

Electoral Finance Reform

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Foreword

The Government is reviewing the law governing electoral campaigning and political party funding to develop and implement a fair and enduring set of rules to regulate future elections.

In May 2009 I released an issues paper seeking your input on the problems of, and possible improvements to, the electoral finance law. Seventy-nine submissions were received, many of which extensively covered the questions raised in the issues paper. I would like to thank those who took the opportunity to have their say and contribute to this important issue. These submissions have helped to inform the proposals outlined in this document.

In addition I have consulted all Parliamentary parties and sought their input to the improvements. This consultation has also helped shape this document.

This document details the core elements of the Government's proposed improvements to electoral finance law. At this point the Government is seeking feedback on these core elements, while noting that you will have a further opportunity to submit on the finer details of the improvements during the legislative stage of this review.

Alongside this review, I also have the pleasure of announcing that the Government has made a separate decision to create a new stand-alone electoral agency with overarching responsibility for electoral administration. It will be an independent Crown entity that is separate from executive government. This is a significant decision, as there are currently three agencies that administer electoral law and ongoing reviews have found that this structure is flawed. A new Electoral Commission will provide integrated, efficient and consistent oversight and decision-making, and will be well placed to administer the new electoral finance rules for the 2011 general election.

Electoral finance law is central to the integrity of New Zealand's democratic system. To have confidence in the outcome of Parliamentary elections, we need to know that the electoral contest is conducted according to rules that are fair to everyone. It is also important that we are well placed when international watchdogs compare the integrity of our system against those of other nations.

I encourage you to be involved in this further opportunity to have your say on how electoral finance might best be administered and managed in New Zealand.

Hon Simon Power
Minister of Justice

Executive Summary

The Electoral Finance Act 2007 has been repealed and an interim regime is in place while the rules governing electoral campaigning and political party funding are reviewed. This proposal document has been prepared to seek public views on the Government's proposals for new electoral finance legislation.

Appendix 1 provides a full list of the proposals within this document. The following table provides a summary of the current rules governing electoral campaigning and political party funding, and the Government's proposals for improvements.

Current law	Government proposals
<p>no guiding principles in legislation</p>	<p>the following principles both guide the development of electoral finance law and be incorporated in the purpose section of the new legislation: clarity, equity, freedom of expression, participation, transparency, accountability, legitimacy</p>
<p>broadcasting allocation funds can only be used for election advertising on radio and television and only between writ day and the day before polling day</p> <p>the Electoral Commission, when deciding how to allocate the broadcasting allocation and airtime to political parties, has discretion to find where the balance sits between six criteria set out in the Broadcasting Act 1989</p>	<p>the Government is consulting on three options for reform of the broadcasting allocation as follows:</p> <ol style="list-style-type: none"> 1. <i>status quo</i> - retain the current broadcasting allocation regime <p>or</p> <ol style="list-style-type: none"> 2. <i>moderate reform</i> - allowing broadcasting funds to be spent in any media, and not just radio and television <p>or</p> <ol style="list-style-type: none"> 3. <i>significant reform</i> - allowing broadcasting funds to be spent for any purpose, and not just election advertising

<p>parliamentary activities distinguished from electioneering activities to avoid inappropriate use of Parliamentary Service funding</p>	<p>the Parliamentary Service Commission is considering these issues as part of the process for developing a permanent definition of <i>funding entitlements for parliamentary purposes</i> in the Parliamentary Service Act 2000; in addition, the Speaker of the House has recently convened a cross-party committee that has developed a public disclosure regime for Parliamentary Service funding</p> <p>the Government proposes to ensure consistency between the Parliamentary Service Commission's work and the work undertaken as part of the electoral finance reform by raising the suggestions made in the submissions with this cross-party committee for further consideration</p>
<p>controls on donations limits, sources and processes for accepting donations</p>	<p>retain the regime governing donations to constituency candidates and political parties that was developed as part of the Electoral Finance Act 2007, and now forms part of the Electoral Act 1993</p>
<p>limits on campaign expenditure</p>	<p>increase expenditure limits for constituency candidates and political parties (last increased in 1995) and periodically adjust limits for inflation</p>
<p>regulated campaign period starts three months before election date, includes potential for retrospective application</p>	<p>the Government is consulting on four options</p> <p>the first three options would fix the date that the regulated period commences to either writ day, 1 August, 1 May</p> <p>the final option would be to retain the status quo</p> <p>in addition, the Government is consulting on two options for the length of the regulated period where an early election is called i.e. either for the regulated period to commence three months before election date (which is the status quo) or alternatively on the date the election date is announced</p>

<p>definition of election advertisement and its breadth is contained in different parts of the Electoral Act 1993, has inconsistent application, and does not cover advertising in all media</p>	<p>develop a new definition of election advertisement that is clear, certain, has uniform application, covers positive and negative advertising, is media neutral and has clear exceptions</p>
<p>disclosure of identity of the promoter of an election advertisement is required through inclusion of promoter's name and residential or business address in advertisement</p>	<p>require promoter's name and full street address and suburb which is either a residential address, or is where the promoter can usually be contacted during the day (cannot be a PO Box)</p>
<p>regulation of parallel campaigning is as follows:</p> <ul style="list-style-type: none"> ▪ parallel campaigners may spend any amount on advertising that does not support a constituency candidate or political party (i.e. negative advertising) ▪ parallel campaigners who wish to publish an election advertisement that promotes election of a constituency candidate or registered political party (i.e. positive advertising) must get written authorisation from the constituency candidate or political party ▪ parallel campaigners must be identified on election advertisements (for both positive and negative advertising) 	<p>the Government is consulting on two options for regulation of parallel campaigners:</p> <ol style="list-style-type: none"> 1. <i>proportionate regulation</i> - this option will establish campaign expenditure limits and thresholds over which the parallel campaigner must register with the Electoral Commission - unlike the Electoral Finance Act 2007, however, the scheme is weighted in favour of freedom of expression, and is simple and easy to comply with <p>the Government is therefore requesting further submissions on how the scheme could uphold freedom of expression, be simple and easy to comply with</p> <p>or</p> <ol style="list-style-type: none"> 2. <i>status quo</i> - this option could be subject to possible modification, such as restriction of parallel campaigning to New Zealand individuals and groups

<p>election advertising on radio and television is limited to constituency candidates and registered political parties</p> <p>parallel campaigners are prohibited from campaigning on broadcast media</p>	<p>the Government is consulting on two options:</p> <ol style="list-style-type: none"> 1. allow parallel campaigners to advertise on radio and television, provided that they are subject to a system of proportionate regulation (the first option proposed for the overall regulation of parallel campaigners) <p>or</p> <ol style="list-style-type: none"> 2. retain the current prohibition
<p>no existing requirement for electoral agencies to publish guidance or provide opinions on whether a publication amounts to an election advertisement</p>	<p>the new stand-alone electoral agency will be tasked with publishing guidance on electoral finance rules and providing advisory opinions on whether publications amount to an election advertisement</p>
<p>penalties for electoral finance offences were increased significantly by the Electoral Finance Act 2007, as were the time limits for prosecution of serious electoral finance offences</p>	<p>retain the offences and penalties regime and time limits that were developed as part of the Electoral Finance Act 2007 and now forms part of the Electoral Act 1993</p>

Introduction

About this review

The Electoral Finance Act 2007 has been repealed and an interim regime is in place while the rules for electoral campaigning and political party funding are reviewed. The outcome of this review will be new legislation that improves regulation of electoral campaigning and political party funding in New Zealand. These improvements will ensure that a fair and enduring electoral finance regime applies to everyone.

Electoral campaigning means any campaigning for or against a constituency candidate or registered political party that is standing for election to Parliament. It includes campaigning by people or organisations that are not constituency candidates or political parties, but who would like to influence the outcome of the election - for example, special interest or lobby groups. In this document these types of individuals or groups are called parallel campaigners.

Political party funding is how constituency candidates and political parties fund their election campaigns and related activities. It includes state funding to political parties and donations made to constituency candidates and political parties.

The scope of this review does not cover other aspects of the electoral system such as voting methods (e.g. the mixed-member proportional representation voting system (MMP), Māori representation, administration of the electoral rolls and electorate boundaries, or local government electoral law).

