(iii) is provided at less than its commercial value, the amount of the difference between the contract price of the material or advertising space and the commercial value of that material or advertising space must be included as an election expense. (5) However, subsections (3) and (4) do not apply where the <aggregate> commercial value of the material or advertising space <is less than \$200.> <provided to the candidate by a provider (on 1 or more occasions) is less than \$200.> (6) For the purposes of subsections (3) to (5), commercial value, in relation to any material referred to in subsection (1)(b)(ii) or any advertising space referred to in subsection (1)(b)(iii), means the lowest amount charged at the time the material or advertising space was provided, for the same kind and quantity, by— <ul style="list-style-type: none"> (a) the person who provided it, if that person is in the business of providing that material or advertising space; or (b) another person who provides that material or advertising space on a commercial basis in the area where it was provided, if the person who provided the material or advertising space is not in that business. | 10
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Struck out (majority)**60 Election expense to be incurred by candidate's financial agent**

No person other than the candidate's financial agent may incur an election expense in relation to a candidate activity.

New (majority)

- 59A Meaning of candidate's election expenses** 5
- In this subpart, **candidate's election expenses** means, in relation to a candidate, the total of the following expenses:
- (a) any election expense incurred by any person specified in **section 60(a), (b), or (c)**; and
 - (b) any election expense of an election activity that is apportioned to the candidate under **section 65**; and 10
 - (c) any election expense in relation to a party advertisement deemed to be an election expense of the candidate under **section 66**.
- 60 Persons who may incur election expense in relation to candidate activity** 15
- An election expense in relation to a candidate activity may only be incurred by—
- (a) a candidate's financial agent; or
 - (b) a third party's financial agent acting under an authority given under **section 55(2)(a) or (3)(a)**; or 20
 - (c) a party's financial agent in relation to an advertisement that the agent has authorised under **section 55(3)**, or in relation to an election activity described in **section 65(2)**; or 25
 - (d) a promoter in respect of whom **section 53(2)(d)** applies.
- 61 Offence to incur unauthorised election expense**
- (1) Every person is guilty of—
- (a) a corrupt practice who wilfully contravenes **section 60**; and 30
 - (b) an illegal practice who contravenes **section 60** in any other case.

- (2) Every person who enters into an agreement or enters into an arrangement or understanding with any other person for the purpose of circumventing **section 60** is guilty of an illegal practice.
- 62 Maximum amount of candidate's *<total>* election expenses** 5
- (1) *<The total>* *<A candidate's>* election expenses *<of a candidate>* in respect of any regulated period must not exceed—
- (a) the amount of \$20,000 in the case of a candidate at a general election; and 10
- (b) the amount of \$40,000 in the case of a candidate at a by-election.
- (2) The amounts in **subsection (1)** are inclusive of goods and services tax.
- (3) For the purposes of **subsection (1)**, it is immaterial whether an election expense is paid or incurred before, during, or after the regulated period. 15
- 63 Apportionment of election expense for candidate activity undertaken both before and within regulated period**
- (1) This section applies where a candidate activity as described in **paragraphs (a) to (c)** of the definition of that term in **section 58** is— 20
- (a) undertaken both before and within the regulated period; or
- (b) undertaken before the regulated period and continues to be undertaken within the regulated period. 25
- (2) Where this section applies,—
- (a) the candidate activity is deemed to have been undertaken in the regulated period; but
- (b) the election expense *<of the candidate activity>* must be apportioned so that a fair proportion of the expense is attributed to being incurred within the regulated period. 30
- (3) Only the fair proportion of the election expense determined in accordance with **subsection (2)** is an election expense.

- 64 Apportionment of election expense of election activity between candidates**
- (1) This section provides for the apportionment between candidates of the election expense of an election activity.
- (2) In this section, **election activity** means an activity that comprises 2 or more candidate activities. 5
- (3) The election expense of an election activity must be apportioned among the candidates in proportion to the coverage the activity provides to each candidate's candidate activity.
- (4) However, where an election activity provides a candidate's candidate activity less than 10% coverage, the candidate's apportionment of the election expenses of the election activity is not to be included as an election expense of the candidate. 10
- (5) For the purposes of this section,—
- (a) **election expense of an election activity** means the total of the election expense *<of>* *<in relation to>* all of the candidate activities to which this section applies; and 15
- (b) the coverage provided by an election activity must be calculated in such a manner as is appropriate in relation to the form of the activity. 20
- 65 Apportionment of election expense of election activity between candidate and party**
- (1) This section provides for the apportionment between a candidate and a party of the election expense of an election activity.
- (2) In this section, **election activity** means an activity that comprises a candidate activity and a party activity (as defined in **section 80**). 25
- (3) The election expense of an election activity must be apportioned between the candidate and the party in proportion to the coverage the activity provides to the candidate's candidate activity and the party's party activity. 30
- (4) For the purposes of this section,—
- (a) **election expense of an election activity** means the *<cost of>* *<election expense in relation to>* the candidate activity and the *<cost of>* *<election expense in relation to>* the party activity (as defined in **section 80**); and 35
- (b) the coverage provided by an election activity must be calculated in such a manner as is appropriate in relation to the form of the election activity.

- 66 Cost of party activity deemed to be election expense of candidate in particular case**
- (1) This section applies where a party advertisement features a candidate—
- (a) in his or her capacity as a list candidate; or 5
 - (b) as endorsing or supporting the party, or the list submitted by the party under section 127 of the Electoral Act 1993.
- (2) Where the party advertisement gives more than 10% coverage to the candidate and is published in the electoral district in respect of which the candidate has been nominated, the *<cost of>* *<election expense in relation to>* the party advertisement *<(as defined in section 80)>* is deemed to be an election expense of the candidate. 10
- (3) However, this section does not apply where the party advertisement is published— 15
- (a) in the electoral district in respect of which the candidate has been nominated; and
 - (b) 10 other electoral districts.
- (4) For the purposes of this section— 20
- candidate** means a person who is both a constituency candidate and a list candidate
- list candidate** *<means a person whose name is included in the list submitted by a party under section 127 of the Electoral Act 1993>* *<has the meaning given to it by section 22>*. 25
- (5) For the purposes of this section the coverage provided by a party advertisement must be calculated in such manner as is appropriate in relation to the form of the advertisement.
- 67 Offences in relation to candidate's *<total>* election expenses** 30
- (1) If a candidate's *<total>* election expenses exceed either of the maximum amounts prescribed by **section 62**, the candidate's financial agent is guilty of—
- (a) a corrupt practice if the financial agent knew the candidate's total election expenses exceeded the maximum amount; or 35
 - (b) an illegal practice in any other case, unless the financial agent proves that he or she took all reasonable steps to

ensure that the election expenses did not exceed the maximum amount.

- (2) Every person who enters into an agreement or enters into an arrangement or understanding with any other person for the purpose of circumventing either of the maximum amounts prescribed in **section 62(1)** is guilty of *<an illegal>* *<a corrupt>* practice. 5

68 Periods for claiming and paying candidate's election expenses

- (1) A claim against a candidate's financial agent in respect of any election expense is recoverable only if it is sent to the financial agent within 20 working days after the day on which the declaration required by section 179(2) of the Electoral Act 1993 is made. 10
- (2) A claim that is sent to a candidate's financial agent in accordance with **subsection (1)** must be paid by the financial agent, and no other person, within 40 working days after the day on which that declaration is made, and not otherwise. 15
- (3) Every person who makes any payment in breach of **subsection (2)** is guilty of an illegal practice. 20
- (4) This section is subject to **sections 69 and 70**.

69 Procedure where claim disputed

- (1) If a financial agent, in the case of a claim for an election expense sent to the candidate's financial agent within the period specified in **section 68(1)**, disputes the claim, or fails to pay the claim within the period of 40 working days specified in **section 68(2)**, then— 25
- (a) the claim is to be treated as a disputed claim; and
- (b) the claimant may, if he or she thinks fit, within 20 working days after the expiration of that period of 40 working days, bring an action for the disputed claim in any court of competent jurisdiction. 30
- (2) Any sum paid by the financial agent in accordance with a judgment or order of the court in any such action is to be treated as paid within the time specified by **section 68(2)**. 35

- 70 Leave to pay claim after time limitation**
- (1) On the application of a claimant or candidate's financial agent, a District Court may make an order granting leave to a financial agent to pay—
- (a) a claim for election expenses sent after the period specified in **section 68(1)**; or 5
 - (b) a claim not paid in the period specified in **section 68(2)**; or
 - (c) a disputed claim in respect of which an action was not brought within the period specified in **section 69(1)(b)**.
- (2) Any sum specified in the order granting that leave may be paid by the candidate's financial agent, and when so paid is to be treated as having been paid within the period specified in **section 68(2)**. 10
- 71 Election expense to be invoiced**
- No payment in respect of any election expense exceeding \$50 may be made without an invoice. 15
- 72 Return of candidate's election expenses**
- (1) Within 70 working days after polling day, a candidate's financial agent must file with the Chief Electoral Officer a return setting out the candidate's election expenses incurred <in relation to candidate activities undertaken> during the regulated period. 20

Struck out (majority)

- (2) Every return filed under **subsection (1)** must be—
- (a) in the form required by the Chief Electoral Officer and include a statutory declaration made by the financial agent and the candidate each declaring that to the best of his or her knowledge and belief—
 - (i) the return correctly sets out all the information required to be provided; and
 - (ii) a fair assessment has been made of the commercial value of any materials and advertising spaces used in candidate advertisements; and 30
 - (b) accompanied by an auditor's report obtained under **section 73**, if required.

