



NEW ZEALAND COUNCIL OF TRADE UNIONS  
*Te Kauae Kaimahi*

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

Submission on the

**Electoral Finance Bill**

to the

**Justice and Electoral Committee**

7<sup>th</sup> September 2007

## **1.0 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 40 affiliated unions with a membership of over 350,000 workers. 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.
- 1.2 Representing over 350,000 workers the CTU is the largest democratic organisation in the country. Our approach to the reform of election finance law is driven by our commitment to the principles of social justice, democracy and participation.
- 1.3 The CTU recognises that there is a clear need for reform of the rules governing election campaign funding, and that the public are expecting Parliament to clean up this area of law, following the problems with the 2005 election. The overriding principles of electoral finance reform must be to limiting the undue influence of wealthy interests on the electoral process, and to provide for transparency in the funding and activities of candidates and political parties, and third party campaigns.
- 1.4 The CTU's submission will focus around the following points
- The need for reform
  - Public Funding
  - Transparency
  - Third party activity
  - Other matters
- 1.5 We set out our recommendations at the end of the document.
- 1.6 The CTU wishes to appear before the select committee in support of our submission.

## **2.0 The need for reform**

- 2.1 The CTU recognises there is clear need for reform of electoral finance law, to strengthen the rules governing both political parties and candidates, and third parties seeking to influence the outcome of elections.
- 2.2 There was a high level of public interest in reform following the last election when we saw millions in secret funding to the two main political parties and a third party spending over \$1 million seeking to discredit two political parties and clearly influence the election outcome. Because of the devious actions of that third party, we now all have to contemplate greater scrutiny of funding of political parties and activities in election year.
- 2.3 This risk was recognised when the 1986 Royal Commission on the Electoral System, warned of the need to “limit the potential for corruption by interests with access to substantial funds”. But last election, that risk became an obvious reality.
- 2.4 The CTU submits that there is a strong public demand for reform in this area, and an expectation that parties in Parliament would follow through with earlier commitments to end secret trusts.
- 2.5 The Royal Commission on the Electoral System recommended a number of changes to election finance law. These have been actioned in part (notably the change of electoral system to MMP), and we submit that putting into place their recommendations over party finance is now long overdue.
- 2.6 The CTU is a campaigning organisation and is itself a political actor during elections. Indeed unions take pride in the fact that we have achieved a significant political influence for working people and secured many tangible policy gains, including minimum wage increases for low paid workers and four weeks annual leave. As member driven organisations, unions are upfront about their activity,

and so a regime of greater transparency and accountability is welcomed by us. The CTU is not affiliated to any political party, but some of our affiliates are.

### **3.0 Public Funding**

- 3.1 The CTU agrees with the view of 1986 Royal Commission on the Electoral System that it is not fair if “some in the community use their relative wealth to exercise disproportionate influence in determining who is to govern and what policies are to be pursued.”
- 3.2 The CTU thinks it is difficult to see why the campaigns of political parties should be privately funded, with the corresponding advantage (and risk of undue influence) to parties backed by corporates and millionaires. Serious consideration should be given to state funding as many other Western democracies do.
- 3.3 Indeed, New Zealand already extensively funds the campaign activities of political parties, through Vote Parliamentary Service (staff time, communications from politicians in their capacity as Members of Parliament) and extensive broadcasting allocations, and we note that political parties do not raise any objections to this. We submit that it is far preferable to front up with a small amount of money and prevent parties from accessing millions in secret and corporate money, through both a ban on anonymous donations, and consideration of reasonable caps on political donations.
- 3.4 We recommend that the select committee give serious consideration to coupling the removal of anonymous donations with a recommendation for a formal process for working out appropriate levels of state funding for political party election campaigns.
- 3.5 Reducing the need for party fundraising may have implications on party democracy. We submit that there may be other ways of encouraging democratic participation, for example the amount of public funding being in part (along with other factors such as vote at last election) be based on party membership. There are other options that may be

worth exploring, such as an amount paid in public funding for every dollar a party raises itself.