The original scope of this review did not include the structure of the electoral agencies. However, alongside this review the Government has made a separate decision to create a new stand-alone electoral agency with overarching responsibility for electoral administration. This agency will be an independent Crown entity that is separate from the executive government. The public will have an opportunity to comment on this decision when the bill merging the existing electoral agencies is before a Parliamentary select committee.

About this proposal document

This document seeks public submissions on the Government's proposals for improvements to New Zealand's electoral finance legislation. The content of these proposals has been informed by the public and Parliamentary party views provided on the May 2009 issues paper.

Electoral finance law is complex, and covers a broad subject area. The Government's aim in this document is to consult on its proposals for the core elements of the regime, to secure public and political consensus on its key characteristics.

In some areas, the Government has made a single proposal for reform. In others (such as parallel campaigning, reform of the broadcasting allocation, and the regulation of election expenditure) the Government has decided that a range of options should be put forward for further public submissions.

A decision has been made at this stage to put the finer details of the regime to one side, until public submissions on these options have been received and the legislation is drafted. The public will have an opportunity to make submissions on the finer details of the regime when the legislation is before a Parliamentary select committee. In addition, submissions made on the finer detail of the law, whether in response to the issues paper or to this proposal document, will be taken into account as the legislation is drafted.

Related documents

This document has been preceded by an issues paper (released in May 2009) and a summary of submissions received on the issues paper (released in August 2009). It is recommended that you refer to these documents when considering the proposals outlined here. These documents can be accessed on the electoral finance reform website: www.justice.govt.nz/electoralfinancereform.

Interim electoral finance regime

Before the Electoral Finance Act 2007, electoral finance rules were included (amongst other matters) in the Electoral Act 1993. When the Electoral Finance Act 2007 was repealed in 2009, as an interim measure the relevant provisions of the Electoral Act 1993 that dealt with electoral finance were reinstated. However, the donations and penalties provisions from the Electoral Finance Act 2007 were carried over to the interim regime.

Process to date and next steps

There are three stages to the review process, each with an opportunity for public and political party input:

- 1. Issues paper** An issues paper was published in May 2009. The issues paper explained each issue within the scope of the review, asked questions and sought public submissions.
- 2. Proposal document** This proposal document sets out the Government's proposed electoral finance regime. The proposal document takes into account the views provided by the public on the issues paper. It has also been informed by consultation with Parliamentary parties. In some cases, options are proposed for consideration. You have until 30 October 2009 to submit your views.
- 3. Legislative stage** Legislation will be drafted and introduced into the House of Representatives. You will have the opportunity to make

submissions about the bill to a Parliamentary select committee. The new law will be enacted by the end of 2010 and take effect in time for the 2011 general election.

You are encouraged to make your views on the proposals within this document known. To do so the Government invites you to make a written submission before 30 October 2009. Details on how to make a submission can be found at page 41.

Chapter 1: Guiding principles

Current rules

- 1.1 There are no guiding principles in relation to electoral finance rules in the Electoral Act 1993. For further information on this topic, see pages 10-12 of the issues paper.

Proposals

- 1 The Government proposes that the following principles both guide the development of electoral finance law and be incorporated in the purpose section of the new legislation: clarity, equity, freedom of expression, participation, transparency, accountability, legitimacy.

Reason

Guiding review

- 1.2 The use of guiding principles is helpful when reviewing complex and detailed matters such as electoral finance rules. Such principles can provide direction and ensure comprehensive improvements to the law.

Within legislation

- 1.3 The purpose statement of legislation assists the contextual interpretation of the legislation. The Government considers that it is useful to include a reference to the principles of equity, freedom of expression, participation, transparency, accountability, and legitimacy in the purpose statement of the new legislation.
- 1.4 A number of submissions on the issues paper proposed the principle of *clarity* or *simplicity*. The Government agrees that this principle should also guide the development of the new legislation and be incorporated in the purpose statement of the new legislation. This principle will also assist the interpretation and administration of the legislation.
- 1.5 For a summary of the submissions on this topic, see pages 5-10 of the summary of submissions made in response to the issues paper.

Chapter 2: State funding

Current rules

- 2.1 New Zealand's current state funding to political parties for election activities is the broadcasting allocation. Political parties can apply for state funding for broadcasting on radio and television in the weeks immediately prior to polling day (from writ day to the day before polling day), and for free time for broadcasting their election campaign opening and closing addresses on Television New Zealand and Radio New Zealand National. Election advertising on radio and television is restricted to political parties and constituency candidates.
- 2.2 A total of \$3,211,875 was available for allocation for the 2008 general election campaigns. This amount of state funding is appropriated by Parliament pursuant to Part 6 of the Broadcasting Act 1989, which sets out the framework of rules that apply in this area.
- 2.3 Under the Broadcasting Act 1989, the Electoral Commission is required to allocate time and money to eligible political parties. The existing allocation criteria include factors such as past election results, the level of public support the political party has and the need to provide a fair opportunity for each eligible political party to convey its policies to the public.
- 2.4 Funds allocated under the Broadcasting Act 1989 can only be used for election advertising on radio or television. Political parties cannot purchase additional broadcasting time, even if their total campaign expenditure remains within the overall campaign expenditure limit that is imposed on them by the Electoral Act 1993. When calculating their overall campaign expenditure under the Electoral Act 1993, political parties do not have to count any money spent from funds allocated to them under the Broadcasting Act 1989.
- 2.5 Political parties that are not registered at the start of the allocation process may apply for funding but become ineligible to receive such funding if they have not registered by writ day (political parties must have at least 500 members to be eligible to register). Unregistered parties cannot use their own money to pay for radio or television advertising, or to broadcast campaign addresses.
- 2.6 Constituency candidates are not eligible for public funding under the Broadcasting Act 1989, but can use their own money to purchase advertising on radio and television within their campaign expenditure limit.
- 2.7 For further information on this topic, see pages 28-35 of the issues paper.

Proposals

The Government is consulting on three options for reform of the broadcasting regime in Part 6 of the Broadcasting Act 1989. Under each option, the Government does not propose to change the total amount of funding that was allocated to political parties at the 2008 general election (\$3.21 million) or the arrangement where the total amount of funding is set by Parliamentary appropriation. The options are:

2a *Retain the status quo*

- political parties continue to be able to apply for state funding for broadcasting on radio and television
- funds allocated to parties are only able to be spent on election advertising on radio or television
- political parties would be unable to purchase any additional broadcasting time on radio and television.

OR

2b *Moderate reform:*

- political parties continue to be required to spend funds allocated to them on election advertising (no change from current law)
- political parties are free to spend funds in any media (for example in newspapers, billboards and other forms of election advertising) - this change helps to ensure that the regime can keep pace with changes in technology (currently political parties are restricted to spending broadcasting funds on radio and television only)
- no limit on the amount of advertising time that a political party can purchase on radio or television provided it does not exceed the total expenditure limit set by the Electoral Act 1993 (currently political parties may only spend the amount allocated to them under the Broadcasting Act 1989 on election advertising on radio and television)
- political parties are required to include money spent from the broadcast allocation when calculating their overall campaign expenditure under the Electoral Act 1993, a concurrent increase to campaign expenditure limits to take account of this, and a requirement to itemise expenditure from state funding in expense returns filed after each general election.

OR

2c *Significant reform:*

- political parties are free to spend funds allocated to them for any purpose - they will not be limited to expenditure on election advertising
- no limit on the amount of advertising time that a political party can purchase on radio and television provided it does not exceed the total expenditure limit set by the Electoral Act 1993 (currently political parties may only spend the amount allocated to them under the Broadcasting Act 1989 on election advertising on radio and television)
- political parties are required to account for money spent from their funding when calculating their overall campaign expenditure under the Electoral Act 1993 and a concurrent increase to campaign expenditure limits to take account of this
- political parties are required to report expenditure from this funding source on an annual basis.

2.8 The Government is seeking your feedback on which option you prefer. Once a decision is made about the overall direction of reform for funding political parties under Part 6 of the Broadcasting Act 1989, further work will be necessary on the finer detail of the new regime. You will have an opportunity to submit on the finer detail of these elements during the legislative stage of this review.