New (majority)

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| (2) | Every return filed under subsection (1) must be— | |
| | (a) in the form required by the Chief Electoral Officer; and | |
| | (b) include a statutory declaration made by the financial agent and the candidate each declaring that, to the best of his or her knowledge and belief,— | 5 |
| | (i) the return correctly sets out all the information required to be provided; and | |
| | (ii) a fair assessment has been made of the commercial value of any materials and advertising spaces used in candidate advertisements. | 10 |

Struck out (majority)

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| 73 | Auditor's report on return of candidate's election expenses exceeding 75% of maximum amount | |
| (1) | Every financial agent must, before the Chief Electoral Officer receives the return required by section 72 , obtain from the auditor appointed under section 10 a report on the return if the candidate's total election expenses exceed 75% of either of the maximum amounts prescribed by section 62 . | 15 |
| (2) | The auditor must state in the report— | |
| | (a) the position shown by the return in respect of the requirement that the candidate's total election expenses not exceed the maximum amount prescribed by section 62 ; and | 20 |
| | (b) either— | |
| | (i) whether, in the auditor's opinion, the position stated under paragraph (a) is correct; or | 25 |
| | (ii) that the auditor has been unable to form an opinion as to whether the position stated in paragraph (a) is correct. | |
| (3) | The auditor must make any examinations that the auditor considers necessary. | 30 |
| (4) | The auditor must specify in the report any case in which— | |
| | (a) the auditor has not received from the financial agent all the information that the auditor requires to carry out his or her duties: | |

Struck out (majority)

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| (b) | proper records of the candidate's election expenses have not, in the auditor's opinion, been kept by the financial agent. | |
| (5) | The auditor— | |
| (a) | must have access at all reasonable times to all records, documents, and accounts which relate to the candidate's election expenses and which are held by the financial agent; and | 5 |
| (b) | may require the financial agent to provide any information and explanations that, in the auditor's opinion, may be necessary to enable the auditor to prepare the report. | 10 |

74 Nil return

Where a financial agent considers there is no relevant information under **section 72**, the financial agent must file a nil return under that section.

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75 Offences relating to return of candidate's election expenses

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| (1) | Every financial agent who fails, without reasonable excuse, to comply with section 72 is liable on summary conviction to a fine not exceeding \$40,000. | 20 |
| (2) | Where a candidate who is his or her own financial agent and who has been elected fails, without reasonable excuse, to comply with section 72 , the candidate is liable on summary conviction to— | |
| (a) | the penalty in subsection (1) ; and | 25 |
| (b) | a further fine not exceeding \$400 for every day he or she sits or votes in the House of Representatives until the return is filed. | |
| (3) | Every financial agent who files a return under section 72 that is false in any material particular is guilty of— | 30 |
| (a) | a corrupt practice if the financial agent filed the return knowing it to be false in any material particular; | |
| (b) | an illegal practice in any other case unless the financial agent proves— | |
| (i) | that he or she had no intention to misstate or conceal the facts; and | 35 |

- (ii) that he or she took all reasonable steps in the circumstances to ensure that the information in the return was accurate.

76	Obligation to retain records necessary to verify return of candidate's election expenses	5
(1)	A financial agent must take all reasonable steps to ensure that all records, documents, and accounts that are necessary to enable a return under section 72 to be verified are retained until the expiry of the period within which a prosecution may be commenced under this Act in relation to the return or in relation to any matter to which the return relates.	10
(2)	Every financial agent who fails, without reasonable excuse, to comply with subsection (1) commits an offence and is liable on summary conviction to a fine not exceeding \$40,000.	
77	Duty of Chief Electoral Officer	15
	If the Chief Electoral Officer believes that any person has committed an offence specified in this subpart, the Chief Electoral Officer must report the facts upon which that belief is based to the New Zealand Police.	
Struck out (majority)		
78	Return of candidate's election expenses to be available for public inspection	20
(1)	As soon as practicable after receiving from a candidate's financial agent a return of the candidate's election expenses filed under section 72 and any accompanying auditor's report obtained under section 73 , the Chief Electoral Officer must send a copy of the return and report to the Electoral Commission.	25
(2)	The Chief Electoral Officer must make a copy of every return of a candidate's election expenses and any accompanying auditor's report available for public inspection by any person on payment of any charges that may be made under the Official Information Act 1982.	30

Struck out (majority)

- (3) The Chief Electoral Officer may publish every return of a candidate's election expenses and any accompanying auditor's report in any manner that the Chief Electoral Officer considers appropriate.
- 79 Return of candidate's election expenses to be kept for certain period** 5
- (1) The Chief Electoral Officer and the Electoral Commission must keep every return of a candidate's election expenses and any accompanying auditor's report for the period— 10
- (a) beginning with the date of receipt of the return and report; and
- (b) ending with the close of polling day for the second general election that takes place after the date of receipt of the return and report.
- (2) On the expiry of the period referred to in **subsection (1)**, the Chief Electoral Officer and the Electoral Commission must destroy, or cause to be destroyed, the return and any report. 15

New (majority)

- 78 Return of candidate's election expenses to be sent by Chief Electoral Officer to Electoral Commission** 20
- As soon as practicable after receiving a return filed under **section 72** the Chief Electoral Officer must send a copy of the return to the Electoral Commission.
- 79 Return of candidate's election expenses to be publicly available**
- (1) The Chief Electoral Officer may publish, in any manner that the Chief Electoral Officer considers appropriate, every return filed under **section 72**. 25
- (2) The Electoral Commission may publish, in any manner that the Electoral Commission considers appropriate, every return received from the Chief Electoral Officer under **section 78**. 30
- (3) During the public inspection period, the Chief Electoral Officer must make available for public inspection a copy of every return filed under **section 72**.

New (majority)

- (4) The Chief Electoral Officer may make inspection under **subsection (3)** subject to the payment of any charges that may be made under the Official Information Act 1982.

Subpart 7—Parties' election expenses

- 80 Interpretation** 5
 In this subpart, unless the context otherwise requires,—
election expense has the meaning given to it by **section 81**
party activity, in relation to a party, means an activity—
- (a) that is undertaken by, or with the authority of,— 10
 (i) the party ~~secretary~~; or
 (ii) the party's financial agent; and
- (b) that ~~comprises the publication of~~ ~~constitutes publishing~~ a party advertisement in any form (for example, in the form of a radio or television broadcast, notice, poster, pamphlet, billboard, or electronic message); and 15
- (c) that is undertaken, or deemed by **section 85** to have been undertaken, during the regulated period; and
- (d) does not include anything done in relation to a member of Parliament in his or her capacity as a member of Parliament 20
- party advertisement** has the meaning given to it by **section 4**

New (majority)

party's election expenses has the meaning given to it by **section 81A**

~~publication~~~~publish~~ has the meaning given to it by **section 4.** 25

- 81 Meaning of election expense**
- (1) In this subpart, **election expense** means an expense that— 30
 (a) is incurred in undertaking a party activity; and
 (b) is incurred in respect of any of the following costs:

- (i) the cost of the preparation, design, composition, printing, distribution, postage, and *<publication of>* *<publishing>* a party advertisement:
 - (ii) the cost of any material used or applied for a party advertisement: 5
 - (iii) the cost of displaying a party advertisement on any advertising space on any land or building *<of a specified kind>* that is used solely or principally for commercial or industrial purposes.
- (2) Despite **subsection (1)(b)**, **election expense** does not include the cost of— 10
- (a) travel:
 - (b) the conduct of any survey or public opinion poll:
 - (c) the labour of any person that is provided free of charge by that person: 15
 - (d) the replacement of any material used in respect of a party advertisement which has been destroyed or rendered unusable by 1 or more persons (other than a person acting on behalf of the party) or by the occurrence of an event beyond the control of any person acting on behalf of the party: 20
 - (e) the election expense of any of the party's candidates:
 - (f) allocations of time and money made to the party by the body responsible for such allocations under the Broadcasting Act 1989: 25
 - (g) any publications that relate to a member of Parliament in his or her capacity as a member of Parliament.