#### **4.0 Transparency**

- 4.1 The well known international financier George Soros has warned that “[p]erhaps the greatest threat to freedom and democracy in the world today comes from the formation of unholy alliances between government and business.”
- 4.2 The CTU thinks most New Zealanders would agree that there is a need to ensure a greater transparency in our electoral process so that elections are seen to be fair, and that no one group has undue influence purely because of their wealth.
- 4.3 We urge the select committee to respond to the public demand for transparency in elections, and end the ability of donors to give large amounts of money to political parties and candidates, hidden from the public view. We note the words of the great US Supreme Court Justice Brandeis who said “Publicity is justly commended as a remedy for social and industrial diseases; sunlight is said to be the best of disinfectants and electric light the most efficient policeman.”
- 4.4 Reform was called for in the 1986 Royal Commission, and repeatedly raised during select committee reviews of elections. We should not have to wait any longer for movement on this issue of such importance to the legitimacy of our electoral system. As the Coalition for Open Government have noted<sup>1</sup>, the original cabinet paper on this Bill did include measures to close down the anonymous trusts, and there has been cross-party support for this move.
- 4.5 The CTU’s view is that it would be desirable if the identity of all political donors and the amounts donated should be publicly available. We acknowledge that this may be problematic to enforce (the two dollar raffle ticket comes to mind), but submit at the very least that:

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<sup>1</sup> Coalition for Open Government, August 2007 newsletter.

- 4.5.1 No donations are permissible through other agents, such as secret trusts. It would become illegal to make an indirect donation to a political party (or a candidate). Donations should only be possible from individuals and organisations to political parties directly.
- 4.5.2 All (direct) donations above a certain level must be declared. We suggest that level is \$500. The Bill already provides for a regime to deal with anonymous donations (*Part 2, Subpart 4 - disclosure of third party donations*), which are the clauses relating to third party anonymous donations. The CTU recommends that these clauses be used for political parties and candidates also. Any anonymous donations received over \$500 would need to be returned or forwarded in full to the Chief Electoral Officer.
- 4.5.3 A cap on donations to political parties should be considered. We acknowledge that this will need to be accompanied by public funding (see arguments above). We think a cap of \$5,000, combined with public funding, should be more than enough. With the average annual income at \$31,720<sup>2</sup>, this represents slightly less than one sixth of an average New Zealander's income, and is clearly much more than most New Zealanders would be able to afford to donate to a political party.
- 4.5.4 We would further submit that it is preferable that donations to political parties and candidates should only be made by individuals in New Zealand who are citizens or permanent residents, and that the committee should recommend a full ban on donations from overseas individuals or organisations. The CTU wants democratic activity in elections to be by New Zealanders for New

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<sup>2</sup> Statistics New Zealand: New Zealand Income Survey, June 2006 quarter.

Zealanders, and not open to influence from overseas big business interests. We note that this was an intention of this Bill in an earlier draft.

- 4.6 These measures outlined above would go some way to restoring faith in the electoral process after the excesses of the last election, and, indeed, of the 1987 election which also saw large secret donations made to the Labour party in connection to their privatization and other policies at the time.
- 4.7 The CTU supports measures in the Bill aimed at regular public disclosure of donations throughout a campaign (i.e. before the election) contained in Clause 38. We submit that this figure should be much lower however, and suggest that the clause is of little use if the Bill does not contain measures to prevent secret donations.

