



NEW ZEALAND COUNCIL OF TRADE UNIONS
Te Kauae Kaimahi

SUBMISSION

by the

**New Zealand Council of Trade Unions –
Te Kauae Kaimahi**

on the

**Ministry of Justice
Electoral Finance Reform Proposal**

October 2009

1. Introduction

- 1.1. The New Zealand Council of Trade Unions – Te Kauae Kaimahi (CTU) is the internationally recognised trade union body in New Zealand. The CTU represents 39 affiliated trade unions with a membership of over 350,000 workers.
- 1.2. The CTU acknowledges Te Tiriti o Waitangi as the founding document of Aotearoa New Zealand and formally acknowledges this through Te Runanga o Nga Kaimahi Māori o Aotearoa (Te Runanga) the Māori arm of Te Kauae Kaimahi (CTU) which represents approximately 60,000 Māori workers.

2. Summary

- 2.1. The CTU is particularly concerned by the potential for wealthy individual and corporate interests to influence the electoral process, either through financial support for political parties (anonymously through secret trusts or overtly) or financing their own third party or parallel campaigns.
- 2.2. On this basis, the CTU supports caps on, and regulation of, donations to political parties and caps on, and regulation of, the spending on electoral advertising by third parties.
- 2.3. As a consequence the CTU generally supports an increase in the level of state funding for political parties.
- 2.4. The CTU supported much of the intent of the Electoral Finance Act, and in particular its stated purposes to, “prevent the undue influence of wealth on electoral outcomes,” and, “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”.

3. Guiding principles

- 3.1. The CTU continues to support the six guiding principles outlined in the Issues Paper and reiterated in the Proposal.
- 3.2. However, the CTU also continues to believe that the principles of transparency and accountability need to be explicitly extended to parallel campaigning and the principles of equity and participation need to encompass the proactive encouragement of smaller voices in the political system.
- 3.3. If, as the CTU favours, parallel campaigning is subjected to greater regulation, this recognises its significance in the electoral process. Given that significance, it is entirely appropriate that parallel campaigning is governed by the same guiding principles.
- 3.4. On a number of occasions the Proposal refers to the importance of freedom of expression. But the ability to express that freedom will be squeezed out by those voices in society with the greatest resources if it is not protected. If it is to be a real and meaningful freedom for everyone it needs to be nurtured at the lowest levels.

4. State Funding

- 4.1. The CTU supports the significant reform option for state funding. Parties need to be able to present their policies to electors, and are in the best position to decide how to do that.

- 4.2. At the same time, strong transparency requirements must ensure spending is clearly accounted for.
- 4.3. However, the CTU would still advocate significantly increased state funding for political parties to reduce the undue influence of “big money” on political parties and ensure equity for smaller parties.
- 4.4. As the 1986 Royal Commission on the Electoral System stated, the failure to seriously consider significantly greater state funding of political parties, “...would be detrimental to our democracy and might, in the long term, lead to corruption of our political process or at least to the suspicion of such corruption”.¹
- 4.5. Even with a significantly lower cap on the total amount donated by an individual or organisation, campaigning by political parties that is predominantly privately funded will favour parties with wealthy backers and create heightened risk of undue influence by those with greater financial resources.
- 4.6. The CTU would also support adoption of an ongoing inflation-adjusted allocation, the setting of which is as far removed from direct political decisions as possible.
- 4.7. While it is not addressed in the Proposal, the CTU also continues to favour the public service broadcasting requirements placed on TVNZ and Radio New Zealand. Irrespective of whether political actors can purchase advertising, there remains merit in requiring state broadcasters to provide free time to political broadcasting.

5. Private Donations

- 5.1. At the level of principle the CTU continues to believe that anonymous donations to either constituency candidates or political parties should not be permitted.
- 5.2. While accepting a requirement that candidates and parties attribute every donation is not practical, the CTU is disappointed that the Proposal does not advocate lowering the thresholds for anonymous donations.
- 5.3. The CTU still maintains that dropping to a threshold of \$500 for anonymous donations on any sort would be a positive first step toward mitigating the corrupting effect of anonymous donations on the electoral system.
- 5.4. The CTU also maintains its opposition to the protected disclosure provisions.
- 5.5. The CTU also cannot see any need for a difference between the thresholds for anonymous donation and required disclosure by political parties – as we have stated previously, if a donation cannot be anonymous then the source of that donation should be clear to the public. Any difference between the two thresholds creates an unhealthy incentive for political parties to withhold information about donations that would be contrary to the principle of transparency.
- 5.6. Despite the position reached in the Proposal, the CTU continues to fully support a limit on donations from a single source and a prohibition on donations from overseas organisations and individuals not eligible to register in a New Zealand election.

6. Campaign expenditure limits

- 6.1. The CTU supports an increase in campaign expenditure limits that is proportionate to the inclusion of state broadcasting allocations. And the CTU also supports making these limits inflation-adjusted.
- 6.2. However, the CTU would not support any significant increase in thresholds beyond that level unless it was to accommodate increased state funding.
- 6.3. The CTU remains committed to preventing the undue influence of wealth on electoral outcomes. A significant rise in thresholds would create an opening for wealthy interests to gain greater sway over political parties and the electoral process.

7. Regulated campaign period

- 7.1. In our submission on the Electoral Finance Reform Issues Paper, the CTU supported a regulated campaign period six months before Election Day as a sensible balance between the administrative demands of a longer regulated period and the need to increase regulation to ensure the legitimacy of the electoral process.
- 7.2. On this basis, the CTU would favour option 6C identified in the Proposal which fixes the commencement of the regulated period at 1 May in the third year of the election cycle. .
- 7.3. However the CTU remains unclear about how this would work if an early election is called. The CTU would not like to see a situation where calling an early election could result in a shorter regulated period. Creating any possible

incentives to “game the system” would run the risk of adding to the advantage of the incumbent governing party and eroding the legitimacy of the electoral system.