New (majority)

- (2A) For the purposes of **subsection (1)(b)(iii)** any **land or building of a specified kind**—
- (a) means any land or building situated in a city, town, or village where 50 or more people are ordinarily resident; but 30
 - (b) does not include—
 - (i) any land or building used principally or solely for agricultural purposes: 35
 - (ii) any land or building used principally or solely as a residential dwelling:

New (majority)

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| (iii) | any land or building used principally or solely as a place of worship, school, or hospital: | |
| (iv) | any land or building owned and occupied by the Crown: | |
| (v) | any land or building owned and occupied by a local authority within the meaning of section 5(1) of the Local Government Act 2002: | 5 |
| (vi) | any road or road reserve: | |
| (vii) | any land that is a conservation area within the meaning of section 2(1) of the Conservation Act 1987: | 10 |
| (viii) | any land that is a reserve within the meaning of section 2(1) of the Reserves Act 1977: | |
| (ix) | any other kind of land or buildings declared by regulations made under section 129 not to be land or building of a specified kind for the purposes of section 59 . | 15 |
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|-----|--|----|
| (3) | Where any material referred to in subsection (1)(b)(ii) or any advertising space referred to in subsection (1)(b)(iii) is provided free of charge, the commercial value of that material or advertising space must be included as an election expense. | 20 |
| (4) | Where any material referred to in subsection (1)(b)(ii) or any advertising space referred to in subsection (1)(b)(iii) is provided at less than its commercial value, the amount of the difference between the contract price of the material or advertising space and the commercial value of that material or advertising space must be included as an election expense. | 25 |
| (5) | However, subsections (3) and (4) do not apply where the <u>aggregate</u> commercial value of the material or advertising space <u>provided to a party by a provider (on 1 or more occasions)</u> is less than \$1,000. | 30 |
| (6) | For the purposes of subsections (3) to (5) , commercial value , in relation to any material referred to in subsection (1)(b)(ii) or any advertising space referred to in subsection (1)(b)(iii) , means the lowest amount charged at the time the material or advertising space was provided, for the same kind and quantity, by— | 35 |

- (a) the person who provided it, if that person is in the business of providing that material or advertising space; or
- (b) another person who provides that material or advertising space on a commercial basis in the area where it was provided, if the person who provided the material or advertising space is not in that business.

Struck out (majority)

- 82 Election expense to be incurred by party's financial agent** 10
- No person other than the party's financial agent may incur an election expense in relation to a party activity.

New (majority)

- 81A Meaning of party's election expenses** 15
- In this subpart, **party's election expenses** means, in relation to a party, the total of the following expenses:
- (a) any election expense incurred by any person specified in **section 82(a) or (b)**; and
 - (b) any election expense of an election activity that is apportioned to the party under **section 65 or 85A**.

- 82 Persons who may incur election expense in relation to party activity** 20
- An election expense in relation to a party activity may only be incurred by—
- (a) a party's financial agent; or
 - (b) a candidate's financial agent in relation to an election activity described in **section 65(2)**; or 25
 - (c) a third party's financial agent acting under an authority given under **section 55(1)(a)**; or
 - (d) a promoter in respect of whom **section 53(2)(d)** applies.

- 83 Offence to incur unauthorised election expense** 30
- (1) Every person is guilty of—
- (a) a corrupt practice who wilfully contravenes **section 82**; and

- (b) an illegal practice who contravenes **section 82** in any other case.
- (2) Every person who enters into an agreement or enters into an arrangement or understanding with any other person for the purpose of circumventing **section 82** is guilty of an illegal practice. 5
- 84 Maximum amount of party's <total> election expenses**
- (1) Where a party is listed in the part of the ballot paper that relates to the party vote, the <total> <party's> election expenses <of that party> in respect of any regulated period must not exceed— 10
- (a) the amount of \$1,000,000; and
- (b) the amount of \$20,000 for each electoral district contested by a candidate for the party.
- (2) Where a party is not listed in the part of the ballot paper that relates to the party vote, the total election expenses of that party in respect of any regulated period must not exceed the amount of \$20,000 for each electoral district contested by a candidate for the party. 15
- (3) The amounts in **subsection (1)** are inclusive of goods and services tax. 20
- (4) For the purposes of **subsections (1) and (2)**, it is immaterial whether an election expense is paid or incurred after the regulated period.
- 85 Apportionment of election expense for party activity undertaken both before and within regulated period** 25
- (1) This section applies where a party activity as described in **paragraphs (a) to (b)** of the definition of that term in **section 80** is—
- (a) undertaken both before and within the regulated period; 30
or
- (b) undertaken before the regulated period and continues to be undertaken within the regulated period.
- (2) Where this section applies,—
- (a) the party activity is deemed to have been undertaken in the regulated period; but 35

- (b) the election expense of the party activity must be apportioned so that a fair proportion of the expense is attributed to being incurred within the regulated period.
- (3) Only the fair proportion of the election expense determined in accordance with **subsection (2)** is an election expense. 5

New (majority)

85A Apportionment of election expense of election activity between parties

- (1) This section provides for the apportionment between parties of the election expense of an election activity.
- (2) In this section, **election activity** means an activity that comprises 2 or more party activities. 10
- (3) The election expense of an election activity must be apportioned among the parties in proportion to the coverage the activity provides to each party's party activity.
- (4) For the purposes of this section,— 15
 - (a) **election expense of an election activity** means the total of the election expense of all of the party activities to which this section applies; and
 - (b) the coverage provided by an election activity must be calculated in such a manner as is appropriate in relation to the form of the election activity. 20

86 Offences in relation to party's <total> election expenses

- (1) If a party's <total> election expenses exceed either of the maximum amounts prescribed by **section 84**, the party's financial agent is guilty of— 25
 - (a) a corrupt practice if the financial agent knew the party's total election expenses exceeded the maximum amount; or
 - (b) an illegal practice in any other case, unless the financial agent proves that he or she took all reasonable steps to ensure that the election expenses did not exceed the maximum amount. 30
- (2) Every person who enters into an agreement or enters into an arrangement or understanding with any other person for the purpose of circumventing either of the maximum amounts 35

prescribed in **section <84(1)> <84>** is guilty of *<an illegal>* *<a corrupt>* practice.

87 Periods for claiming and paying party's election expenses

- (1) No claim against a party's financial agent in respect of a party's election expense is recoverable unless it is sent to the financial agent within 20 working days after the day on which the declaration required by section 193(5) of the Electoral Act 1993 is made. 5
- (2) A claim that is sent to a party's financial agent in accordance with **subsection (1)** must be paid by the financial agent, and no other person, within 40 working days after the day on which that declaration is made, and not otherwise. 10
- (3) Every person who makes any payment in breach of **subsection (2)** is guilty of an illegal practice. 15
- (4) This section is subject to **sections 88 and 89**.

88 Procedure where claim disputed

- (1) If a financial agent, in the case of a claim for an election expense sent to the party's financial agent within the period specified in **section 87(1)**, disputes the claim, or fails to pay the claim within the period of 40 working days specified in **section 87(2)**, then— 20
 - (a) the claim is to be treated as a disputed claim; and
 - (b) the claimant may, if he or she thinks fit, within 20 working days after the expiration of that period of 40 working days, bring an action for the disputed claim in any court of competent jurisdiction. 25
- (2) Any sum paid by the financial agent in accordance with a judgment or order of the court in any such action is to be treated as paid within the time specified by **section 87(2)**. 30

89 Leave to pay claim after time limitation

- (1) On the application of a claimant or party's financial agent, a District Court may make an order granting leave to a financial agent to pay— 35
 - (a) a claim for election expenses sent after the period specified in **section 87(1)**; or
 - (b) a claim not paid in the period specified in **section 87(2)**; or

- (c) a disputed claim in respect of which an action was not brought within the period specified in **section 88(1)(b)**.
- (2) Any sum specified in the order granting that leave may be paid by the party's financial agent, and when so paid is to be treated as having been paid within the period specified in **section 87(2)**. 5
- 90 Election expense to be invoiced**
No payment in respect of any election expense exceeding <\$50> <\$100> may be made without an invoice.
- 91 Return of party's election expenses**
- (1) Within 50 working days after the day on which the declaration required by section 193(5) of the Electoral Act 1993 is made, a party's financial agent must file with the Electoral Commission a return of the party's election expenses <incurred in respect of a party activity undertaken during the regulated period>. 10 15
- (2) Every return filed under **subsection (1)** must be—
- (a) in the form required by the Electoral Commission and include a statutory declaration made by the financial agent and the party secretary each declaring that to the best of his or her knowledge and belief— 20
- (i) the return correctly sets out all the information required to be provided; and
- (ii) a fair assessment has been made of the commercial value of any materials and advertising spaces used in party advertisements; and 25
- (b) accompanied by an auditor's report obtained under **section 92**.
- 92 Auditor's report on return of party's election expenses**
- (1) Every financial agent must, before the Electoral Commission receives the return required by **section 91**, obtain from the auditor appointed under **section 11** a report on the return. 30
- (2) The auditor must state in the report—
- (a) the position shown by the return in respect of the requirement that the party's total election expenses not exceed the maximum amount prescribed by **section 84**; and 35
- (b) either—

