Regulatory Impact Statement

Electoral Finance Reform

INTRODUCTION

The Electoral Finance Act 2007 introduced strict requirements for election campaigning by third parties (parallel campaigners). Alongside this, the Act also introduced a stricter regime for disclosure of political donations than was previously in place under the Electoral Act 1993, and increased the criminal penalties and time limits for prosecution for serious electoral finance offences.

On 1 March 2009 the Electoral Finance Act 2007 was repealed because there was not broad public and political consensus about the parallel campaign regime in the Act. At that time, the former provisions of the Electoral Act 1993 that related to campaign expenditure and advertising were reinstated, and the provisions of the Electoral Finance Act 2007 that related to donations and criminal sanctions were inserted into the Electoral Act 1993.

Consultation process

The Government's policy has been to follow the repeal of the Electoral Finance Act 2007 with a thorough process of consultation involving all parliamentary parties and the public, with the aim being to ascertain where there are areas of broad-based public and political consensus that is necessary for reform of electoral law.

The first stage of the consultation process was the release of an issues paper, explaining potential areas for reform of electoral finance law and the full spectrum of issues that arise from them. The issues paper sought submissions from the public about the design of a new electoral finance regime. The consultation period ran for five weeks between 22 May 2009 and 26 June 2009, and 79 submissions were received in response.

The second stage of the consultation process was the release of a proposal document, based on feedback received in submissions on the issues paper, which outlined the Government's proposals for potential reform of electoral finance law. The proposals included options for reform in many areas. The consultation period ran for five weeks between 28 September 2009 and 30 October 2009, and 47 submissions were received in response.

The issues paper and proposal document contained a comprehensive discussion of the options for New Zealand's electoral finance regime, including statements of the problems that arise from the status quo, and the costs, benefits, and risks that arise from the various options for reform. This RIS should therefore be read alongside these public discussion documents.

Parliamentary parties have been consulted at each stage of the process to ensure that any resulting legislation has the level of cross-party support that is desirable for enduring electoral law.

Results of consultation process

The consultation undertaken indicates that, while there is consensus on the direction for reform in some areas, views continue to diverge strongly over whether there should be regulation of parallel campaigners, which was one of the key areas of debate during the passage of the Electoral Finance Act 2007. There were also strong yet differing views on whether reform of Part 6 of the Broadcasting Act 1989, which governs campaign advertising on radio and television, is required.

Policy electoral finance reform

A policy package for reform of electoral finance law is being proposed which comprises initiatives that have a high degree of support among parliamentary parties and the public.

The Government's consultation on electoral law reform has been underpinned by a series of key principles that were proposed in the issues paper and Government proposal document. These principles were equity, freedom of expression, participation, transparency, and accountability. A further principle of clarity was incorporated in the Government's proposal document following submissions made in response to the issues paper.

Note: This regulatory impact statement (RIS) has been produced under Regulatory Impact Analysis (RIA) guidelines that were in effect at the time policy development was underway. This RIS has also been updated to reflect options that were not previously identified or considered by the Government. The update is to better inform Ministers' decision making in terms of new policy decisions.

ADEQUACY STATEMENT

The Ministry of Justice prepared this Regulatory Impact Statement (RIS) and considers it to be adequate.

STATUS QUO AND PROBLEM

The following sets out the key elements of the current electoral finance rules, alongside the respective costs and benefits, and risks associated with the status quo.

General

The status quo imposes some compliance and implementation costs on constituency candidates, political parties and parallel campaigners, largely in relation to ensuring that they are well aware of, and meet, obligations for disclosure, record keeping and reporting requirements in relation to advertising during the regulated campaign period, donations and election expenditure. The additional costs under electoral finance rules (costs additional to those that already exist as a result of political parties, constituency candidates and parallel campaigners otherwise needing to meet other financial recording, reporting and tax requirements) are not large or onerous. The Electoral Commission and the Chief Electoral Office provide guidance on the rules to help political parties, constituency candidates and parallel campaigners meet these obligations.