8. Advertising

- 8.1. The CTU would supports a definition of election advertising that only captures material that is aimed at procuring a vote for or against a party or candidate, or for a change or retention of a government overall.
- 8.2. The CTU agrees there is merit in a broad definition of advertising that is generally “media neutral”.
- 8.3. The CTU also supports the adjustment to disclosure statements on electoral advertising to allow “an address at which a promoter can usually be contacted during the day”. We assume this means, for example, that advertising authorised by CTU President Helen Kelly on behalf of the NZCTU, could disclose the physical address of the CTU as opposed to her home address. However, we recognise this may still raise privacy concerns for individuals who authorise advertising and who are not doing so on behalf of an organisation or political party. These individuals could still be unfairly required to disclose their home address.
- 8.4. However the CTU remains concerned by the lack of clarity about organisations communicating with their members. The CTU would like to see this identified as an explicit exception.
- 8.5. A significant amount of union activity involves communicating with members on a range of public policy issues. Necessarily these have a political dimension and in

the run-up to an election that dimension can be particularly pointed.

- 8.6. An exception for this activity would provide instant clarity and would protect an important right and function of unions and other membership groups when communicating with their members.
- 8.7. The CTU also does not support the proposed exception for so called “low cost merchandise”. The purpose of such merchandise is unambiguous – it is clearly advertising. This is unlike the other exceptions identified around news reporting, personal correspondence or expression of personal opinions. Equally, while one balloon or pen might be “low cost”, producing 10 million pens could consume a party’s entire expenditure limit many times over.

9. Parallel campaigns

- 9.1. The CTU believes the regulation of all individuals or groups who participate in significant election campaigning is essential.
- 9.2. On that basis the CTU would generally favour option 8a identified in the Proposal that would introduce a proportionate regulatory scheme for parallel campaigners. However that scheme should not only focus on expenditure by campaigners.
- 9.3. It is not sufficient simply to require parallel campaigners to disclose their name on political advertising - it is vital to record and aggregate the scope of their activity.
- 9.4. Based the CTU’s own experience – we would welcome a framework that is simple and easy to comply with.

- 9.5. In terms of simplicity, one recommendation made by the CTU in our submission on the Issues Paper was requiring only external costs in the production of advertising material (and excluding internal staff time) to be counted towards expenditure limits.
- 9.6. The CTU finds the wording “weighted in favour of freedom of expression” somewhat loaded but hopes the intent is to protect the fundamental right for anyone to express their opinion and have their say on the issues as part of an election campaign.
- 9.7. The CTU supports parallel campaign spending limits and our submission on the Electoral Finance Bill and the Issues Paper proposed a cap of \$100,000.
- 9.8. However, the CTU does not support a high registration threshold. As reflected in our previous remarks on the “guiding principles”, the CTU believes the principles of accountability and transparency should extend to the parallel campaigning. Therefore the threshold should be relatively low. Our previous submission aligned this threshold with a cap on individual donations of just under \$6,000.
- 9.9. Within the context of comprehensive registration and enforced spending caps, the CTU also supports option 8C to permit parallel campaigns to advertise on TV and radio.
- 9.10. The CTU does full support a restriction that only New Zealand citizens, permanent residents or organisations based in New Zealand may engage in parallel campaigning.

9.11. The CTU would also seek further clarification of a particular issue raised in our submission on the Issues Paper, relating to the way the cost of advertising material supporting a particular political party was counted towards the spending caps of both the third party producing the material and the political party being endorsed by that material.

9.12. It would seem that registration and inclusion of both positive and negative advertising within the definition of election advertising would go some way to addressing this matter. However the CTU still believes the current discussion would benefit from directly speaking to this issue.

9.13. The CTU maintains that, as long as there is stringent transparency, reasonable spending caps and beefed-up enforcement and penalties around collusion and electoral corruption generally, third party advertising should be independent of the party spending cap.

10. Monitoring and compliance

10.1. The CTU particularly supports the commitment to provide an agency with the capacity and authority to advise whether media amounts to election advertising.

10.2. The CTU is also keen to ensure that there are effective enforcement and meaningful penalties in place that act as a real disincentive to breaking the law.

11. Other issues – communication with union members in the public sector

11.1. While it has not been addressed in the Proposal, the CTU continues to support the position of the PSA that there is a need for clear protection of the right of unions with members in the public sector to be able to communicate with those members on political issues during the election campaign.

11.2. While there is a legitimate place for specific rules around the activities of state agencies during an election campaign when staff are carrying out their official roles, these rules cannot cut across the right of employees in state agencies, in their capacity as members of a voluntary trade union, to communicate with their union on any issue, including political issues and elections. Such restrictions we believe unfairly limit these workers' rights to freedom of association.

12. Conclusion

12.1. The CTU's primary concern with current electoral law is its inability to prevent the undue influence of wealthy interests on an electoral outcome.

12.2. On this basis the CTU supports proposals to retain elements of the Electoral Finance Act 2007 in relation to donations and regulate the activity of parallel campaigns.

12.3. However, the CTU is concerned by proposals to raise expenditure limits, disappointed by the failure to propose tougher anonymous donation thresholds and unconvinced by the advertising exceptions for low-cost merchandise

12.4. The CTU also remains committed to greater state funding of the electoral process.

12.5. Lastly the CTU believes there is still a need to clarify the position of both membership organisations communicating with their members and the activity of public servants in a regulated election period.

¹ Report of the Royal Commission on the Electoral System (1986) p210-211.