## **5.0 Third party campaigns**

- 5.1 The purpose of the third party proposals in the Bill are to provide more transparency, limit the potential for unlimited parallel election campaigns, ensure that third party election advertising cannot overwhelm the speech of political parties and candidates and reduce the ability of third parties to attack a party that cannot respond because it has reached its spending limit.
- 5.2 These are all important goals. If we think back to the Exclusive Brethren spending \$1 million on attack advertising there is a clear case for law reform.
- 5.3 We support the intent of the Bill to make third parties transparent in their activities. We support a reasonable cap on third party spending, registration of third parties to ensure enforcement and monitoring and donation rules forbidding anonymous donations of over \$500.
- 5.4 We are also prepared to support a regulated period from January 1, in order to prevent third parties pre-empting a traditional election period by spending large sums of money on election speech a few weeks out

from a 3 month election period. Our support for this is contingent on a satisfactory amendment to the definition of election advertisement.

- 5.5 The key definitions in the Bill that would create problems for advocacy organisations like the CTU are the cumulative effect of the definitions of electoral advertising (any form of words or graphics... taking a position on a proposition with which 1 or more parties or 1 or more candidates is associated) and *publication* (issue, hand out, or display; send/deliver to any member of the public, disseminate by means of the Internet...). These could cover a significant amount of our activities. The Bill is seeking to catch election speech. As it is currently drafted, it will catch considerably more.
- 5.6 The CTU's policy intent is that the definition of election advertisement must only capture 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.
- 5.7 The select committee has a number of options to tighten this definition. This could include deleting Clause 5 (1) (iii), so that election advertisements only cover third parties encouraging or persuading people to vote for or against a candidate or party.
- 5.8 The British wording of election speech is that which "can reasonably be regarded as intended to promote or procure electoral success at any relevant election." This may also prove to be a sensible option.
- 5.9 We also submit that the meaning of election expense (cl 100) should be clarified to include the cost of *external* design, distribution and the purchase of advertising or publication space, rather than apportioning staff time in coordination or design. That is, third party spending would be on materials or services external to the organisation in relation to the publication of their election advertisement.
- 5.10 We welcome the exclusion of "a document published directly by a body corporate or unincorporated to its members (cl 5 (2) (f))". This is necessary to protect the legitimate communications between an organisation and its members. In the CTU's case, our membership is

affiliated trade unions. Our interpretation of this clause would be that it would permit our communicating with the individual members of our affiliated unions. We would welcome clarification on this.

- 5.11 The Bill sets a level of election spending at \$60,000 for registered third parties. The CTU thinks that a more realistic threshold would be \$100,000.

## **6.0 Other**

- 6.1 We submit that the penalties for illegal and corrupt practices in the Bill, while increased from the current Electoral Act, do not act as significant enough a disincentive to break the electoral law. It is arguable that electoral law is one of our most important constitutional laws. We therefore recommend that the fines (currently a maximum of \$40,000) are significantly increased.

## **7.0 Summary of recommendations**

- 7.1 That the select committee give serious consideration to coupling the removal of anonymous donations with a recommendation for a formal process for working out appropriate levels of state funding for political party election campaigns.

- 7.2 That it would be desirable if the identity of all political donors and the amounts donated be publicly available, but at the very least that:

7.2.1 No donations are permissible through other agents, such as secret trusts; donations should only be possible from individuals and organisations to political parties directly.

7.2.2 All (direct) donations above a certain level must be declared. We suggest that level is \$500.

7.2.3 The clauses in relation to anonymous donations for third parties be used for political parties and candidates also.

- 7.2.4 A cap on donations to political parties should be considered.
- 7.2.5 That the Bill bans donations to candidates and political parties from overseas individuals or organisations.
- 7.3 That the requirements for public disclosure of donations prior to the election contained in Clause 38 are supported, but that the figure should be much lower. It is of little use if the Bill does not contain measures to prevent secret donations.
- 7.4 That the definition of election advertisement 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.
- 7.5 That the meaning of election expense (cl 100) should be clarified to include the cost of *external* design, distribution and the purchase of advertising or publication space, rather than apportioning staff time in coordination or design.
- 7.6 That the level of election spending for third parties be \$100,000.
- 7.7 That the penalties for illegal practices and corrupt practices are significantly increased.