Reason

Broadcasting allocation generally supported

2.9 There was strong support across the submissions made in response to the issues paper for some form of continued state funding for political parties. There was a high level of support for continuation of the broadcasting allocation as it has proven to be an accepted and enduring avenue for state funding to political parties in New Zealand. However, many submissions also sought reform of the broadcasting allocation regime, which has remained essentially unchanged since the introduction of the mixed member proportional representation (MMP) voting system.

2.10 For a summary of the submissions on this topic, see pages 19-29 of the summary of submissions made in response to the issues paper.

Funding available

2.11 The Government does not propose to change the total amount of funding allocated to political parties from that of the 2008 general election (\$3.21 million), nor the arrangement where the total amount of funding is set by Parliamentary appropriation.

2.12 The Broadcasting Act 1989 currently provides for the total amount of funds available to be determined and appropriated by Parliament. While some submissions on the

issues paper supported an increase in state funding to political parties, many submissions considered there was no case for additional state funding to political parties at the current time, particularly in light of the donations returns for the 2008 general election which demonstrate that some political parties are able to raise adequate private funds for their campaigning.

Option 2a – Status quo

- 2.13 Option 2a retains the broadcasting allocation regime in its current form. In summary, this means that political parties continue to be able to apply for state funding for broadcasting on radio and television. Funds allocated under the Broadcasting Act 1989 are only able to be spent on election advertising on radio or television - any unspent funds would be returned to the Crown. In addition, political parties would be unable to purchase additional broadcasting time on radio and television. Expenditure on election advertising on these media by political parties is limited to funding allocated under the Broadcasting Act 1989.

Option 2b - Allow broadcasting funds to be spent in any advertising media

- 2.14 Option 2b entails moderate change to the existing broadcasting allocation regime. As under the current law, political parties will continue to be required to spend funds allocated to them on election advertising. However, political parties will be free to spend funds in any media, for example in newspapers, billboards and other forms of election advertising. This is a departure from the current regime, where funds allocated under the Broadcasting Act 1989 can only be spent on radio and television advertising.
- 2.15 There will also be no limit on the amount of advertising time that a political party can purchase on radio and television provided it does not exceed the total expenditure limit set by the Electoral Act 1993. This is also a departure from the status quo as at present parties may only spend the amount allocated to them under the Broadcasting Act 1989 on election advertising on radio and television.
- 2.16 Some submissions made in response to the issues paper said that the existing restriction on the use of the broadcasting allocation is outdated and was developed before many modern communications systems (such as the internet) were in use. The proposed change ensures that the regime keeps pace with changes in technology. It also gives each political party greater flexibility to choose how it wants to spend its funding allocation and what mix it should have of television, radio, newspaper, billboard and other forms of electronic advertising.
- 2.17 Political parties will be required to include money spent from this funding when calculating their overall campaign expenditure under the Electoral Act 1993, and there will be a concurrent increase to campaign expenditure limits to take account of this. At present, political parties do not have to include expenditure of funds

allocated under the Broadcasting Act 1989 in their expense returns. Alongside this, there will be a requirement imposed on political parties to itemise expenditure from this funding source in expense returns filed after each general election.

Option 2c - Use of allocated funds for any purpose

- 2.18 Option 2c provides significant change to the existing broadcasting allocation regime. Political parties will be free to spend funds allocated to them for any purpose, not only election advertising. For example, they will be able to spend the allocated funds for both developing policies at any time in the electoral cycle and communicating those policies to voters.
- 2.19 There will also be no limit on the amount of advertising time that a political party can purchase on radio or television, provided it did not exceed the total expenditure limit set by the Electoral Act 1993. This is a departure from the status quo where political parties may only spend the amount allocated to them under the Broadcasting Act 1989 on election advertising on radio and television.
- 2.20 Removing the current restrictions provides greater equality between the political parties as it means that all political parties will have the same campaign expenditure limit (i.e. their limit is not directly influenced by their broadcasting allocation). It also provides political parties greater freedom in terms of how they run their political campaigns. For example, smaller and newly formed parties may consider radio advertising to be a more effective use of their limited funds than spending an equivalent amount on television or on billboards and newspaper advertising.
- 2.21 As with option 2b, political parties will be required to account for money spent from their funding when calculating their overall campaign expenditure under the Electoral Act 1993, and there will be a concurrent increase to campaign expenditure limits to take account of this. At present, political parties do not have to include expenditure of funds allocated under the Broadcasting Act 1989 in their expense returns. There will also be a requirement imposed on political parties to submit annual reports to the Electoral Commission on expenditure from this funding source.

Chapter 3: Parliamentary Service funding

Current rules

- 3.1 Members of Parliament and political parties represented in Parliament receive funding from the Parliamentary Service for the following purposes:
- a member of Parliament performing his or her role and functions as a member of Parliament
 - a recognised political party performing its role and functions as a recognised political party
 - providing travel, accommodation and attendance services
 - providing communications services, provided that those services do not include electioneering
 - providing benefits or privileges of a specified kind for former members of Parliament and members of their families in accordance with an appropriation by Parliament of money for that purpose.
- 3.2 Members of Parliament and political parties that are represented in Parliament are not permitted to use their funding entitlements for electioneering. Electioneering means any communication that explicitly:
- seeks support for the election of a particular person or persons
 - seeks support for the casting of a political party vote for a particular political party or political parties
 - encourages a person to become a member of a particular political party or political parties
 - solicits subscriptions or other financial support.
- 3.3 These rules were established following an inquiry in 2006 by the Office of the Controller and Auditor-General into the use of Parliamentary Service funding for electioneering. The rules were developed to distinguish between parliamentary activities and electioneering activities so that it is clear that parliamentary funding cannot be used for election campaigning.
- 3.4 For further information on this topic, see pages 26-27 of the issues paper.

Proposals

- 3 The submissions received in response to the issues paper showed that opinions were divided on whether the relationship between Parliamentary Service funding and election advertising needed to be clarified and how this should be achieved.

The Parliamentary Service Commission is considering these issues as part of the process for developing a permanent definition of *funding entitlements for parliamentary purposes* in the Parliamentary Service Act 2000. In addition, the Speaker of the House has recently convened a cross-party committee that has developed a public disclosure regime for Parliamentary Service funding.

The Government proposes to ensure consistency between the Parliamentary Service Commission's work and the work undertaken as part of the electoral finance reform by raising the suggestions made in the submissions with this cross-party committee for further consideration.

Reasons

- 3.5 The issues paper asked whether it was clear that Parliamentary Service funding cannot be used to purchase election advertising. There was a split in the submissions on this subject. The majority of submissions said that the rules in this area were not sufficiently clear, while others said that the rules were clear and no further reform was necessary.
- 3.6 Of those who said that greater clarity was needed, a number of suggestions for improvements were made. For example:
- the definition of *electioneering* in the Parliamentary Service Act 2000 and the definition of *election advertisement* in the Electoral Act 1993 could be aligned to ensure a clearer relationship between the two pieces of legislation
 - Parliamentary Service expenditure by members of Parliament and parliamentary parties could be suspended during the pre-election period
 - there could be more detailed guidelines about the use of Parliamentary Service funding during the pre-election period
 - there could be greater disclosure of funding to members of Parliament under the Parliamentary Service Act 2000, for example that expenditure of Parliamentary Service funding by parliamentary parties and members of Parliament should be subject to the Official Information Act 1982.
- 3.7 The Government proposes to ensure consistency between the Parliamentary Service Commission's work and the work undertaken as part of this electoral finance reform, and to raise the suggestions made in the submissions with the cross-party committee that is developing the public disclosure regime.

3.8 For a summary of the submissions on this topic, see pages 29-30 of the summary of submissions made in response to the issues paper.