Election advertising on radio and television

Part 6 of the Broadcasting Act 1989 regulates political campaigning on radio and television ("broadcast advertising") and has remained unchanged since prior to the introduction of the MMP electoral system. Broadcast advertising is prohibited before writ day. Following writ day, a Parliamentary appropriation (Vote: Justice, amounting to a total of $3,211,875 for the 2008 election) provides state funding for broadcast advertising by political parties. Parties apply for this funding and are granted funds by the Electoral Commission based on criteria including past election results and their level of public support. The purpose of this appropriation is to assist political parties to communicate their policies to the electorate so that the public is able to vote in an informed manner. Political parties may not purchase additional broadcasting time beyond their state allocation. Constituency candidates can use their own funds to purchase broadcast advertising within their maximum campaign expenditure limit. Parallel campaigners are not permitted to purchase broadcast advertising.

Compliance costs relate largely to the need for political parties and constituency candidates, as well as broadcasters (who seek payment directly from the Electoral Commission), to keep records. These costs are minor in nature and are only incurred if political parties choose to take up the State's offer of funding for broadcasting.

Donations

The Electoral Act 1993 Act contains the provisions developed during the passage of the Electoral Finance Act 2007 relating to donations. It includes detailed restrictions relating to anonymous donations, and donations from overseas sources. Political parties or constituency candidates may not receive anonymous or overseas donations greater than $1,000. Larger 'protected disclosure' anonymous donations can be routed to a political party via the Electoral Commission. A party can only receive up to 10 percent of its campaign expenditure limit (see below) from protected disclosure donations and an individual donor can only give up to 15 percent of that 10 percent.

The Act also provides for public disclosure of donations via annual (in the case of political parties) and post-election (in the case of constituency candidates) returns. Political parties must identify all donors who make donations greater than $10,000, and constituency candidates must identify all donors who make donations greater than $1,000. There is an additional requirement on political parties to report donations that exceed $20,000 to the Electoral Commission on a "rolling basis" within 10 working days of receipt. There are also detailed disclosure rules for donations that are routed through intermediaries.

There are record keeping and reporting requirements for constituency candidates and political parties in respect to donations. There are also auditing requirements imposed on political parties.

The requirements are designed to promote transparency and improve the public's confidence in the legitimacy of the electoral system by making it clearer how political parties and constituency candidates are funded. There is an argument that disclosure of political donations can hinder the ability of political parties and candidates to source donations and reduces participation in the electoral process (some people may not want their donations disclosed).

Requirements to keep records of, and report on, donations over certain levels, and for political parties to have the reports audited, result in some compliance and implementation costs. These costs again relate to time and resources needed to be aware of the rules, and to establish processes and systems to record donations and report on them. However, the additional requirements and costs under electoral finance rules (ie. additional to the usual costs that would be expected in terms of financial record keeping more generally) are minor in nature. Parties that are heavily reliant on voluntary labour may face additional challenges.

Campaign expenditure limits

During the regulated campaign period (see below), constituency candidates can spend up to $20,000 on election advertising and registered political parties can spend up to $1,000,000 plus $20,000 for each contested electorate. The legislation imposes record keeping and reporting requirements on political parties and constituency candidates to ensure that limits are being observed.

The primary purpose of campaign expenditure limits is to ensure that, while constituency candidates and political parties are able to purchase election advertising as part of their overall campaign, there is an overall limit on how much can be spent in the run-up to a general election - striking a balance between the principles of freedom of expression and equity.

Campaign expenditure limits have not changed since 1995 with their real value having fallen by approximately 25 percent in real terms, affecting the ability of constituency candidates and political parties to effectively convey their policies and views to the electorate. There is currently no formula in the legislation to provide for the expenditure limits to keep pace with inflation. There is a requirement for political parties and constituency candidates to record and report on their expenditure. As with donations recording and reporting, these requirements impose some additional costs to political parties beyond the usual record and tax reporting requirements that would be expected of any body. However, these costs are currently minor in nature.