- (i) whether, in the auditor's opinion, the position stated under **paragraph (a)** is correct; or
 - (ii) that the auditor has been unable to form an opinion as to whether the position stated in **paragraph (a)** is correct. 5
 - (3) The auditor must make any examinations that the auditor considers necessary.
 - (4) The auditor must specify in the report any case in which—
 - (a) the auditor has not received from the financial agent all the information that the auditor requires to carry out his or her duties: 10
 - (b) proper records of the party's election expenses have not, in the auditor's opinion, been kept by the financial agent.
 - (5) The auditor— 15
 - (a) must have access at all reasonable times to all records, documents, and accounts which relate to the party's election expenses and which are held by the financial agent; and
 - (b) may require the financial agent to provide any information and explanations that, in the auditor's opinion, may be necessary to enable the auditor to prepare the report. 20
- 93 Nil return**
- Where a financial agent considers there is no relevant information to disclose under **section 91**, the financial agent must file a nil return under that section. 25
- 94 Offences relating to return of party's election expenses**
- (1) Every financial agent who fails, without reasonable excuse, to comply with **section 91** is liable on summary conviction to a fine not exceeding \$40,000. 30
 - (2) Every financial agent who files a return under **section 91** that is false in any material particular is guilty of—
 - (a) a corrupt practice if the financial agent filed the return knowing it to be false in any material particular:
 - (b) an illegal practice in any other case unless the financial agent proves that— 35
 - (i) he or she had no intention to misstate or conceal the facts; and

- (ii) he or she took all reasonable steps in the circumstances to ensure that the information in the return was accurate.

- 95 Obligation to retain records necessary to verify return of party's election expenses** 5
- (1) A financial agent must take all reasonable steps to ensure that all records, documents, and accounts that are necessary to enable a return under **section 91** to be verified are retained until the expiry of the period within which a prosecution may be commenced under this Act in relation to the return or in relation to any matter to which the return relates. 10
- (2) Every financial agent who fails, without reasonable excuse, to comply with **subsection (1)** commits an offence and is liable on summary conviction to a fine not exceeding \$40,000.
- 96 Duty of Electoral Commission** 15
- If the Electoral Commission believes that any person has committed an offence specified in this subpart, the Electoral Commission must report the facts upon which that belief is based to the New Zealand Police.
- Struck out (majority)**
-
- 97 Return of party's election expenses to be available for public inspection** 20
- (1) The Electoral Commission must make every return of a party's election expenses filed under **section 91**, and every accompanying auditor's report obtained under **section 92**, available for public inspection by any person on payment of any charges that may be made under the Official Information Act 1982. 25
- (2) The Electoral Commission may publish every return of a party's election expenses and accompanying auditor's report in any manner that the Electoral Commission considers appropriate. 30
-

Struck out (majority)

- 98 Return of party's election expenses to be kept for certain period**
- (1) The Electoral Commission must keep every return of a party's election expenses and accompanying auditor's report for the period—
- 5
- (a) beginning with the date of receipt of the return and report; and
- (b) ending with the close of polling day for the second general election that takes place after the date of receipt of the return and report.
- 10
- (2) On the expiry of the period referred to in **subsection (1)**, the Electoral Commission must destroy, or cause to be destroyed, the return and report.

New (majority)

- 97 Return of party's election expenses to be publicly available**
- 15
- (1) The Electoral Commission may publish, in any manner that the Electoral Commission considers appropriate, every return filed under **section 91** and any accompanying auditor's report obtained under **section 92**.
- (2) During the public inspection period, the Electoral Commission must make available for public inspection a copy of every return and report referred to in **subsection (1)**.
- 20
- (3) The Electoral Commission may make inspection under **subsection (2)** subject to the payment of any charges that may be made under the Official Information Act 1982.
- 25

Subpart 8—Third parties' election expenses

- 99 Interpretation**
- In this subpart, unless the context otherwise requires,—
- election advertisement** has the meaning given to it by **section 5**
- 30
- election expense** has the meaning given to it by **section 100**
- ~~publication~~**publish** has the meaning given to it by **section 4**

third party activity, in relation to a third party, means an activity—

- (a) that is undertaken by, or with the authority of,—
 - (i) the third party; or
 - (ii) the third party's financial agent; and 5
- (b) that *<comprises the publication of>* *<constitutes publishing>* a election advertisement in any form (for example, in the form of a radio or television broadcast, notice, poster, pamphlet, billboard, or electronic message); and 10
- (c) that is undertaken, or deemed by **section 105** to have been undertaken, during the regulated period.

100 Meaning of election expense

- (1) In this subpart, **election expense** means an expense that—
 - (a) is incurred in undertaking a third party activity; and 15
 - (b) is incurred in respect of any of the following costs:
 - (i) the cost of the preparation, design, composition, printing, distribution, postage, and *<publication of>* *<publishing>* an election advertisement: 20
 - (ii) the cost of any material used or applied for an election advertisement: 25
 - (iii) the cost of displaying an election advertisement on any advertising space on any land or building *<of a specified kind>* that is used solely or principally for commercial or industrial purposes. 25
- (2) Despite **subsection (1)(b)**, **election expense** does not include the cost of—
 - (a) travel:
 - (b) the conduct of any survey or public opinion poll:
 - (c) the labour of any person that is provided free of charge by that person: 30
 - (d) the replacement of any material used in respect of an election advertisement which has been destroyed or rendered unusable by 1 or more persons (other than the third party or any person acting on its behalf) or by the occurrence of an event beyond the control of the third party and any person acting on its behalf. 35

New (majority)

- | | |
|---|----|
| (2A) For the purposes of subsection (1)(b)(iii) any land or building of a specified kind — | |
| (a) means any land or building situated in a city, town, or village where 50 or more people are ordinarily resident; but | 5 |
| (b) does not include— | |
| (i) any land or building used principally or solely for agricultural purposes: | |
| (ii) any land or building used principally or solely as a residential dwelling: | 10 |
| (iii) any land or building used principally or solely as a place of worship, school, or hospital: | |
| (iv) any land or building owned and occupied by the Crown: | |
| (v) any land or building owned and occupied by a local authority within the meaning of section 5(1) of the Local Government Act 2002: | 15 |
| (vi) any road or road reserve: | |
| (vii) any land that is a conservation area within the meaning of section 2(1) of the Conservation Act 1987: | 20 |
| (viii) any land that is a reserve within the meaning of section 2(1) of the Reserves Act 1977: | |
| (ix) any other kind of land or building declared by regulations made under section 129 not to be land or building of a specified kind for the purposes of section 59 . | 25 |
| (3) Where any material referred to in subsection (1)(b)(ii) or any advertising space referred to in subsection (1)(b)(iii) is provided free of charge, the commercial value of that material or advertising space must be included as an election expense of the third party. | |
| | 30 |
| (4) Where any material referred to in subsection (1)(b)(ii) or any advertising space referred to in subsection (1)(b)(iii) is provided at less than its commercial value, the amount of the difference between the contract price of the material or advertising space and the commercial value of that material or advertising space must be included as an election expense of the third party. | |
| | 35 |

- (5) However, **subsections (3) and (4)** do not apply where the <aggregate> commercial value of the material or advertising space <provided to a third party by a provider (on 1 or more occasions)> is less than \$200.
- (6) For the purposes of **subsections (3) to (5), commercial value**, in relation to any material referred to in **subsection (1)(b)(ii)** or any advertising space referred to in **subsection (1)(b)(iii)**, means the lowest amount charged at the time the material or advertising space was provided, for the same kind and quantity, by—
- (a) the person who provided it, if that person is in the business of providing that material or advertising space;
- or
- (b) another person who provides that material or advertising space on a commercial basis in the area where it was provided, if the person who provided the material or advertising space is not in that business.

New (majority)

100A Meaning of third party's election expenses

In this subpart, **third party's election expenses** means, in relation to a third party, the total of the following expenses:

- (a) any election expense in relation to a third party activity incurred by the third party's financial agent; and
- (b) any election expense of an election activity that is apportioned to the third party under **section 105A**.

Struck out (majority)

101 Election expense to be incurred by third party's financial agent

No person other than the third party's financial agent may incur an election expense in relation to a third party activity.

New (majority)

101 Persons who may incur election expense in relation to third party activity

An election expense in relation to a third party activity may only be incurred by a third party's financial agent.