Chapter 4: Private donations

Current rules

- 4.1 The Electoral Act 1993 contains a range of rules that set out who may donate money to constituency candidates and political parties and how donations must be made. There are particularly detailed rules about the information that constituency candidates and political parties must disclose in returns about donations they receive, including information about the identity of each donor and the amount they donate.
- 4.2 The existing rules in the Electoral Act 1993 were developed as part of the Electoral Finance Act 2007, which significantly reformed the law relating to political donations by introducing tighter controls and more transparent rules. When the Government repealed the Electoral Finance Act 2007, it carried the new donations law from that Act over into the Electoral Act 1993.
- 4.3 Rules about donations where the donor is anonymous include:
 - a constituency candidate or political party may accept anonymous donations up to \$1,000 (donations are anonymous if the constituency candidate or political party does not know the donor's identity and could not reasonably be expected to know it)
 - where an anonymous donation exceeds \$1,000, the constituency candidate or political party may keep \$1,000 and must provide the excess amount of the donation to the appropriate electoral agency (i.e. the Electoral Commission or the Chief Electoral Office)
 - there is no limit on the total number or total amount of anonymous donations a constituency candidate or political party may receive.
- 4.4 There is also a protected disclosure regime in the Electoral Act 1993, that has the following features:
 - a donor may make a donation over \$1,000 to a political party without their identity becoming known to the party, if it is first sent to the Electoral Commission and follows the rules of a protected donation in the Electoral Act 1993
 - the Electoral Commission must pass on all such protected disclosure donations that it receives to the relevant political party on a regular basis and publish information on the total amount of such donations it handles

- a political party can only receive up to 10 percent of its campaign expenditure limit from protected disclosure donations, and an individual donor can only give up to 15 percent of that 10 percent.
- 4.5 Constituency candidates and political parties must publicly disclose the following information about donations they receive:
- constituency candidates must file a donations return following a general election or by-election, with details of every donor who donates more than \$1,000 (in one lump sum or in a series of donations)
 - where a donation is provided through an intermediary (such as a trust) the donor's identity must be disclosed if the donation is above \$1,000
 - political parties must file a donations return annually, with details of every donor who donates more than \$10,000 annually (in one lump sum or in a series of donations)
 - political parties must also file a donations return within 10 working days of receipt of the donation when any donations from a single source exceed \$20,000 (either in one donation or in a series of donations within a 12-month period).
- 4.6 The Electoral Act 1993 also imposes limits on who may make a donation to a constituency candidate or political party as follows:
- there is no limit on the total amount of donations a single individual or organisation based in New Zealand may make, whether to a constituency candidate, to a political party, or to both
 - overseas donors may not donate more than \$1,000 to a particular constituency candidate or political party
 - there are no limits on who can donate, for example constituency candidates and political parties can receive donations from individuals, corporations, trade unions and trusts.
- 4.7 For further information on this topic, see pages 14-22 of the issues paper.

Proposals

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| <p>4 The Government proposes to retain the regime governing donations to constituency candidates and political parties that was developed as part of the Electoral Finance Act 2007, and now forms part of the Electoral Act 1993.</p> |
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Reason

- 4.8 The Government proposes to retain the existing donations regime that applies to constituency candidates and political parties. The significant majority of submissions

gave broad support to the core characteristics of the existing donations regime that was developed as part of the Electoral Finance Act 2007. This Act delivered significant reform in the area of political donations, including requiring greater transparency on matters such as anonymous donations, donations through intermediaries such as trusts, and donations from overseas sources. When the Government repealed the Electoral Finance Act 2007 it carried the donations law from that Act over to the Electoral Act 1993.

- 4.9 There was discussion across the submissions about the detail of the regime. Some said that aspects of the existing rules could be made stricter by lowering particular thresholds, or introducing greater restrictions on donations from a single person or organisation. Others said that the balance struck by the existing law was about right. Only a small number called for the rules to be relaxed.
- 4.10 The Government's view is that the existing rules strike a fair balance between transparency and the freedom to accept donations. Accordingly, the Government proposes to retain the regime in its current form.
- 4.11 For a summary of the submissions on this topic, see pages 12-19 of the summary of submissions made in response to the issues paper.

Chapter 5: Campaign expenditure limits

Current rules

- 5.1 Currently spending limits during a general election are as follows:
- constituency candidates can spend up to \$20,000 (including GST) on campaign advertising
 - registered political parties can spend up to \$1,000,000 (including GST), plus \$20,000 (including GST) for each electorate they contest.
- 5.2 There are currently 70 electorates (63 general, and seven Māori), so a political party contesting all electorates can spend up to \$2.4 million (including GST) on election advertising. This limit does not include money spent by a political party on election advertising on radio and television from funds allocated under the Broadcasting Act 1989.
- 5.3 During a by-election campaign constituency candidates can spend up to \$40,000 (including GST) on campaign advertising.
- 5.4 For further information on this topic, see pages 37-39 of the issues paper.

Proposals

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| <p>5 The Government proposes to increase the expenditure limits that apply to constituency candidates and political parties (the Government is seeking submissions on the level of expenditure limits that should apply) and that expenditure limits be adjusted every general election to keep pace with inflation through a formula set in legislation.</p> |
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Reason

- 5.5 The Government proposes to increase the expenditure limits that apply to constituency candidates and political parties. This was supported by a large number of submissions. The current limits have remained unchanged since 1995 and since that time the relative value of the limits have fallen by approximately 25 percent in real terms.
- 5.6 The Government is seeking your input on the amount of the expenditure limits. For example whether the expenditure limits should be inflation adjusted from their 1995 value to today's relative value. Alternatively, whether they should be based on the cost of mounting a significant advertising campaign - in a single electorate (in the case of a constituency candidate) or nationwide (in the case of a political party). You may have other suggestions about the overall expenditure limits that should apply.

- 5.7 The Government also proposes to develop a mechanism where campaign expenditure limits will be adjusted regularly from this point forward to keep pace with inflation. The majority of submissions were in favour of this type of arrangement. The Government proposes to adopt a similar approach to Canada, where there is a formula in legislation that dictates the amount the expenditure limits will be adjusted by before each general election.
- 5.8 For a summary of the submissions on this topic, see pages 32-35 of the summary of submissions made in response to the issues paper.

Chapter 6: Regulated campaign period

Current rules

- 6.1 New Zealand has a regulated campaign period that starts three months before the election date. The regulated campaign period is the time during which any money spent by constituency candidates and political parties on election advertising must be counted against the overall campaign expenditure limits that are set by the Electoral Act 1993.
- 6.2 New Zealand does not have a fixed election date or a specific date on which campaigning officially starts. Consequently, where the Prime Minister announces that a general election will be held in less than three months time (e.g. an early or snap election is called), the regulated period operates retrospectively - that is, it commences before the announcement is made.
- 6.3 This means that constituency candidates and political parties can unwittingly exceed expenditure limits if they have spent money on election advertising before the Prime Minister's announcement, since they will have done so within the regulated period but without knowing that the regulated period had started.
- 6.4 For further information on this topic, see pages 40-42 of the issues paper.

Proposals

The Government is consulting on four options for the commencement and length of the regulated period. The first three options are to fix the date that the regulated period commences. The fourth option is retention of the status quo. The Government is seeking submissions on which of the following options is preferred:

6a commencement on **writ day** (i.e. a likely regulated period of approximately four to five weeks)

OR

6b commencement on **1 August** in the third year of the election cycle (i.e. a likely regulated period of approximately three to four months depending on the date of the election)

OR

6c commencement on **1 May** in the third year of the election cycle (i.e. a likely regulated period of approximately five to six months depending on the date of the election)

OR

6d the final option is to retain the status quo where the regulated period commences **three months** before the date of the election.

If option **6b**, **6c** or **6d** is supported, the Government is consulting on two further options to address situations of snap or early elections:

6e the regulated period to commence three months before election date (which is the status quo, and may result in retrospective application of the regulated period in some cases)

OR

6f a regulated period that starts from the date of the announcement of the election date (this will avoid retrospective application of the regulated period).

6.5 To explain how the commencement of a regulated period from a fixed date will work, the regulated period will start on that date and will run until the election date. Taking the 2008 election as an example, the election was on 8 November, and so the regulated period would have run from 1 August to 8 November, or just over three months. If the regulated period started on 1 May 2008, the regulated period would have lasted just over six months.