Regulated campaign period

The regulated campaign period, during which political parties' and constituency candidates' are subject to campaign expenditure limits, currently runs from the date three months before the election date, until election day. The purpose of this period is to define the official campaign period, during which the expenditure controls imposed under the Electoral Act 1993 are imposed.

Because New Zealand does not have a fixed election date, the three month regulated campaign period can operate "retrospectively". That is, where the Prime Minister announces that an election will take place in less than three months time, the regulated period effectively starts before the announcement took place. This creates compliance problems for constituency candidates, political parties, and the general public – who effectively can be required to comply with rules that were not in force at the time their actions took place.

Election advertising

There is no clear, stand-alone definition of election advertisement in the Electoral Act 1993 and different variations of a standard definition are found throughout the electoral

finance provisions of the Act. In each case, the definitions give examples of particular types of advertising that fall within election advertising, and in doing so lists traditional paper-based media, that is, advertisements "published in any newspaper, periodical, poster, handbill, billboard or card" and advertisements broadcast over radio and television. There is no reference to whether new media, such as telephone, internet or messaging services, are covered by the definition.

There is also not a list of particular types of communications that do not constitute election advertising, such as private letters or personal political views that are published in blogs on a non-commercial basis on the internet.

There are arguments that the existing definition requires modernisation as it is confusing in terms of what sort of advertising amounts to election advertising and is thus subject to campaign expenditure caps and parallel campaigning requirements. This confusion leads to compliance costs on the part of constituency candidates, political parties and parallel campaigners who must obtain legal advice, run the risk of prosecution, and sometimes be restricted on activities they would like to undertake in order to avoid legal risks. The counter argument is that the existing definition has been in place for many years and is well understood, and while it uses antiquated language, change might lead to increased confusion about obligations, at least in the short term.

All election advertisements must contain the name and address of the promoter (the person who directed its publication), and in the case of a constituency candidate or political party, who authorised its publication. The requirement to display contact details on election advertising is designed to promote a degree of transparency, and ultimately accountability, for those undertaking election campaigns for or against political parties and constituency candidates.

Parallel campaigning

Under the Electoral Act 1993, individuals and groups who are not standing for election themselves may engage in campaigning for or against political parties or constituency candidates or on a particular issue. If a parallel campaigner wishes to run a positive campaign (in support of a party or constituency candidate) they must obtain written authorisation from the party or candidate, and the amount spent must be counted against the spending limit of the candidate or party that authorised it. Parallel campaigners may spend any amount on other types of advertising that opposes the election of a constituency candidate or political party (negative advertising). Parallel campaigners are prohibited from advertising on radio or television.

Current compliance costs for parallel campaigners are limited to being aware of, and ensuring compliance with, rules that require disclosure of identity and authorisation for election advertising. There are no direct financial recording or reporting requirements although if a positive parallel campaign was run, the parallel campaigner would need to provide sufficient records to the candidate or party they are endorsing to enable that candidate or party to meet record keeping and reporting requirements.

Parliamentary Service funding

At present, the rules for Parliamentary Service funding prohibit the use of that funding for 'electioneering'. However, there has been an ongoing concern that the relationship between the definition of electioneering in this Act and the definition of election

advertising in the 1993 Act is unclear, leading to concerns about the possible use of Parliamentary Service funds for purchase of election advertising.

OBJECTIVES

The following principles have been used by the Ministry of Justice as the basis of policy work for the review of electoral finance rules. These principles have been broadly supported by those consulted on the electoral reform proposals:

- Clarity: ensuring that rules are clear and easy to follow
- Equity: constituency candidates and political parties should campaign on a level playing field
- Freedom of expression: constituency candidates, political parties, interest groups and voters will have the opportunity to explain their viewpoints fully without undue restrictions
- Participation: rules should not create unreasonable barriers to participation in the electoral process
- Transparency: open processes ensure that the interests and roles of those involved in the electoral process are clear
- Accountability: participants in the electoral process must be responsible for their actions
- Legitimacy: clear, easily understood and effective law ensures that the law has credibility.