102 Offence to incur unauthorised election expense

- (1) Every person is guilty of—
- (a) a corrupt practice who wilfully contravenes **section 101**; and
 - (b) an illegal practice who contravenes **section 101** in any other case. 5
- (2) Every person who enters into an agreement or enters into an arrangement or understanding with any other person for the purpose of circumventing **section 101** is guilty of an illegal practice. 10

103 Maximum amount of third party's <total> election expenses

- (1) *<The total election expenses of a third party>* *<A third party's election expenses>* in respect of any regulated period must not exceed— 15
- (a) the amount of *<\$2,000>* *<\$4,000>* in the case of election advertisements that relate to a candidate in the candidate's capacity as a candidate for an electoral district (whether or not the name of the candidate is stated); and 20
 - (b) the amount of *<\$60,000>* *<\$120,000>* in any case.
- (2) The amounts in **subsection (1)** are inclusive of goods and services tax.
- (3) For the purposes of **subsection (1)**, it is immaterial whether an election expense is paid or incurred before, during, or after the regulated period. 25

Struck out (majority)**104 Offences in relation to third party's total election expenses**

- (1) If a third party's total election expenses exceed either of the maximum amounts prescribed by **section 103(1)**, the third party's financial agent is guilty of— 30
- (a) a corrupt practice if the financial agent knew the election expenses of the third party exceeded the applicable maximum amount; or
 - (b) an illegal practice in any other case, unless the financial agent proves that he or she took all reasonable steps to 35

Struck out (majority)

ensure that the election expenses did not exceed the maximum amount.

- (2) Every person who enters into an agreement or enters into an arrangement or understanding with any other person for the purpose of circumventing either of the maximum amounts prescribed by **section 103(1)** is guilty of an illegal practice. 5

105 Apportionment of election expense for third party activity undertaken both before and within regulated period

- (1) This section applies where a third party activity as described in **paragraphs (a) and (b)** of the definition of that term in **section 99** is— 10
- (a) undertaken both before and within the regulated period; or
 - (b) undertaken before the regulated period and continues to be undertaken within the regulated period. 15
- (2) Where this section applies,—
- (a) the third party activity is deemed to have been undertaken in the regulated period; but
 - (b) the election expense of the third party activity must be apportioned so that a fair proportion of the expense is attributed to being incurred within the regulated period. 20
- (3) Only the fair proportion of the election expense determined in accordance with **subsection (2)** is an election expense.

New (majority)

105A Apportionment of election expense of election activity between third parties 25

- (1) This section provides for the apportionment between third parties of the election expense of an election activity.
- (2) In this section,—
- election activity** means an activity that comprises 2 or more third party activities 30

New (majority)

election expense of an election activity means the total of the election expense of all the third party activities comprising the election activity.

- (3) The election expense of an election activity must be apportioned equally among the third parties whose third party activities comprise the election activity. 5

106 Election expenses attributed in respect of advertisements authorised by candidate or party

- (1) This section applies if an election advertisement promoted by a third party is authorised in writing by the financial agent of the party or by the financial agent of 1 or more candidates. 10
- (2) The election expense of the election advertisement forms part of the election expenses of the third party and also forms part of the election expenses of the party or, as the case requires, the candidate whose financial agent authorised the election advertisement. 15

New (majority)**106A Offences in relation to third party's election expenses**

- (1) If a third party's election expenses exceed either of the maximum amounts prescribed by **section 103(1)**, the third party's financial agent is guilty of— 20
- (a) a corrupt practice if the financial agent knew the election expenses of the third party exceeded the applicable maximum amount; or
- (b) an illegal practice in any other case, unless the financial agent proves that he or she took all reasonable steps to ensure that the election expenses did not exceed the maximum amount. 25
- (2) Every person who enters into an agreement or enters into an arrangement or understanding with any other person for the purpose of circumventing either of the maximum amounts prescribed in **section 103(1)** is guilty of a corrupt practice. 30

- 107 Periods for claiming and paying third party's election expenses**
- (1) A claim against a third party's financial agent in respect of any election expense is recoverable only if it is sent to the financial agent within 20 working days after the day on which the declaration required by section 193(5) of the Electoral Act 1993 is made. 5
- (2) A claim that is sent to a third party's financial agent in accordance with **subsection (1)** must be paid by the financial agent, and no other person, within 40 working days after the day on which that declaration is made, and not otherwise. 10
- (3) Every person who makes any payment in breach of **subsection (2)** is guilty of an illegal practice.
- (4) This section is subject to **sections 108 and 109**.
- 108 Procedure if claim disputed** 15
- (1) If a financial agent, in the case of a claim for an election expense sent to the third party's financial agent within the period specified by **section 107(1)**, disputes the claim, or fails to pay the claim within the period of 40 working days specified in **section 107(2)**, then— 20
- (a) the claim is to be treated as a disputed claim; and
- (b) the claimant may, if he or she thinks fit, within 20 working days after the expiration of that period of 40 working days, bring an action for the disputed claim in any court of competent jurisdiction. 25
- (2) Any sum paid by the financial agent in accordance with a judgment or order of the court in any such action is to be treated as paid within the time specified by **section 107(2)**.
- 109 Leave to pay claim after time limitation**
- (1) On the application of a claimant or third party's financial agent, a District Court may make an order granting leave to a financial agent to pay— 30
- (a) a claim for election expenses sent after the period specified in **section 107(1)**; or
- (b) a claim not paid in the period specified in **section 107(2)**; 35
or
- (c) a disputed claim in respect of which an action was not brought within the period specified in **section 108(1)(b)**.

- (2) Any sum specified in the order granting that leave may be paid by the third party's financial agent, and when so paid is to be treated as having been paid within the period specified in **section 107(2)**.
- 110 Election expense to be invoiced** 5
No payment in respect of any election expense exceeding \$50 may be made without an invoice.
- 111 Return of third party's election expenses**
- (1) Within 70 working days after polling day, a third party's financial agent must file with the *Chief Electoral Officer* Electoral Commission a return setting out the election expenses *of the third party in respect of* incurred in respect of a third party activity undertaken during the regulated period. 10
- (2) Every return filed under **subsection (1)** must be— 15
- (a) in the form required by the *Chief Electoral Officer* Electoral Commission and include a statutory declaration made by the financial agent and the person who made the application for the third party listing or his or her successor, each declaring that to the best of his or her knowledge and belief— 20
- (i) the return correctly sets out all the information required to be provided; and
- (ii) a fair assessment has been made of the commercial value of any materials and advertising spaces used in third party advertisements; and 25
- (b) accompanied by an auditor's report obtained under **section 112**, if required.
- 112 Auditor's report on return of third party's election expenses** 30
- (1) Every financial agent must, before the *Chief Electoral Officer* Electoral Commission receives the return required by **section 111**, obtain from the auditor appointed under **section 12** a report on the return if the third party's total election expenses exceed 25% of the maximum amount prescribed by **section 103(1)(b)**. 35
- (2) The auditor must state in the report—

-
- (a) the position shown by the return in respect of the requirement that the third party's total election expenses not exceed either of the amounts prescribed by **section 103**; and
- (b) either— 5
- (i) whether, in the auditor's opinion, the position stated under **paragraph (a)** is correct; or
- (ii) that the auditor has been unable to form an opinion as to whether the position stated in **paragraph (a)** is correct. 10
- (3) The auditor must make any examinations that the auditor considers necessary.
- (4) The auditor must specify in the report any case in which— 15
- (a) the auditor has not received from the financial agent all the information that the auditor requires to carry out his or her duties:
- (b) proper records of the third party's election expenses have not, in the auditor's opinion, been kept by the financial agent.
- (5) The auditor— 20
- (a) must have access at all reasonable times to all records, documents, and accounts which relate to the third party's election expenses and which are held by the financial agent; and
- (b) may require the financial agent to provide any information and explanations that, in the auditor's opinion, may be necessary to enable the auditor to prepare the report. 25
- 113 Nil return**
- Where a financial agent considers there is no relevant information to disclose under **section 111**, the financial agent must file a nil return under that section. 30
- 114 Offences relating to return of third party's election expenses**
- (1) Every financial agent who fails, without reasonable excuse, to comply with **section 111** is liable on summary conviction to a fine not exceeding \$40,000. 35
- (2) Every financial agent who files a return under **section 111** that is false in any material particular is guilty of—