Reasons

- 6.6 The start and length of the regulated period attracted comment from the largest number of submissions on campaign expenditure, however, there was no clear consensus on these matters.
- 6.7 The first three options provide certainty to candidates, political parties, and the general public about the time when election expenditure must be accounted for in the run-up to polling day. They also reduce any risk that the law will have retrospective application.
- 6.8 The final option is to retain the status quo, where the regulated period would commence three months before the election date. As noted in paragraph 6.2, this raises a risk of part of the regulated period operating retrospectively.
- 6.9 In addition, the Government is proposing two options to deal with the retrospective application of the regulated campaign period in the case of snap or early elections.
- 6.10 Some submissions supported a regulated period of 12 months, or alternatively one that commences on 1 January in the third year of the election cycle, mirroring the arrangement in the Electoral Finance Act 2007. This arrangement was the subject of significant criticism during the passage of the Electoral Finance Act 2007 because of its implications for freedom of expression.
- 6.11 For a summary of the submissions on this topic, see pages 35-38 of the summary of submissions made in response to the issues paper.

Chapter 7: Election advertising

Current rules

- 7.1 A fundamental aspect of any electoral finance regime is the definition of election advertisement. Such a definition identifies what is, and what is not, regulated by any expenditure limits.
- 7.2 There is no stand-alone definition in the Electoral Act 1993 of election advertisement. Instead, the definition is contained in different parts of the Act and has inconsistent application for constituency candidates and political parties. Also, the Electoral Act 1993 specifically refers only to traditional paper-based media (i.e. advertisements published in any newspaper, periodical, poster, handbill, billboard or card) and advertisements broadcast over radio and television, though the regulation of election advertising is not limited to these examples.
- 7.3 The Electoral Act 1993 requires that when an election advertisement is published it must contain the true name of the person for whom or at whose direction it is published (the promoter) and the address of that person's place of residence or business. This ensures that everybody who sees the advertisement knows who has placed it and helps with the administration of the law governing election advertising.
- 7.4 For further information on this topic, see pages 43-47 of the issues paper.

Proposals

7 The Government proposes to develop a clear and certain definition of election advertisement.

The definition of election advertisement will have the following core elements:

- be based on the existing language in the Electoral Act 1993 - that is, be focused on campaigning that seeks to influence voting behaviour by encouraging or persuading voters, or appearing to encourage or persuade them
- cover both positive and negative campaigning - that is, advertising that encourages a person to vote, or alternatively not to vote, in a particular way
- be media-neutral and cover all forms of communication so that the definition does not have to be updated as new media are developed.

The definition will incorporate the following exceptions to make it clear that particular activities are not election advertisements:

- news and comment published or broadcast by the news media
- personal correspondence between private individuals
- low cost merchandise, which would be defined in the legislation as t-shirts, lapel buttons, lapel badges, pens, pencils or balloons (this is the definition in Australia's Commonwealth Electoral Act 1918)
- a broad exception to cover personal opinions published on the internet or other open digital platforms such as text messaging
- websites maintained by political parties, constituency candidates, and also registered parallel campaigners if a system of registration of parallel campaigners is developed
- an exception that allows the electoral agencies to disseminate information for electoral administration purposes.

The Government proposes that on every election advertisement promoters are required to disclose their true name and full street address and suburb or locality (not a PO Box number) of either their residential address, or an address at which the promoter can usually be contacted during the day. Promoters are not required to disclose a private home address if they choose not to.

Reason

Breadth of the definition

- 7.5 The Government proposes to develop a clear, certain definition of election advertisement based on the language in the Electoral Act 1993. Many submissions said that clarity and certainty in this area were crucial to electoral law and supported the core elements of the definition that is being proposed by the Government above.
- 7.6 There was almost no support for the development of an extremely broad definition of election advertisement (e.g. issues advocacy where advertisements take a position on policy issues without explicitly calling for a vote for a political party or constituency candidate). A definition of this type was incorporated in the Electoral Finance Bill and raised questions about freedom of expression.

Exceptions

- 7.7 The Government proposes exceptions to the definition, so that it is clear that particular types of publications are not election advertisements. The following exceptions, drawn from submissions, are proposed:
- a. editorial opinion, news and comment published or broadcast by the news media
 - b. personal correspondence between private individuals
 - c. low cost merchandise, which would be defined in the legislation as t-shirts, lapel buttons, lapel badges, pens, pencils or balloons (this is the definition in Australia's Commonwealth Electoral Act 1918)
 - d. a broad exception to cover personal opinions published on the internet or other digital platforms including blogs, personal websites and social networking sites such as facebook, myspace, text messaging or twitter - an exception of this nature currently forms part of Canada's Elections Act, which excludes "the transmission by an individual, on a non-commercial basis on what is commonly known as the Internet, of his or her personal political views" from the definition of election advertising
 - e. websites maintained by political parties, constituency candidates and also registered parallel campaigners if a system of registration of parallel campaigners is developed.
- 7.8 An exception is also required that allows the electoral agencies to disseminate information for electoral administration purposes. This is a long-standing feature of electoral law.

Disclosure of identity on an election advertisement

- 7.9 The Government proposes to retain the long-standing requirement for individuals to disclose their identity (true name and address) when promoting an election

advertisement. This feature of electoral law was supported by a significant number of submissions.

- 7.10 Many submissions also pointed out the need to balance personal privacy in this area by ensuring that promoters, when publishing a contact address, do not have to provide their home address if they choose not to.
- 7.11 To achieve this outcome, the Government proposes to allow either disclosure of a residential address, or disclosure of an address at which a promoter can usually be contacted during the day (not a PO Box number). This latter option for disclosure is similar to the Australian approach set out in the Commonwealth Electoral Act 1918.
- 7.12 This option enables, for example, a campaign volunteer or manager for a political party or constituency candidate to choose whether to disclose either their home address or an alternative address where they can be contacted such as a campaign headquarters.

Submissions

- 7.13 For a summary of the submissions on this topic, see pages 39-49 of the summary of submissions made in response to the issues paper.

Chapter 8: Parallel campaigning

Level of regulation

Current rules

- 8.1 Parallel campaigning means campaigning by individuals and groups that are not standing for election themselves. Such individuals or groups include those running organised campaigns for (positive advertising) or against (negative advertising) a constituency candidate or political party, or who campaign on a particular issue. In this document these types of individuals or groups are called parallel campaigners.
- 8.2 The current rules regarding parallel campaigners are:
- they may spend any amount on advertising that does not support a constituency candidate or political party (negative advertising); and
 - they must be identified on election advertisements (for both positive and negative advertising).
- 8.3 A feature of our existing system is that positive advertising is regulated, but negative advertising is not (apart from the requirement to be identified on election advertisements).
- 8.4 The rules provide that anyone who wants to publish an election advertisement that encourages or persuades voters to vote for a constituency candidate or registered political party (positive advertising) must get written authorisation from the constituency candidate or political party first. The cost of the advertisement must then be included in the total campaign expenditure of the constituency candidate or political party who authorised it.
- 8.5 This effectively regulates positive advertising by parallel campaigners. At the end of the day, expenditure on positive advertising cannot exceed the limit that is imposed on the constituency candidate or political party who it is designed to support.
- 8.6 Negative advertising, in contrast, is not regulated. Negative advertising is advertising that encourages or persuades voters not to vote for a constituency candidate or political party, for example negative advertising such as “Don’t vote for John Briggs” or “Change the Government”. There is no requirement for a constituency candidate or political party to authorise negative advertising. As a consequence, there is no limit on the amount of money that a member of the public can spend on advertising of this type. The only requirement is that the promoter must disclose their name and address on the advertisement.

8.7 For further information on this topic, see pages 48-56 of the issues paper.

Proposals

The Government is consulting on two options for regulation of expenditure by parallel campaigners. The Government is seeking submissions on which of the following options is preferred:

8a The first option is a proportionate regulatory scheme that focuses on expenditure by parallel campaigners. It requires those who spend over a certain amount on election advertising to register with the Electoral Commission and imposes overall limits on campaign expenditure.

Unlike the Electoral Finance Act 2007, however, the scheme that the Government will develop if this option is chosen will be weighted in favour of freedom of expression, and be simple and easy to comply with.

The Government is therefore requesting further submissions on how the scheme could uphold freedom of expression, be simple and easy to comply with. As examples, this scheme could (based on submissions made in response to the issues paper) include some or all of the following elements:

- a high registration threshold and overall expenditure limits
- registration could require identification of the key officeholder or spokesperson for the parallel campaign
- while parallel campaigners will be required to identify themselves in election advertisements, they will not have to account for political donations they received - this was an aspect of the Electoral Finance Act 2007 that caused significant compliance problems for organisations that receive high levels of donations for apolitical purposes
- a restriction that only New Zealand citizens, permanent residents, or organisations based in New Zealand may engage in parallel campaigning.