In assessing the costs and benefits of the reform proposal presented in this RIS, discussion focuses in particular on how the proposal assures or promotes the meeting of, or balancing of, the principles.

REFORM PROPOSAL

Following public consultation the Minister of Justice is proposing to advance a package of reform comprising initiatives that have a high degree of support among parliamentary parties and the public. Implementation of this package will result in amendments to the Electoral Act 1993.

General statement of costs, benefits and risks

A general risk associated with reform of electoral law is a potential lack of initial clarity in, or understanding of, the rules leading to compliance costs and/or confusion among electoral participants, parallel campaigners and the public. This would be managed in all cases through the insertion of clear definitions in the legislation, rationalisation of rules relating to election advertising between the electoral law and the Parliamentary Service, passage of the legislative changes before the end of 2010, the preparation of guidance materials by the Electoral Commission, and the Electoral Commission being

charged with providing guidance opinions on whether specific advertising constitutes election advertising for the purposes of the Act.

There are no studies of compliance costs in the electoral field and thus commentary in this RIS has been descriptive only. Compliance costs in this context are the value of the resources expended by political parties, constituency candidates and parallel campaigners on meeting the obligations imposed on them by the electoral law:

- the costs of internal time spent on meeting obligations
- the opportunity costs of that internal time
- any external advisor costs incurred in relation to those obligations.

Arguably there is a further cost, involving stress or anxiety in managing obligations imposed under the legislation. This cannot be quantified but should be factored into efforts to minimise compliance costs more generally.

The population generally subject to compliance costs in the electoral finance area are:

- political parties, registered and unregistered (there were 21 registered and 11 unregistered political parties at the 2008 general election)
- prospective political parties who do not proceed to formation
- parallel campaigners (25 were registered for the 2008 general election)
- persons who are considering whether to register but who do not do so
- constituency candidates at general elections and by-elections (approximately 700 electorate candidates).

Political parties are not homogenous in the sense that their capacity to comply with electoral obligations varies. The bigger parties have professional staff and access to advice; the smaller parties have non-professional staff the majority of which are unpaid. It is likely that compliance costs fall disproportionately on smaller parties. Similarly, parallel campaigners or prospective parallel campaigners are also not homogenous, ranging from established organisations such as trade unions and industry associations to individuals. Again, the capacity to comply varies and the impact of compliance costs is likely to be disproportionate, but this is not able to be quantified.

Compliance costs overall are therefore likely to vary according to:

- the person or agency incurring the costs
- the complexity of the law
- the amount of change from the status quo
- the extent and quality of the assistance the new Electoral Commission is able to give.

Proposals for reform

The proposals being advanced by the Minister of Justice will see the following changes to electoral law:

- the definition of election advertising in the 1993 Act will be modernised, so that it is media neutral and has clear exceptions

- the Electoral Commission will be required to developing general guidance materials on the Electoral Act, and to provide advisory opinions to political parties, constituency candidates, and the general public on whether particular publications that are submitted to it amount to election advertising under the law. It will be a criminal defence if a person relies in good faith on an advisory opinion supplied by the Electoral Commission when publishing election advertising

- there will be stricter disclosure requirements for parallel campaigners, increasing transparency. Parallel campaigners who spend, or intend to spend, over $20,000 in the regulated period will be required to register with the Electoral Commission, who would publish a register of campaigners

- the relationship between the Electoral Act 1993 and Parliamentary Service funding would be reformed by aligning the definition of *electioneering* in Parliamentary Service legislation and the definition of *election advertising* in the Electoral Act 1993 during the regulated campaign period

- the regulated campaign period will be amended to avoid retrospective application of the regulated period where a Government announces an election less than three months from polling day. Options were explored for fixing the start of the regulated period, which was a proposal that attracted support across many submissions. These options included a fixed calendar date for the start of the regulated period, or a date that was fixed in relation to the previous general election. However, these were technically unworkable and were therefore not supported the Chief Electoral Officer or Chief Executive of the Electoral Commission. The regulated campaign period for early elections would continue to be three months before polling day, which is the status quo

- indexing the campaign expenditure limits to reflect inflation for the 2011 general election and successive elections

- the donations regime would be made more transparent by requiring political parties to disclose their total income from donations in bands, and developing an 'associated persons' test to ensure that donors can not pass funds through an associated person to avoid disclosure.