- (a) a corrupt practice if the financial agent filed the return knowing it to be false in any material particular:
- (b) an illegal practice in any other case unless the financial agent proves—
- (i) that he or she had no intention to misstate or conceal the facts; and 5
- (ii) that he or she took all reasonable steps in the circumstances to ensure that the information in the return was accurate.
- 115 Obligation to retain records necessary to verify return of third party’s election expenses** 10
- (1) A financial agent must take all reasonable steps to ensure that all records, documents, and accounts that are necessary to enable a return under **section 111** to be verified are retained until the expiry of the period within which a prosecution may be commenced under this Act in relation to the return or in relation to any matter to which the return relates. 15
- (2) Every financial agent who fails, without reasonable excuse, to comply with **subsection (1)** commits an offence and is liable on summary conviction to a fine not exceeding \$40,000. 20
- 116 Duty of <Chief Electoral Officer> <Electoral Commission>**
- If the <Chief Electoral Officer> <Electoral Commission> believes that any person has committed an offence specified in this subpart, the <Chief Electoral Officer> <Electoral Commission> must report the facts upon which that belief is based to the New Zealand Police. 25
- Struck out (majority)**
- 117 Return of third party’s election expenses to be available for public inspection**

(1) As soon as practicable after receiving from a third party’s financial agent a return of the third party’s election expenses filed under **section 111** and any accompanying auditor’s report obtained under **section 112**, the Chief Electoral Officer must send a copy of the return and report to the Electoral Commission. 30
35

Struck out (majority)

- (2) The Chief Electoral Officer must make a copy of every return of a third party's election expenses and any accompanying auditor's report available for public inspection by any person on payment of any charges that may be made under the Official Information Act 1982. 5
- (3) The Chief Electoral Officer may publish every return of a third party's election expenses and any accompanying auditor's report in any manner that the Chief Electoral Officer considers appropriate.
- 118 Return of third party's election expenses to be kept for certain period** 10
- (1) The Chief Electoral Officer and the Electoral Commission must keep every return of a third party's election expenses and any accompanying auditor's report for the period— 15
- (a) beginning with the date of receipt of the return and report; and
- (b) ending with the close of polling day for the second general election that takes place after the date of receipt of the return.
- (2) On the expiry of the period referred to in **subsection (1)**, the Chief Electoral Officer and the Electoral Commission must destroy, or cause to be destroyed, the return and any report. 20

New (majority)

- 117 Return of third party, election expenses to be publicly available**
- (1) The Electoral Commission may publish, in any manner that the Electoral Commission considers appropriate, every return filed under **section 111** and any accompanying auditor's report obtained under **section 112**. 25
- (2) During the public inspection period, the Electoral Commission must make available for public inspection a copy of every return filed under **section 111** and any accompanying auditor's report obtained under **section 112**. 30

New (majority)

- (3) The Electoral Commission may make inspection under **subsection (3)** subject to the payment of any charges that may be made under the Official Information Act 1982.

Part 3 Miscellaneous

5

Subpart 1—General provisions and penalties

New (majority)

119A Electoral Commission may provide guidance on commercial value of advertising space

- (1) In order to facilitate and encourage compliance with **sections 59(4), 81(4), and 100(4)**, the Electoral Commission may provide guidance, in any form or manner, and to the extent, that the Commission considers appropriate, in relation to the value that ought to be attributed to—
- (a) free advertising space generally; or
 - (b) free advertising space of any kind or in any location specified by the Commission.
- (2) If the Commission provides guidance under **subsection (1)**, it must publish that guidance on the Commission’s website and in any other form the Commission considers appropriate.

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119 Liability of candidates, party secretaries, and third parties

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- (1) In this section, **principal** means—
- (a) a candidate; or
 - (b) a party secretary; or
 - (c) a third party.
- (2) If an offence is committed against any of the provisions of this Act by the financial agent of a principal, the principal is, without prejudice to the liability of the financial agent, liable under that provision in the same manner and to the same extent as if the principal had personally committed the offence.

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- (3) **Subsection (2)** only applies if it is proved—
- (a) that the act that constituted the offence was committed with the principal’s authority, permission, or consent; or
 - (b) that the principal knew or could reasonably have known that the offence was to be or was being committed and failed to take all reasonable steps to stop or prevent it. 5

120 Providing money for illegal purposes

Where any person knowingly provides money for any purpose which is contrary to the provisions of this Act, or for any election expenses incurred in excess of the maximum amount allowed by this Act, or for repaying any money expended in any such payment or expenses, that person is guilty of an illegal practice. 10

121 Power to issue search warrants in respect of illegal practice 15

- (1) A search warrant may be issued under section 198 of the Summary Proceedings Act 1957 in respect of an illegal practice that constitutes an offence under this Act that—
- (a) has been committed; or 20
 - (b) is suspected to have been committed; or
 - (c) is believed to be intended to be committed.
- (2) **Subsection (1)** applies even though the offence is not punishable by imprisonment.

Struck out (majority)

- (3) Section 199 of the Summary Proceedings Act 1957, so far as it is applicable and with any necessary modifications, applies to any thing seized under a warrant provided for by **subsection (1)**. 25

New (majority)

- (3) Where a search warrant is issued under section 198 of the Summary Proceedings Act 1957, as provided for by **subsection (1)**, the following provisions of that Act apply so far as they are applicable and with any necessary modifications: 30
- (a) section 198A:

New (majority)

- | | |
|---|--|
| <ul style="list-style-type: none"> (b) section 198B: (c) section 199. | |
|---|--|
- (4) It is declared that a person who, under section 199 of the Summary Proceedings Act 1957 (as applied by **subsection (3)**), has custody of any thing seized under a <search> warrant provided for by **subsection (1)**, may disclose any information contained in or derived from the thing only—
- (a) for the purposes of section 199 of that Act (as so applied); or
 - (b) for the purposes of investigating or prosecuting an offence; or
 - (c) for the purposes of an appeal or other application that relates to an offence; or
 - (d) for the purposes of complying with any enactment or any order or direction of a court of competent jurisdiction.
- 122 Time limit for prosecution**
- (1) A prosecution against a financial agent under any of the following sections must be commenced within 6 months of the date on which the return was required to be filed:
- (a) **section 32(1) or (2):**
 - (b) **section 40(1):**
 - (c) **section 50(1):**
 - (d) **section 75(1) or (2):**
 - (e) **section 94(1):**
 - (f) **section 114(1).**
- (2) A prosecution against a financial agent or any other person for a corrupt practice or illegal practice must be commenced—
- (a) within 6 months of the date on which the prosecutor is satisfied that there is sufficient evidence to warrant the commencement of proceedings; but
 - (b) not later than 3 years after the corrupt practice or illegal practice was committed.

- 123 Persons charged with corrupt practice may be found guilty of illegal practice** 5
- Any person charged with a corrupt practice may, if the circumstances warrant that finding, be found guilty of an illegal practice; and any person charged with an illegal practice may be found guilty of that offence even if the act constituting the offence amounted to a corrupt practice.
- 124 Punishment for corrupt practice** 10
- Every person who is guilty of any corrupt practice is liable on conviction on indictment to either or both of the following:
- (a) a term of imprisonment not exceeding *<1 year>* *<2 years>*:
- (b) a fine not exceeding—
- (i) *<\$40,000>* *<\$100,000>* in the case of a person who is— 15
- (A) a financial agent; or
- (B) a party secretary; or
- (ii) *<\$15,000>* *<\$40,000>* in the case of any other person.
- 125 Punishment for illegal practice** 20
- Every person who is guilty of any illegal practice is liable on conviction on indictment to a fine not exceeding—
- (a) \$40,000 in the case of a person who is—
- (i) a financial agent; or
- (ii) a *<party>* secretary; or 25
- (b) \$10,000 in the case of any other person.
- 126 Additional penalty**
- (1) This section applies to a person who—
- (a) is convicted of an offence under this Act; and
- (b) has directly or indirectly received a benefit as a result of the commission of the offence. 30
- (2) In addition to any penalty that the court may impose under this Act in respect of the offence, the court may order the person to pay to the Crown an amount of money equal to the value of the benefit that the person has received. 35
- (3) For the purpose of **subsection (2)**, the value of any benefit is assessed by the court and is recoverable in the same manner as a fine.

