

NZ GOVERNMENT GAGS CRITICS

Changes to New Zealand's election laws favour incumbents over challengers and critics, explains **David Farrar**

A few days before Christmas 2007, the New Zealand parliament passed a controversial law, the *Electoral Finance Act 2007*, that imposes many new regulations and limits advertising and advocacy by parties, candidates, and the public.

Unlike most changes to electoral law, these lacked widespread support from political parties and the public. The law was passed with agreement from only four of the eight parliamentary parties, and with only 63 votes out of 121.

The opposition National Party has vowed to repeal the law if it gains office. Almost every newspaper editorialised against the law, and the largest newspaper, the *New Zealand Herald*, ran a front page campaign against it for several weeks. Other notable opponents were the Human Rights Commission and the Law Society. They both submitted that the then Electoral Finance Bill was so flawed that it should not proceed.

There are seven major complaints about the *Electoral Finance Act*. They are:

One. The regulated advertising period has been increased from the traditional ninety days to all of the election year—typically eleven months, as New Zealand tends to have November elections. This gives New Zealand the longest regulated period in the world, at 30% of the overall three-year electoral cycle.

Two. The definition of what constitutes an election advertisement has been expanded from traditional advertising in newspapers, radio, and television, plus billboards and pamphlets, to all forms of words or graphics that express an opinion on how people should vote. This includes protest placards, t-shirts, emails, YouTube videos, and posts to internet newsgroups. Only personal blogs and news media sites are exempt.

Three. It works with a companion law to make it far easier for parliamentary parties to spend taxpayer money on their election campaigns—without it even counting towards their spending limit—while seriously restricting the ability of people to spend their own money.

Four. You are required to register with the state as a third party if you spend more than \$1,000 over the entire election year opposing a local candidate, or more than \$12,000 on advertising (which might just be a website) related to the election.

Five. The limit of \$120,000 over the entire year for a registered third party is less than half of what the Electoral Commission recommended was needed to allow a third party's message to be effectively heard.

Six. Incumbent MPs are greatly advantaged, as opponents could previously spend money building up name recognition prior to the ninety-day period, but candidates are

now restricted to spending \$20,000 over the entire year, while incumbent MPs can spend three times as much as that—from the taxpayer—on promoting themselves.

Seven. Messages that don't even mention particular parties are captured. Just advocating support for unspecified parties that support the Kyoto Protocol, or that support lower taxes, is now classified as election advertising.

There have already been detrimental effects from the new law. A twenty-one-year-old Canterbury resident was forced to close down his website, www.dontvotelabour.org.nz, because he was unwilling to list his family's home address on the site, which cost less than \$50 to establish. (The site is up and running again, with the tagline 'It's legal now because it's a blog...')

Advertisements run in December 2007 by Invercargill mayor Tim Shadbolt, protesting funding cuts to his local Southland Polytechnic, were unable to be repeated in January, as they would have been illegal unless

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Shadbolt registered as a third party, which he refused to do.

A blog temporarily hosted on a Labour Party server had to urgently move to a new server after it was found that the hosting arrangement may have made the blog an advertisement that needed party authorisation.

There will be many more examples in the months to come. The underlying problem with the *Electoral Finance Act* is that it treats all written advocacy for or against a party, or against party policies, as a regulated election advertisement, then carves out a few narrow exemptions.

The more sensible approach would have been to minimise the impact on citizens' rights to support or oppose parties and candidates in an election by narrowly defining election advertising in the traditional way: as newspaper, radio, and TV advertising, along with outdoor advertising such as billboards. Instead, the legislation captures press releases, websites, e-mails, t-shirts, protest placards, cartoons, and plays, making them regulated election advertisements.

Even the media lose their previous total exemption. The minister for justice has said a newspaper that endorses a political party may have to register as a third party to do so, for the new law only exempts the

media if the editorial material is 'solely for the purpose of informing, enlightening, or entertaining readers' (emphasis added).

The use of the term 'solely' means that any other purpose removes the exemption. So, if a newspaper runs a campaign to change a government decision, then they have an additional purpose that could lose them the media exemption.

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The only redeeming aspect of the law is that it was an improvement on the original bill introduced to Parliament. That bill would have made it illegal for a citizen to take a position on any proposition associated with a party or candidate unless they filed a statutory declaration that their spending was under the limit. So expressing a view

on battery hen farming without a statutory declaration would have been illegal, as the Green Party is associated with opposing battery hen farming.

These aspects of the legislation were removed on the recommendation of a parliamentary select committee, which also proposed a new clause that would have banned use of megaphones at public meetings or protests unless the speaker repeated their name and address as part of their statement. In fact, the select committee wanted to extend the ambit of election advertising regulation to include all oral speech for or against a party or candidate. This was abandoned at the last moment after widespread protests.

The *Electoral Finance Act* is a classic case of using a sledgehammer to crack a nut. As in Australia, the Exclusive Brethren got involved in the last election, and their activities were controversial. But rather than make a proportionate response to the involvement of the Brethren (which would probably mainly involve greater transparency requirements) the government and its allies greatly overreacted with this far-reaching and restrictive law. It was designed to help them win the election by silencing their critics, but the backlash against it could help them lose the election instead.

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