There will not, however, be reform of the broadcast allocation, any changes to campaign expenditure limits for political parties or constituency candidates, or expenditure limits placed on parallel campaigners, in the absence of any clear consensus on these proposals.

Costs, benefits, risks

Alignment of definitions as proposed and increased clarity in the definition of *election advertising* in particular, will provide for greater certainty and clarity as to the obligations

of constituency candidates, political parties and parallel campaigners in relation to election advertising. This would be likely to reduce compliance costs compared with the status quo.

The provision of general guidance by the Electoral Commission on the Electoral Act, alongside advisory opinions to political parties, constituency candidates, and the general public on whether particular publications that are submitted to it amount to election advertising under the law, will result in considerably greater understanding of, and compliance with, the law. It will also result in less costs being incurred by political parties, constituency candidates and the general public on legal advice.

Amending the regulated campaign period to avoid retrospective application will avoid the likelihood of constituency candidates and political parties committing unlawful expenditure at the beginning of the regulated period. This is because, until the election date is known, members and parliamentary political parties will continue to be able to use their parliamentary-funded entitlements for publicity that could retrospectively be classified as election advertising. As a result the amendment will provide certainty and clarity for all affected MPs, parties and the Parliamentary Service.

Indexing campaign expenditure limits to inflation would be supported by some as a means of ensuring that the current spending power of those limits is not eroded for future elections. This will ensure that political parties can continue to appeal to and provide information to voters at current levels. No additional compliance or implementation costs are expected.
The proposals for reform of donations would promote greater transparency of donations made to political parties. It is arguable that this will promote a greater perception of legitimacy of the electoral system as a result of the increased transparency and accountability. The counter argument is, however, that greater disclosure of donations will become more difficult for political parties to collect donations, which is an important source of their annual income.

As political parties and constituency candidates must already record all donations received so that they may disclose donations of a certain size (which include aggregations of smaller donations from one donor), the move to fuller disclosure of total donation income, while bringing some additional reporting requirements, is unlikely to add significant implementation costs for larger political parties. However, for smaller parties this obligation would be more onerous. It is not expected that the associated persons test will impose any significant compliance costs on political parties as it will simply require parties to be aware of what they can and cannot do. The Electoral Commission would develop guidelines and assist political parties and constituency candidates in regard to all new requirements around donations receipt and reporting.

The proposal for a register of parallel campaigners that spend over $20,000 on election advertising would see greater transparency and accountability promoted in relation to the group of highest spenders. These campaigners would have to register and have their names and details made publicly available in an easy to access manner (for example, on the Electoral Commission's website).

Advertising costings secured by the Ministry of Justice (see below) suggest that such a high threshold is unlikely to discourage participation in the electoral process as it would allow a reasonable level amount of advertising to take place before a parallel

campaigner would need to register. However, it will ensure that significant expenditure on election advertising will require registration.

There would be no maximum expenditure limit for parallel campaigners. This would mean that the status quo would continue in that those wishing to run negative campaigns against the election of a constituency candidate(s) or a party could spend as much as they liked. This lack of a limit would promote freedom of expression on the part of parallel campaigners but the proposal could also be argued to be inequitable. Firstly, constituency candidates and political parties would be subject to campaign expenditure limits whereas parallel campaigners would not, and secondly, political parties could advertise on television and radio with considerable reach, whereas parallel campaigners would be denied these media. Compliance and implementation costs for parallel campaigners are expected to be minimal. There would be no requirement to provide reports on expenditure on advertising or political donations, as there are for constituency candidates or political parties.