Subpart 2—Regulations and transitional provisions

- 127 Regulations relating to advertisement of a specified kind**
- (1) The Governor-General may from time to time, by Order in Council made on the recommendation of the Minister, make regulations regulating— 5
- (a) all or any of the following matters in relation to an advertisement of a specified kind:
- (i) design:
- (ii) layout:
- (iii) shape: 10
- (iv) colour:
- (b) the procedures to be followed by any person before displaying an advertisement of a specified kind.
- (2) Regulations made under **subsection (1)(a)**— 15
- (a) may be made only for the purpose of ensuring that an advertisement of a specified kind does not endanger the safety of road users; and
- (b) apply only during the period beginning 2 months before polling day and ending with the close of the day before polling day. 20
- (3) Regulations made under **subsection (1)** may—
- (a) impose different requirements for an advertisement of a specified kind depending on how it is published:
- (b) override or modify any other enactment and any bylaw or other instrument. 25
- (4) In this section, **advertisement of a specified kind** has the same meaning as in **section 57(2)**.
- (5) This section is subject to **section 128**.
- 128 Requirements before Minister can recommend that regulations be made** 30
- (1) The Minister may not recommend the making of any regulations under **section 127(1)(a)** unless—
- (a) the Minister has consulted with the Minister who is for the time being responsible for the administration of the Land Transport Act 1998; and 35
- (b) the Minister is satisfied that the regulations do not restrict the rights of candidates and political parties any more than is reasonably necessary to ensure that an

- advertisement of a specified kind does not endanger the safety of road users; and
- (c) the recommendation is agreed by at least half of the parliamentary leaders of all political parties represented in Parliament; and 5
- (d) the members of Parliament of the political parties whose parliamentary leaders agree with the Minister's recommendation comprise at least 75% of all members of Parliament.
- (2) The Minister may not recommend the making of any regulations under **section 127(1)(b)** unless— 10
- (a) the Minister has consulted with the Minister of Local Government; and
- (b) the recommendation is agreed by at least half of the parliamentary leaders of all political parties represented in Parliament; and 15
- (c) the members of Parliament of the political parties whose parliamentary leaders agree with the Minister's recommendation comprise at least 75% of all members of Parliament. 20
- 129 General regulations**
- The Governor-General may from time to time, by Order in Council, make regulations providing for such other matters as are contemplated by or necessary for giving full effect to the provisions of this Act and for its due administration. 25
- Struck out (majority)**
- 130 Transitional provisions**

If a writ for a general election or by-election is issued before 1 March 2008, the provisions of the Electoral Act 1993 continue to apply in respect of that election as if this Act were not in force. 30

New (majority)

130 Transitional elections

- (1) In this section, a **transitional election** is a general election or a by-election for which a writ is issued after the commencement of this Act but on or before 31 March 2008.
- (2) Any expenses incurred by or on behalf of a candidate in relation to a transitional election and any donations made to a candidate in relation to such an election are governed by sections 206 to 210A, 213, 214, and 214A of the Electoral Act 1993 instead of **sections 29 to 32** and **58 to 77** of this Act. 5
- (3) Any expenses incurred by or on behalf of a party in relation to a transitional election (being a general election) are governed by sections 214B to 214E, 214I, 214K, and 214L of the Electoral Act 1993 instead of **sections 80 to 96** of this Act. 10
- (4) Any advertising that relates to a transitional election is governed by sections 219, 221, 221A (as in force immediately before the commencement of this Act), 221B, 267A, and 267B of the Electoral Act 1993 instead of **subpart 5 of Part 2** of this Act. 15
- (5) **Subparts 4 and 8 of Part 2** of this Act do not apply to a transitional election. 20
- (6) In relation to any transitional election,—
- (a) **sections 33 and 34** of this Act must be read as if each reference to a return of a candidate's donations were a reference to a return under section 210 of the Electoral Act 1993; and 25
- (b) **sections 78 and 79** of this Act must be read as if each reference to a return of a candidate's election expenses were a reference to a return under section 210 of the Electoral Act 1993; and
- (c) **section 97** of this Act must be read as if the references to a return of a party's election expenses and to an auditor's report were each, respectively, references to a return under section 214C of the Electoral Act 1993 and to a report under section 214E of that Act. 30
- (7) This section has effect despite **section 153**. 35

New (majority)

130A Return of party donations in 2008

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|-----|--|----|
| (1) | This section applies to party donations (within the meaning of section 214F of the Electoral Act 1993) made to political parties in the year ending with 31 December 2007. | |
| (2) | Sections 214F to 214I, 214K, and 214L of the Electoral Act 1993, so far as they are applicable to party donations, continue to apply to party donations to which this section applies. | 5 |
| (3) | Sections 35 to 37, 39, and 40 of this Act do not apply to party donations to which this section applies. | |
| (4) | In relation to party donations to which this section applies, section 35 of this Act must be read as if it referred to the return required by section 214G of the Electoral Act 1993 and to the auditor's report on that return required by section 214H of that Act. | 10 |
| (5) | This section has effect despite section 153(2)(b) . | 15 |

Subpart 3—Consequential amendments

131 Consequential amendments

The enactment specified in the **Schedule** is amended in the manner set out in that Schedule.

Subpart 4—Amendments to Broadcasting Act 1989 20

132 Principal Act amended

This subpart amends the Broadcasting Act 1989.

133 Interpretation

Section 2 is amended by inserting the following definition in its appropriate alphabetical order: 25

“**election programme**,—

- | | | |
|------|---|----|
| “(a) | in the definition of advertising programme and in sections 8 and 21 , means a programme broadcast under Part 6; and | |
| “(b) | in Part 6, has the meaning given to it by section 69”. | 30 |

- 134 Right of complainant to refer formal complaint to Authority**
- (1) Section 8 is amended by repealing subsections (1) and (1A) and substituting the following subsections:
- “(1) A complainant must refer the complaint directly to the Authority if the complaint is that an election programme did not meet 1 or more of the standards in section 4(1)(a) to (c) and (e). 5
- “(1A) A complainant may refer the complaint directly to the Authority if— 10
- “(a) the complaint is that a broadcaster failed to comply with section 4(1)(c); and
- “(b) the complainant chooses to refer the complaint directly to the Authority.
- “(1B) A complainant may refer the complaint to the Authority if the complainant— 15
- “(a) made the complaint under section <4> <6>(1)(a); and
- “(b) is dissatisfied with—
- “(i) the decision of the broadcaster; or
- “(ii) the action taken by the broadcaster. 20
- “(1C) A complainant may refer the complaint to the Authority if—
- “(a) the complaint is about a programme other than an election programme; and
- “(b) at least 20 working days have passed since the broadcaster received the complaint; and 25
- “(c) the broadcaster has not notified the complainant of—
- “(i) the decision of the broadcaster; or
- “(ii) the action taken by the broadcaster; and
- “(d) the broadcaster—
- “(i) has not given the complainant a notice under **subsection (1D)**; or 30
- “(ii) has given the complainant a notice under **subsection (1D)** but has not complied with the statement under **subsection (1D)(c)**.
- “(1D) A broadcaster that receives a complaint under section 6 may give the complainant a notice in writing or electronically within 20 working days after receiving the complaint— 35
- “(a) stating that the broadcaster will be unable to make a decision or take action on the complaint within 20 working days after receiving the complaint; and 40

- “(b) stating the reasons why the broadcaster will be unable to do so; and
- “(c) stating that the broadcaster will tell the complainant about its decision or action on the complaint within 40 working days after the broadcaster received the complaint.” 5
- (2) Section 8(2) is amended by omitting “Subsection (1) of this section” and substituting “**Subsections (1) to (1D)**”.
- 135 New section 9 substituted** 10
- Section 9 is repealed and the following section substituted:
- “9 Time limits**
- “(1) The Authority must not accept a complaint made outside the period specified for the complaint in this section.
- “(2) A complaint under **section 8(1)** must be made to the Authority in the period— 15
- “(a) starting on the first working day after the broadcast of the programme that the complaint is about; and
- “(b) ending 60 working days later.
- “(3) A complaint under **section 8(1A)** must be made to the Authority in the period— 20
- “(a) starting on the first working day after the broadcast of the programme that the complaint is about; and
- “(b) ending 20 working days later.
- “(4) A complaint under **section 8(1B)** must be made to the Authority in the period— 25
- “(a) starting on the first working day after the day on which the complainant received notice of the broadcaster’s decision or action on the complaint; and
- “(b) ending 20 working days later.
- “(5) A complaint under **section 8(1C)** must be made to the Authority in the period— 30
- “(a) starting on the first working day after the broadcast of the programme that the complaint is about; and
- “(b) ending 60 working days later.”
- 136 Functions of Authority** 35
- Section 21(1) is amended by repealing paragraph (b) and substituting the following paragraphs:

- “(b) to receive and determine complaints that election programmes did not meet 1 or more of the standards in section 4(1)(a) to (c) and (e); and
- “(ba) to receive and determine complaints when—
- “(i) the complaint is that a broadcaster failed to comply with section 4(1)(c); and 5
- “(ii) the complainant has chosen to refer the complaint directly to the Authority; and”.
- 137 Prohibition on paid election programmes** 10
Section 70(2)(c)(iv) is amended by omitting “3 months preceding polling day for the election” and substituting “election period”.
- Subpart 5—Amendments to Electoral Act 1993
- 138 Principal Act amended** 15
This subpart amends the Electoral Act 1993.
- 139 Interpretation**
- (1) Section 3(1) is amended by repealing the definitions of **anonymous** and **election expenses**.
- (2) Section 3(1) is amended by repealing the definition of **corrupt practice** and substituting the following definition: 20
“**corrupt practice** means any act declared by this Act or the Electoral Finance Act **2007** to be a corrupt practice”.
- (3) Section 3(1) is amended by repealing the definition of **illegal practice** and substituting the following definition: 25
“**illegal practice** means any act declared by this Act or the Electoral Finance Act **2007** to be an illegal practice”.
- 140 Electoral Commission**
Section 4 is amended by inserting “and the Electoral Finance Act **2007**” after “Act”.
- 141 Functions** 30
Section 5 is amended by repealing paragraph (c) and substituting the following paragraph:
“(c) to supervise political parties’ ~~and third parties’~~ compliance with the requirements of the Electoral Finance Act **2007**:”. 35