OR

8b The second option is to retain the status quo. Parallel campaigners do not have to register, and may spend any amount on advertising that does not support a constituency candidate or political party, but must be identified on election advertisements. Those advertisements supporting a constituency candidate or political party are included in the constituency candidate's or political party's expenditure limits, as per the status quo.

This option could possibly include a modification that restricts parallel campaigning to New Zealand citizens, permanent residents, or organisations based in New Zealand.

- 8.8 You should note that any changes made to how the promoter of election advertisements for constituency candidates and political parties are identified on election advertisements will also apply to election advertisements by parallel campaigners. More information on the proposal in relation to election advertisements can be found in Chapter 7 of this document.

Reason

Option 8a - Proportionate regulation of parallel campaigners

- 8.9 The aim of option 8a is to develop a more proportionate regulatory scheme to govern parallel campaigners than that contained in the Electoral Finance Act 2007. A regime of this type focuses on expenditure by parallel campaigners by requiring those who spend over a certain amount on election advertising to register with the Electoral Commission and imposing overall limits on campaign expenditure.
- 8.10 The largest number of submissions made on this subject supported a regime where parallel campaigners are subject to some type of overall regulation of this nature. The main reason given was that unregulated parallel campaigning allows parallel campaigners to spend any amount on negative or smear campaigning that does not support, or appear to support, a particular constituency candidate or political party - this was felt to allow individuals with spending power to have a disproportionate voice in comparison to political parties and constituency candidates, who are subject to expenditure limits.
- 8.11 Unlike the Electoral Finance Act 2007, however, the scheme that the Government will develop if this option is chosen will be weighted in favour of freedom of expression, and be simple and easy to comply with. This was an emphasis in many submissions that supported regulation of parallel campaigners. Submissions said that it was important for such a regime, if it were developed, to emphasise freedom of expression. Submissions also said that it was important for the regime to be proportionate to the level of risk that parallel campaigning might be used to circumvent the expenditure limits that apply to political parties and constituency candidates.
- 8.12 The Government is therefore requesting further submissions on how the scheme could uphold freedom of expression, be simple and easy to comply with. As examples, this scheme could (based on submissions made in response to the issues paper) include some or all of the following elements:
- High registration threshold and expenditure limits. One submission, for example, suggested that the threshold for registration could be expenditure of \$100,000 (although this was at the high end of suggestions), which effectively means that only those who spend significant amounts are subject to greater

public disclosure under the legislation. The same submission also suggested that the overall expenditure limit be calculated based on the actual costs of mounting a nationwide advertising campaign.

- While parallel campaigners are required to identify themselves on election advertisements, they will not have to account for political donations they received. The donations regime that applied to parallel campaigners in the Electoral Finance Act 2007 caused compliance problems for voluntary organisations, as they can receive significant levels of donations that are not necessarily given for political campaigning purposes. Very few submissions suggested that parallel campaigners should have to disclose donations.
- Parallel campaigning could possibly be restricted to New Zealand citizens, permanent residents, or organisations based in New Zealand. This helps ensure that the outcome of an election is not subject to undue influence from wealthy overseas interests.

Option 8b - Maintain or modify the status quo

8.13 Option 8b maintains the status quo, where the only requirements are for parallel campaigners to:

- identify themselves on the face of an election advertisement
- obtain authorisation from a constituency candidate or political party where an advertisement supported their election.

8.14 This option was supported by a small number of submissions who said that the only regulation necessary in this area is for the public to be aware of the identity of parallel campaigners as this enables individuals to make up their own minds about the weight to place on an advertisement when deciding how to vote. These submissions also opposed any registration system for parallel campaigners, or imposition of expenditure limits on them.

8.15 There could also be possible modifications of the status quo. One possible modification, for example, is to restrict parallel campaigning to New Zealand citizens, permanent residents, or groups based in New Zealand. This helps ensure that the outcome of an election is not subject to undue influence from wealthy overseas interests.

8.16 For a summary of the submissions on this topic, see pages 50-58 of the summary of submissions.

Advertising by parallel campaigners on radio and television

Current rules

8.17 Under the existing terms of Part 6 of the Broadcasting Act 1989, only constituency candidates and registered political parties can undertake election advertising on radio and television. Members of the public are specifically prohibited from advertising either for or against a political party or constituency candidate on radio or television.

8.18 For further information on this topic, see pages 32-33 of the issues paper.

Proposals

The Government is consulting on two options regarding whether parallel campaigners should be able to buy election advertising on radio and television. The Government is seeking submissions on which of the following options is preferred:

8c allow parallel campaigners to advertise on radio and television, provided that they are subject to a system of proportionate regulation (the first option proposed for the overall regulation of parallel campaigners - option 8a)

OR

8d retain the current ban.

Reason

8.19 The Government is putting these two options forward for consideration because the existing prohibition on election advertising on radio and television by anyone other than constituency candidates and political parties is closely associated with the broader controls on parallel campaigners. The issues therefore need to be considered together.

8.20 Submissions were split on this subject, with some supporting continuation of the existing prohibition, and others proposing that it be removed. Submissions on both sides observed that, if parallel campaigners are able to buy election advertising on radio and television, there is a strong case for imposing a regulatory system on election advertising expenditure by parallel campaigners, such as that outlined above in option 8a. As a result, one of the options proposed is to allow parallel campaigners to advertise on radio and television *only if* parallel campaigners are subject to a system of proportionate regulation (option 8a).

8.21 The alternative option is to simply retain the current ban on parallel campaigners advertising on radio or television.

8.22 For a summary of the submissions on this topic, see page 27 of the summary of submissions made in response to the issues paper.

Chapter 9: Monitoring and compliance

Current rules

- 9.1 Responsibility for electoral administration is currently split between the Chief Electoral Officer (within the Ministry of Justice), the Electoral Commission (an independent Crown entity), and the Chief Registrar of Electors through the Electoral Enrolment Centre (a business unit of New Zealand Post Limited).
- 9.2 The **Chief Electoral Office** is responsible for running elections and administering the law relating to constituency candidates. The Chief Electoral Office also publishes detailed written guidance for constituency candidates in the run-up to a by-election or a general election. With this, the Chief Electoral Office considers draft advertisements from constituency candidates and provides a view to the constituency candidate about whether the advertisement risks contravening the law. The Chief Electoral Office's advice is confidential, subject of course to the requirements of the Official Information Act 1982. Similar to the written material on the legislation that is published by the Chief Electoral Office, advice on particular advertisements that is given to constituency candidates is only guidance. Ultimately, a decision about whether an election advertisement should be published is for each constituency candidate.
- 9.3 The **Electoral Commission** is responsible for administering the law relating to political parties, and allocating time and money under the Broadcasting Act 1989. The Electoral Commission also publishes detailed written guidance for political parties and parallel campaigners.
- 9.4 The **Electoral Enrolment Centre** is a division of New Zealand Post Limited and is responsible for administering the electoral roll.
- 9.5 The Electoral Act 1993 creates a number of offences, which are classified as corrupt practices, illegal practices or summary offences. The maximum penalty for a corrupt practice in breach of the election expense and donation provisions is two years imprisonment and a \$100,000 fine. The maximum penalty for an illegal practice in breach of the election expense and donation provisions is a \$40,000 fine. The highest penalties are reserved for constituency candidates or political party secretaries.
- 9.6 Members of the public can also be charged with electoral finance offences, for example, not complying with election advertising rules or the rules concerning disclosure of donor information.

9.7 The time limit under the Electoral Act 1993 for commencing a prosecution for a serious electoral finance offence is within six months of the assembly of a prima facie case by the prosecution. However, the offence must be discovered within three years of it being committed.

9.8 For further information on this topic, see pages 57-61 of the issues paper.

Proposed restructure of electoral agencies

9.9 Separate to this review of the laws governing electoral campaigning and political party funding, the Government, in consultation with Parliamentary parties, is proposing to create a new stand-alone electoral agency with overarching responsibility for electoral administration.