With respect to the proposed $20,000 threshold, the Ministry of Justice secured estimates of the costs of advertising development and placement under various scenarios (eg. using different media, in different locations around New Zealand, targeting different demographics).

The cost of advertising is higher in some electorates than others. However, for $20,000 a campaigner in any electorate could purchase the following minimum advertising:

- half to full page advertisements in at least two local newspapers and
- a quarter page advertisement in a major metropolitan newspaper and
- distribution on one occasion of a pamphlet to all households in that electorate and
- either placement of advertisements in 20 bus shelters for two weeks or the development and siting of a mobile billboard.

Costings provided suggest that a campaigner could purchase the following in any electorate, for less than $40,000:

- half to full page advertisements in at least two local newspapers; and
- a quarter page advertisement in a major metropolitan newspaper;
- the development and distribution, on two occasions, of a pamphlet to all households in that electorate;
- and either the placement of advertisements in 20 bus shelters for two weeks or the development and siting of a mobile billboard.

In many areas of New Zealand, where advertising costs are not as great, this could also be supplemented with further print advertising – all under the $40,000 limit. If a parallel campaigner wished to target a national audience, the campaigner could develop and distribute a pamphlet to <<1.4>> residential households for just under the $40,000 threshold limit.

A budget of $60,000 would allow increased local print, radio advertising, bus shelter and/or mobile billboards usage and, where appropriate for the electorate, online advertising.

The Chief Electoral Office has advised that these proposals would impose additional costs on the Electoral Commission, estimated at $92,500 in 2010/11 and $400,000 in 2011/12. For future elections an additional sum of $320,000 per election would be required. Costs to the Ministry of Justice in working with the Electoral Commission to implement the reforms have been built into the Ministry's work programme and no further funding would be required.

Other options

Other possible reform packages were also considered, based on suggestions made in submissions during the consultation process.

(i) Retention of status quo

One option that was considered was retention of the status quo, in the absence of any clear consensus in the core area of regulation of parallel campaigners, where views continue to diverge strongly.

The risks, costs, and benefits associated with retention of the status quo are outlined under the description of the status quo in this RIS.

This option was rejected because the Government's consultation exercise indicated that there are areas where consensus on electoral finance reform is apparent, and implementing changes in these areas will result in a coherent reform package that will strengthen the existing law.

(ii) Reform package that included "proportionate" regulation of parallel campaigners

Another option that was considered was to implement a reform package that includes "proportionate" or light-touch regulation of parallel campaigners, where the key elements would be a requirement for parallel campaigners who spend, or intend to spend, over $40,000 to register with the Electoral Commission. Alongside this, there would be an overall limit on election expenditure by parallel campaigners of $500,000. Parallel campaigners would potentially be permitted to advertise on radio and television under this option.

Costs, benefits, risks of this option

This option was rejected because submissions received from both the public and parliamentary parties were polarised on whether campaign expenditure caps should be imposed as part of an overall system of regulation of parallel campaigners. In many respects, the arguments made in submissions reflect the views expressed at the time of the passage of the Electoral Finance Act 2007, with little consensus on the way forward.

This option is therefore likely to be contentious and would not have the broad-based political support that is necessary for reform of electoral law.

Setting a maximum expenditure limit for parallel campaigners would be opposed by some on the grounds of restriction of freedom of expression. Others would argue that

such a limit is justifiable on the grounds of promoting equity of participation in the electoral process (reducing the ability of well-funded campaigns by non-contenders in an election to dominate the debate), particularly where there are limits on candidates' and parties' expenditures.

