

Electoral Finance Amendment Bill



CROWN LAW OFFICE

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Attorney-General

Electoral Finance Amendment Bill (No 2)

Our Ref: ATT396/61

I have reviewed the Electoral Finance Amendment Bill (No 2) ("the Bill") for consistency with the New Zealand Bill of Rights Act 1990.

The Bill has two parts. The first proposes an amendment to the definitions of "address". No issue under the Bill of Rights Act arises.

The second aspect of the Bill is a proposed amendment to the definition of "candidate".

As noted in the explanatory note to the Bill, the definition of "candidate" in the principal Act is narrower than that given in the Electoral Act 1993 in relation to electoral advertising. The Bill proposes a new definition of "candidate" (clause 4):

"means a constituency candidate, and includes (other than in subpart 3 of Part 2, sections 82 to 89, 91, 92 and 98) any person who has declared his or her intention of becoming a candidate; and a person who becomes a candidate is deemed to be a candidate on and from the beginning of the regulated period." (new wording in italics)

The change carries over the 1993 definition to extend the actual (rather than deemed) recognition of a candidate back in time from the point of formal nomination, to the time when they declare their intention of becoming a candidate. The exceptions in the definition do not affect the basic impact of the proposed amendment.

On its face, the deeming provision in the current definition in the principal Act has the effect of applying the regulatory scheme of the principal Act to candidates throughout the entire regulated period. The consistency of the regulatory scheme as a whole with the Bill of Rights Act was considered on that basis in advice dated 26 June 2007.

However, aspects of the regulatory scheme under the principal Act relating to candidates only apply from the point of formal nomination, despite the deeming provision. This period will usually be shorter than the period previously covered by the Electoral Act 1993. The Bill proposes to extend that period back to the declaration of intention, to overcome the apparently inadvertent reduction and return to the position under the 1993 Act.

The effect of the amendment creates a time period for the application of the regulatory scheme that is equal to or shorter than the regulated period that formed the basis of the advice of 26 June 2007, and therefore falls within that analysis. No new issues arise for consideration.

The amendment does not of itself introduce any new issues under the Bill of Rights Act.

In accordance with Crown Law practice, this opinion has been peer reviewed by Fergus Sinclair, Crown Counsel.

Yours faithfully

Victoria Casey
Crown Counsel

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