- 142 Membership**
- (1) Section 8(4) is repealed.
- (2) Section 8(5) is repealed.
- 143 Term of office**
Section 10 is repealed. 5
- 144 Vacation of office of additional members who hold office for purposes of jurisdiction under Part 6 of Broadcasting Act 1989**
Section 11 is repealed.
- 145 Appointment of deputies** 10
Section 11A(1) is amended by omitting “or section 8(4)(b)”.
- 146 Chief Electoral Officer**
Section 18 is amended by inserting “and the Electoral Finance Act **2007**” immediately before “into”.
- 147 Application for registration** 15
- (1) Section 63(2)(c)(v) is amended by omitting “section 214D” and substituting “**section 11** of the Electoral Finance Act **2007**”.
- (2) Section 63(2)(c) is amended by adding the following subparagraph:
- “(viii) set out <in the form required by the Electoral Commission> the name, <and> address<, and contact details> of the person, being a person eligible for appointment under **section 9** of the Electoral Finance Act **2007**, who is to be appointed as the financial agent of the party, and be accompanied by that person’s signed consent to the appointment; and” 20 25
- (3) Section 63 is amended by adding the following subsection:
- “(5) For the purposes of subsection (2)(c)(v) and (viii), **address** means,— 30
- “(a) in relation to an individual, the full address of the place where that person usually lives:
- “(b) in relation to a body corporate or unincorporated, the full address of its principal place of business or head office.” 35

148 Registration

Section 67(3)(f) is repealed.

149 Deposit by party secretary

- (1) Section 127A(4)(a) is amended by omitting “section 214C” and substituting “**section 91** of the Electoral Finance Act **2007**”. 5
- (2) Section 127A(4)(b) is amended by omitting “under section 214E” and substituting “obtained under **section 92** of the Electoral Finance Act **2007**”.

New (majority)**149A Acceptance or rejection of lists by Chief Electoral Officer**

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Section 128(1) is amended by inserting the following paragraph after paragraph (d):

“(da) the list is submitted by a party that—

“(i) is listed as a third party under **section 19** of the Electoral Finance Act **2007**; or 15

“(ii) has submitted a non-contest declaration under **section 16(4)** of the Electoral Finance Act **2007** and is awaiting a decision on whether it is to be listed as a third party under **section 19** of that Act; or”.

150 Deposit by candidate

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Section 144(4) is amended by omitting “a duly completed return under section 210 in respect of that candidate” and substituting “from that candidate duly completed returns under **sections 29 and 72** of the Electoral Finance Act **2007** and any auditor’s report required under **section 73** of that Act”. 25

New (majority)**150A Acceptance or rejection of nomination**

Section 145(1) is amended by inserting the following paragraph after paragraph (c):

“(ca) the nomination paper indicates that the candidate is a candidate for a political party that— 30

“(i) is listed as a third party under **section 19** of the Electoral Finance Act **2007**; or

New (majority)

“(ii) has submitted a non-contest declaration under **section 16(4)** of the Electoral Finance Act **2007** and is awaiting a decision on whether it is to be listed as a third party under that Act; or”.

- 151 Deposit payable in respect of bulk nomination schedule** 5
 Section 146F(4) is amended by omitting “a return under section 210 in respect of every constituency candidate nominated in the bulk nomination schedule” and substituting “from every constituency candidate nominated in the bulk nomination schedule duly completed returns under **sections 29 and 72** of the Electoral Finance Act **2007** and any auditor’s report required under **section 73** of that Act”. 10

New (majority)

- 151A Acceptance or rejection of bulk nomination schedule or nomination of candidate** 15
 Section 146G(1) is amended by inserting the following paragraph after paragraph (d):
 “(da) the schedule is lodged by a party that—
 “(i) is listed as a third party under **section 19** of the Electoral Finance Act **2007**; or
 “(ii) has submitted a non-contest declaration under **section 16(4)** of the Electoral Finance Act **2007** and is awaiting a decision on whether it is to be listed as a third party; or”. 20

- 152 Interfering with or influencing voters** 25
 Section 197(1) is amended by omitting “\$5,000” and substituting “\$20,000”.

- 153 Repeals**
 (1) The heading above each of sections 206, 214A, 214B, 214F, and 214K are omitted.
 (2) The following sections are repealed: 30
 (a) sections 206 to 211;
 (b) sections 213 to 214L:

(c) sections 219, 221, 221B, 267A, and 267B.

154 Electoral advertisements

Section 221A(1) is amended by inserting “(not being an election advertisement as defined in **section 5** of the Electoral Finance Act **2007**)” after “election”.

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155 Providing money for illegal purposes

Section 220 is amended by omitting “, or for any election expenses incurred in excess of the maximum amount allowed by this Act, or for repaying money expended in any such payment or expenses,” and substituting “, or for repaying any money expended in any such payment,”.

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156 Punishment for corrupt or illegal practice

Struck out (majority)

(1) Section 224(1)(a) is amended by omitting “\$4,000” and substituting “\$15,000”.

New (majority)

(1) Section 224(1)(a) is amended by—

- (a) omitting “1 year” and substituting “2 years”; and
- (b) omitting “\$4,000” and substituting “\$40,000”.

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(2) Section 224(1)(b) is amended by omitting “\$3,000” and substituting “\$10,000”.

(3) Section 224 is amended by repealing subsection (2) and substituting the following subsection:

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“(2) Nothing in this section applies in relation to a corrupt practice under any of the following provisions:

“(a) section 201; or

“(b) the Electoral Finance Act **2007**; or

25

“(c) section 43 of the Citizens Initiated Referenda Act 1993; or

“(d) section 54 of the Compulsory Retirement Savings Scheme Referendum Act 1997.”

157 New section 226A inserted

The following section is inserted after section 226:

“226A Power to issue search warrants in respect of illegal practice

- “(1) A search warrant may be issued under section 198 of the Summary Proceedings Act 1957 in respect of an illegal practice that constitutes an offence under this Act that—
- “(a) has been committed; or
 - “(b) is suspected to have been committed; or
 - “(c) is believed to be intended to be committed.
- “(2) **Subsection (1)** applies even though the offence is not punishable by imprisonment.

Struck out (majority)

- “(3) Section 199 of the Summary Proceedings Act 1957, so far as it is applicable and with any necessary modifications, applies to any thing seized under a warrant provided for by **subsection (1)**.

New (majority)

- “(3) Where a search warrant is issued under section 198 of the Summary Proceedings Act 1957, as provided for by **subsection (1)**, the following provisions of that Act apply so far as they are applicable and with any necessary modifications:
- “(a) section 198A:
 - “(b) section 198B:
 - “(c) section 199.
- “(4) It is declared that a person who, under section 199 of the Summary Proceedings Act 1957 (as applied by **subsection (2)**), has custody of any thing seized under a warrant provided for by **subsection (1)**, may disclose any information contained in or derived from the thing only—
- “(a) for the purposes of section 199 of that Act (as so applied); or
 - “(b) for the purposes of investigating or prosecuting an offence; or
 - “(c) for the purpose of an appeal or other application that relates to an offence; or

“(d) for the purposes of complying with any enactment or any order or direction of a court of competent jurisdiction.”

158 Schedule 1 amended

Clause 1 of Schedule 1 is repealed.

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Schedule Consequential amendments

s 131

Citizens Initiated Referenda Act 1993 (1993 No 101)

Section 24(5): omit “206 to 214L, 221”.

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Section 24A(3): omit “206 to 214A, 215 to 219, 221” and substitute “215 to 218”.

New (majority)

Summary Proceedings Act 1957 (1957 No 87)

Part 2 of Schedule 1: omit the items relating to sections 219 and 221 of the Electoral Act 1993.

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Part 2 of Schedule 1: insert after the items relating to the Electoral Act 1993:

Electoral Finance Act 2007	55	Requirements for election advertisements that promote parties or candidates	15
	56	Payments for exhibition of election advertisements	
	120	Providing money for illegal purposes	

Legislative history

23 July 2007

Introduction (Bill 130–1)

26 July 2007

First reading and referral to Justice and Electoral Committee