9.10 Ongoing reviews of the current structure for electoral administration have found that it is flawed as there is duplication of functions between the agencies, confusion about the roles of the various agencies, and increased costs and complexity for political parties, constituency candidates and the general public.

9.11 The new electoral agency will be designed to address these issues. It will be an independent Crown entity that is separate from executive government. Merging the responsibilities of the electoral agencies into a new Electoral Commission is intended to provide integrated, efficient and consistent oversight and decision-making in electoral administration.

9.12 The merge will occur in two stages. The first stage is the amalgamation of the Chief Electoral Office and the Electoral Commission. This stage will be completed in time to administer the new electoral finance rules for the 2011 general election.

9.13 The public will have an opportunity to comment on this proposal when the bill merging the agencies is before a Parliamentary select committee.

Proposals

9 The new stand-alone electoral agency will be tasked with publishing guidance on electoral finance rules and providing advisory opinions to political parties, constituency candidates, and the general public on electoral finance law - including whether publications amount to an election advertisement.

The Government proposes to retain the offences and penalties regime and time limits currently in the Electoral Act 1993.

Reason

Guidance

- 9.14 A number of submissions raised the need for guidance to help participants in the electoral process understand their responsibilities. Submissions were concerned that without guidance participants have to guess how the law affects them, which can lead to confusion and uncertainty.
- 9.15 Requiring the new stand-alone Electoral Commission to publish guidance on electoral finance rules and provide advisory opinions on electoral finance law (including whether publications amount to an election advertisement) will encourage participation and greater compliance with the law. It will mean that constituency candidates, political parties, and members of the public will have access to guidance about what the law is and whether advertisements they intend to publish comply with it.

Penalties

- 9.16 The Government proposes to retain the existing offences and penalties regime and time limits that apply to electoral finance offences.
- 9.17 The current penalties in the Electoral Act 1993 were increased significantly by the Electoral Finance Act 2007 and the timeframe in which the prosecution of more serious electoral finance offences could be brought was also extended by the 2007 Act. When the Government repealed the Electoral Finance Act 2007 it carried over these higher penalties and time limits into the Electoral Act 1993.
- 9.18 The maximum fine for an illegal practice was increased from \$3,000 to \$10,000. The maximum penalty for a corrupt practice was increased from one years imprisonment and a maximum fine of \$4,000 to two years imprisonment and a maximum fine of \$40,000. The Electoral Finance Act 2007 included higher maximum fines for an illegal practice (\$40,000) or a corrupt practice (\$100,000) where the offender was a political party secretary or financial agent. The current regime retains those higher penalties for offences committed by political party secretaries or constituency candidates.
- 9.19 With respect to the time limit for when prosecutions need to commence for serious electoral finance offences, the Electoral Finance Act 2007 increased the time limit to within six months of the assembly of a prima facie case by the prosecution. Previously, prosecutions had needed to commence within six months of the date that offences were committed, which meant that the time limit often passed before the offences were discovered.

- 9.20 The scale of these penalties reflects the seriousness with which offences against electoral finance law are viewed.
- 9.21 For a summary of the submissions on this topic, see pages 59-64 of the summary of submissions made in response to the issues paper.

How to have your say

Submissions on this Proposal Document

- 10.1 You are encouraged to make your views on the proposals within this document known. To do so, the Government invites you to make a written submission before 30 October 2009.
- 10.2 Submissions can be:
- emailed to electoral financereform@justice.govt.nz
 - posted to
Freepost Authority No 224498
Electoral Finance Reform
Ministry of Justice
C/- PO Box 180
Wellington 6140
 - delivered to
Electoral Finance Reform
Ministry of Justice
Level 1, Vogel Centre
16 Kate Sheppard Place
Wellington
- 10.3 The Ministry of Justice will place a summary of all submissions received in response to this proposal document on its website at www.justice.govt.nz/electoral financereform.
- 10.4 Your submission may be subject to a request to the Ministry of Justice for information under the Official Information Act 1982. Personal details of submitters submitting in a personal capacity may be withheld under the Official Information Act 1982, including your name and address. If you do not want any information contained in your submission to be released, please state this clearly in your submission and explain why. For example, you may want some information to be kept confidential because it is commercially sensitive or personal. The Ministry of Justice will take your views into consideration when responding to requests for information.
- 10.5 The Privacy Act 1993 governs how the Ministry of Justice collects, holds, uses and discloses personal information about you and your submission. You have the right to access and correct personal information.
- 10.6 Further information on the review is available on the review website i.e. www.justice.govt.nz/electoral financereform.

Next steps - Bill

- 10.7 Following submissions on the proposal document, a Bill will be drafted and introduced into the House by the Minister of Justice. Submissions received on the proposal document will be taken into account when the Bill is being drafted. The Bill will go through the Parliamentary stages, including the select committee phase where there will be a further opportunity for the public to provide feedback on the Government's proposals.
- 10.8 The new law will be enacted by the end of 2010 and take effect in time for the 2011 general election.

Appendix 1 – Government’s proposals

The following table provides a full list of the proposals within this document.

Guiding principles	
1	The Government proposes that the following principles both guide the development of electoral finance law and be incorporated in the purpose section of the new legislation: clarity, equity, freedom of expression, participation, transparency, accountability, legitimacy.
State funding	
<p>The Government is consulting on three options for reform of the broadcasting regime in Part 6 of the Broadcasting Act 1989. Under each option, the Government does not propose to change the total amount of funding that was allocated to political parties at the 2008 general election (\$3.21 million) or the arrangement where the total amount of funding is set by Parliamentary appropriation. The options are:</p>	
2a	<p><i>Retain the status quo</i></p> <ul style="list-style-type: none">political parties continue to be able to apply for state funding for broadcasting on radio and televisionfunds allocated to parties are only able to be spent on election advertising on radio or televisionpolitical parties would be unable to purchase any additional broadcasting time on radio and television.
OR	
2b	<p><i>Moderate reform:</i></p> <ul style="list-style-type: none">political parties continue to be required to spend funds allocated to them on election advertising (no change from current law)political parties are free to spend funds in any media (for example in newspapers, billboards and other forms of election advertising) - this change helps to ensure that the regime can keep pace with changes in technology (currently political parties are restricted to spending broadcasting funds on radio and television only)no limit on the amount of advertising time that a political party can purchase on radio or television provided it does not exceed the total expenditure limit set by the Electoral Act 1993 (currently political parties may only spend the amount allocated to them under the Broadcasting Act 1989 on election advertising on radio and television)political parties are required to include money spent from the broadcast allocation when calculating their overall campaign expenditure under the Electoral Act 1993, a

concurrent increase to campaign expenditure limits to take account of this, and a requirement to itemise expenditure from state funding in expense returns filed after each general election.

OR

2c *Significant reform:*

- political parties are free to spend funds allocated to them for any purpose - they will not be limited to expenditure on election advertising
- no limit on the amount of advertising time that a political party can purchase on radio and television provided it does not exceed the total expenditure limit set by the Electoral Act 1993 (currently political parties may only spend the amount allocated to them under the Broadcasting Act 1989 on election advertising on radio and television)
- political parties are required to account for money spent from their funding when calculating their overall campaign expenditure under the Electoral Act 1993 and a concurrent increase to campaign expenditure limits to take account of this
- political parties are required to report expenditure from this funding source on an annual basis.

Parliamentary Service funding

3 The submissions received in response to the issues paper showed that opinions were divided on whether the relationship between Parliamentary Service funding and election advertising needed to be clarified and how this should be achieved.

The Parliamentary Service Commission is considering these issues as part of the process for developing a permanent definition of *funding entitlements for parliamentary purposes* in the Parliamentary Service Act 2000. In addition, the Speaker of the House has recently convened a cross-party committee that has developed a public disclosure regime for Parliamentary Service funding.

The Government proposes to ensure consistency between the Parliamentary Service Commission's work and the work undertaken as part of the electoral finance reform by raising the suggestions made in the submissions with this cross-party committee for further consideration.

Private donations

4 The Government proposes to retain the regime governing donations to constituency candidates and political parties that was developed as part of the Electoral Finance Act 2007, and now forms part of the Electoral Act 1993.