In developing this RIS, the Ministry of Justice sought estimates of advertising costs to inform those options that propose inclusion a cap on expenditure by parallel campaigners. Two scenarios were costed: caps of either $300,000 or $500,000. For $300,000 a parallel campaigner could develop and run a limited national campaign utilising television, print and some online content. This could include, for example, a reasonable advertising presence on television (300 thirty-second advertisements over a three week period). It would also allow for one placement of one-quarter page advertisements in all main metropolitan and regional newspapers and advertisements in community newspapers. Advertising for one week on mainstream key internet sites such as Trade Me, Yahoo and Stuff would also be able to be undertaken under the $300,000 limit. For $500,000, however, a parallel campaigner could develop and run, for example, a national campaign with 350 thirty-second television commercials spread over a period of four weeks. One placement of quarter page advertisements in all main metro and regional papers, a four week national radio campaign and a pamphlet drop to 1.4 million residential households could also be accommodated. Advertising could also be secured for a week on key mainstream and youth websites. With less television spend, a mix of other media could also be utilised.

There would be increased compliance costs (learning requirements and establishing systems for compliance) and implementation costs (record keeping and reporting requirements) for parallel campaigners. While there would already be costs associated with financial record keeping and reporting and tax obligations on the part of many parallel campaigners, the additional costs are expected to be greater for parallel campaigners, and especially for individuals who wish to run parallel campaigns, than for political parties who already have established systems in this regard. These costs will be minimised by the Electoral Commission producing clear guidance for parallel campaigners. Only those parallel campaigners who spend over the $40,000 threshold would have to have their reports audited. This is not expected to be overly burdensome but will impose costs on parallel campaigners, justified on grounds of promoting confidence in the legitimacy of the electoral system.

Those seeking reform in the broadcasting area for political parties are likely to criticise a lack of perceived progress in this area.

The Chief Electoral Office has advised that this option would impose additional costs on the Electoral Commission, estimated at $100,000 in 2010/11 and $432,500 in 2011/12. For future elections an additional sum of $327,500 per election would be required.

(iii) Package that included reform of the broadcast allocation

The next option would be to reform the broadcast allocation. The key elements of the reform package would be:

- Part 6 of the Broadcasting Act would be repealed and new provisions governing election funding for political parties inserted in the Electoral Act 1993. These provisions would implement the "moderate reform" option proposed by the Government as part of its electoral finance proposals (allowing expenditure in any

media; no limit on the amount of TV and radio advertising provided that expenditure is within the overall campaign expenditure limit on political parties; all expenditure including state funding to be accounted for and consequently an increase in campaign expenditure limits so that state and party funding is included in the limit). Prior to writ day, there would continue to be a ban on any radio or television election advertising by constituency candidates, political parties or parallel campaigners

- As part of the broadcasting reform package, parallel campaigners would also be permitted to advertise on radio and television, as long as they did not exceed an overall expenditure cap in these broadcasting media. This would be necessary because re-enactment of the existing prohibition on broadcast advertising by parallel campaigners would raise issues of freedom of expression under the New Zealand Bill of Rights Act 1990. This regime would require implementation of a regulatory system, administered by the Electoral Commission, to monitor this expenditure. The regime would share many of the elements of the "proportionate" or light-touch regime for parallel campaigners, but its ambit would be restricted to radio and television advertising only.

Costs, benefits, risks of this option

This option was rejected because, while a large number of the public submissions supported reform of Part 6 of the Broadcasting Act 198, there was a lack of consensus among the parliamentary parties on whether there should be reform in this area, with the Labour and Green parties both strongly opposing change to the status quo.

This option is therefore likely to be contentious and would not have the broad-based political support that is necessary for reform of electoral law.

The broadcasting proposal would provide greater flexibility for political parties and constituency candidates to campaign as they see fit, promoting freedom of expression and enhancing participation. They would, however, be opposed by some on the grounds that it would favour those with greater funding, reducing equity between political parties in presenting their policies to the electorate. There would be some increased compliance costs initially as political parties expend effort to learn the new requirements. The need to report on total expenditure (now including the State allocation) should not however be onerous as political parties would already need to account for such expenditure through their usual financial recording, reporting and tax obligations. Repeal of provisions of Part 6 of the Broadcasting Act 1989 and the inclusion of relevant provisions in the amended Electoral Act may lead to some increased compliance costs as broadcasters would need to consult two statutes to understand their obligations.