Campaign expenditure limits

- 5** The Government proposes to increase the expenditure limits that apply to constituency candidates and political parties (the Government is seeking submissions on the level of expenditure limits that should apply) and that expenditure limits be adjusted every general election to keep pace with inflation through a formula set in legislation.

Regulated campaign period

The Government is consulting on four options for the commencement and length of the regulated period. The first three options are to fix the date that the regulated period commences. The fourth option is retention of the status quo. The Government is seeking submissions on which of the following options is preferred:

- 6a** commencement on **writ day** (i.e. a likely regulated period of approximately four to five weeks)
- OR
- 6b** commencement on **1 August** in the third year of the election cycle (i.e. a likely regulated period of approximately three to four months depending on the date of the election)
- OR
- 6c** commencement on **1 May** in the third year of the election cycle (i.e. a likely regulated period of approximately five to six months depending on the date of the election)
- OR
- 6d** the final option is to retain the status quo where the regulated period commences **three months** before the date of the election.

If option **6b**, **6c** or **6d** is supported, the Government is consulting on two further options to address situations of snap or early elections:

- 6e** the regulated period to commence three months before election date (which is the status quo, and may result in retrospective application of the regulated period in some cases)
- OR
- 6f** a regulated period that starts from the date of the announcement of the election date (this will avoid retrospective application of the regulated period).

Election advertising

- 7** The Government proposes to develop a clear and certain definition of election advertisement. The definition of election advertisement will have the following core elements:
- be based on the existing language in the Electoral Act 1993 - that is, be focused on campaigning that seeks to influence voting behaviour by encouraging or persuading voters, or appearing to encourage or persuade them

- cover both positive and negative campaigning - that is, advertising that encourages a person to vote, or alternatively not to vote, in a particular way
- be media-neutral and cover all forms of communication so that the definition does not have to be updated as new media are developed.

The definition will incorporate the following exceptions to make it clear that particular activities are not election advertisements:

- news and comment published or broadcast by the news media
- personal correspondence between private individuals
- low cost merchandise, which would be defined in the legislation as t-shirts, lapel buttons, lapel badges, pens, pencils or balloons (this is the definition in Australia's Commonwealth Electoral Act 1918)
- a broad exception to cover personal opinions published on the internet or other open digital platforms such as text messaging
- websites maintained by political parties, constituency candidates, and also registered parallel campaigners if a system of registration of parallel campaigners is developed
- an exception that allows the electoral agencies to disseminate information for electoral administration purposes.

The Government proposes that on every election advertisement promoters are required to disclose their true name and full street address and suburb or locality (not a PO Box number) of either their residential address, or an address at which the promoter can usually be contacted during the day. Promoters are not required to disclose a private home address if they choose not to.

Parallel campaigning

The Government is consulting on two options for regulation of expenditure by parallel campaigners. The Government is seeking submissions on which of the following options is preferred:

8a The first option is a proportionate regulatory scheme that focuses on expenditure by parallel campaigners. It requires those who spend over a certain amount on election advertising to register with the Electoral Commission and imposes overall limits on campaign expenditure.

Unlike the Electoral Finance Act 2007, however, the scheme that the Government will develop if this option is chosen will be weighted in favour of freedom of expression, and be simple and easy to comply with.

The Government is therefore requesting further submissions on how the scheme could uphold freedom of expression, be simple and easy to comply with. As examples, this scheme could (based on submissions made in response to the issues paper) include some or all of the

following elements:

- a high registration threshold and overall expenditure limits
- registration could require identification of the key officeholder or spokesperson for the parallel campaign
- while parallel campaigners will be required to identify themselves in election advertisements, they will not have to account for political donations they received - this was an aspect of the Electoral Finance Act 2007 that caused significant compliance problems for organisations that receive high levels of donations for apolitical purposes
- a restriction that only New Zealand citizens, permanent residents, or organisations based in New Zealand may engage in parallel campaigning.

OR

8b The second option is to retain the status quo. Parallel campaigners do not have to register, and may spend any amount on advertising that does not support a constituency candidate or political party, but must be identified on election advertisements. Those advertisements supporting a constituency candidate or political party are included in the constituency candidate's or political party's expenditure limits, as per the status quo.

This option could possibly include a modification that restricts parallel campaigning to New Zealand citizens, permanent residents, or organisations based in New Zealand.

The Government is consulting on two options regarding whether parallel campaigners should be able to buy election advertising on radio and television. The Government is seeking submissions on which of the following options is preferred:

8c allow parallel campaigners to advertise on radio and television, provided that they are subject to a system of proportionate regulation (the first option proposed for the overall regulation of parallel campaigners - option 8a)

OR

8d retain the current ban.

Monitoring and compliance

9 The new stand-alone electoral agency will be tasked with publishing guidance on electoral finance rules and providing advisory opinions to political parties, constituency candidates, and the general public on electoral finance law - including whether publications amount to an election advertisement.

The Government proposes to retain the offences and penalties regime and time limits currently in the Electoral Act 1993.

Appendix 2 – Glossary

Blog - a web log, or online diary. A type of website, usually maintained by an individual with regular entries of commentary, descriptions of events, or other material such as graphics or video.

Broadcasting election period - the period of time in which a political party or constituency candidate may broadcast election advertising on television or radio.

By-election - an election to replace a Member of Parliament who represents an electorate and has vacated their seat in the House of Representatives. For example, a by-election can occur when a Member of Parliament representing an electorate has resigned or died.

Campaign - the competition between candidates and between political parties seeking to be elected to Parliament.

Campaign expenditure - the amount of money spent on election advertising by a political party or constituency candidate during the regulated campaign period.

Campaign funding - the money political parties and constituency candidates have paid for their election campaigns.

Chief Electoral Office - the entity responsible for running elections and administering the law relating to constituency candidates.

Constituency candidate - a person registered to stand for election in an electorate.

Donation - a gift to a political party or constituency candidate.

Donor - a person or group who gives a donation.

Election advertising - material that is published to influence voting behaviour.

Electoral Commission - the entity responsible for administering the law relating to political parties, and allocating time and money under the Broadcasting Act 1989.

Electoral Enrolment Centre - the entity responsible for administering the electoral roll.

Electoral Finance Act 2007 - an Act of Parliament that was repealed on 1 March 2009. It was the law in place for the 2008 general election.

Electorate - areas of New Zealand that are represented by a Member of Parliament. There are 63 general electorates and seven Māori electorates.

Election expenses - the expenses on election advertising incurred by a political party or constituency candidate in the course of a campaign.

General election - an election for all members of Parliament that normally takes place once every three years at the end of the Parliamentary term.

Guiding principles - principles that could guide the development of new legislation.

Issues Paper - a paper published in May 2009, that explained each issue within the scope of the electoral finance review, asked questions, and sought public submissions.

Member of Parliament (MP) - a person who has a seat in Parliament.

Mixed-member proportional representation voting system (MMP) - New Zealand's electoral system. Under MMP, the party vote generally determines the total number of seats each party has in Parliament.

Parallel campaigners - individuals or groups who undertake parallel campaigning.

Parallel campaigning - campaigning by individuals and groups that are not standing for election themselves. Such individuals or groups include those running organised campaigns for or against a constituency candidate or political party, or who campaign on a particular issue ('parallel campaigners').

Parliamentary parties - political parties currently represented in Parliament.

Parliamentary Service Commission - advises the Speaker about the services to be provided to the House of Representatives and to members of Parliament, and the objectives for those services. The Commission is made up of representatives from each of the parliamentary political parties, and is chaired by the Speaker.

Parliamentary Service funding - funding that is provided to political parties and members of Parliament under the Parliamentary Service Act 2000. Such funding is used to support Members of Parliament and the parties represented in Parliament to carry out their parliamentary functions. It cannot be used for electioneering.

Political party - unless otherwise stated, references to a political party mean a political party registered under Part 4 of the Electoral Act 1993.

Polling day - the day on which people vote in an election.

Regulated campaign period - the period in which political parties and constituency candidates are subject to campaign expenditure limits.

Select committees - groups of Members of Parliament that meet to examine issues referred by the House of Representatives.

Writ day - the day the Governor-General formally declares when the election day will be.