There are likely to be benefits to the advertising and public relations sectors from this option, with an expected but unquantifiable increase in advertising (broadcast and wider media) expected as a result of the increase in campaign expenditure limits and greater freedom for parallel campaigners in their selection of media. The cap on spending by parallel campaigners may limit how much increased expenditure will flow through to these sectors.

Advertising and public relations companies are likely to benefit from this option, with a greater expenditure on television and radio advertising likely from political parties with traditionally higher donation and expenditure patterns. However, this benefit cannot be

quantified. The ability for parallel campaigners to advertise on television and radio would also facilitate such expenditure. However, this benefit cannot be quantified.

The Chief Electoral Office has advised that this option would impose additional costs on the Electoral Commission, estimated at $115,000 in 2010/11 and $465,000 in 2011/12. For future elections an additional sum of $335,000 per election would be required.

IMPLEMENTATION AND REVIEW

To implement the Government's proposal, a draft Bill amending the Electoral Act 1993 would be introduced to Parliament in early 2010, with a view to the Bill being passed by late 2010. The legislation should come into force by 31 December 2010 as any delays will affect constituency candidates', political parties' and parallel campaigners' ability to learn and apply the new requirements prior to the election period in late 2011.

The Electoral Commission, working closely with the Ministry of Justice, will be charged with communicating the new requirements to interested parties, including political parties. This will include the development of detailed guidance materials and publicity of them. The Commission would also establish all necessary systems and processes for recording and monitoring returns expected of political parties and constituency candidates.

The Electoral Commission would also be responsible for inquiring into any potential contraventions of the legislation and passing alleged breaches to the New Zealand Police for any consideration of enforcement action.

The Ministry of Justice will work with the Electoral Commission to monitor the implementation of the new legislation.

CONSULTATION

Interested parties and the wider public have been given the opportunity to comment on the reform of the legislation regulating electoral financing in two phases to date.

In May 2009 an *issues* paper was released by the Ministry of Justice. This paper discussed current law and outlined a range of approaches to reform. In the same month the Victoria University Institute of Policy Studies hosted an electoral finance review roundtable which brought together 20 interested agencies from academia, watchdog organisations, the legal profession, the public service and the media to discuss the *issues* paper. Public fora were also held in early June in Auckland, Wellington and Christchurch to discuss the *issues* paper.

In September 2009 a *proposal* document was released that set out specific proposals (and options) in relation to the key areas of electoral finance reform discussed above.

Submissions were sought on both papers. Seventy-nine submissions were received on the *issues* paper and 47 submissions were received on the *proposal* document. Submitters included political parties, electoral commentators, academics, students, industry and professional associations, businesses, unions and members of the public. There has also been direct consultation by the Minister of Justice with political parties at key stages during the process. All views and submission have been analysed and taken into account in the development of the proposals being presented to Cabinet.

There was a significant division of views between submitters (including between parliamentary parties and between the public) on many elements of the proposals. This division can be characterised as a divergence of views between those favouring light handed or no regulation and those favouring stricter regulation. Those favouring little or no further regulation emphasise freedom of expression as a key principle to take into account when setting rules. Those favouring stricter regulation cite the promotion of equity of voice in election campaigning, and transparency and accountability, as needing greater emphasis. As a result of this clear division of views, it was decided that this regulatory impact statement should present the range of options for consideration.

The Ministry of Culture and Heritage, the Treasury, the Crown Law Office, the Electoral Commission, the Chief Electoral Office, the Human Rights Commission, the Parliamentary Counsel Office and the New Zealand Police were consulted on this RIS and their views taken into account during the document's finalisation. The Department of Internal Affairs, the Department of Prime Minister and Cabinet and the Parliamentary Service were sent the RIS for their information.