SUBMISSION OF DAVID FARRAR TO THE JUSTICE AND ELECTORAL SELECT COMMITTEE ON THE ELECTORAL FINANCE BILL

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About the Submitter

1. This submission is made by David Farrar in a personal capacity. I would like to appear before the Committee to speak to my submission.

2. I have over 15 years experience with the Electoral Act. As a former parliamentary staffer I advised National Prime Ministers and Opposition Leaders on the Act. I have been an electorate campaign manager and a national campaign staffer, requiring intimate knowledge of the Act. I have also done original research on the Police investigations relating to breaches of the Act in the 2005 election – research which led to full page stories in major newspapers.

Executive Summary

3. The Electoral Finance Bill is the worst legislation I have ever come across. It is so badly drafted that it is quite simply unworkable. Even if the unintentional mistakes are fixed, it is still a repugnant law which promotes MPs and Candidates to a political elite, and requires all other New Zealanders to jump through hoops to express a view on any issues an MP or candidate has already associated themselves with.

4. The Electoral Act does need changing in many areas. The blatant breaches of the Act in the 2005 election showed us this. Sadly the Electoral Finance Bill ignores almost all the areas where change is most badly needed, and goes totally overboard in areas such as third party campaigning. Even worse it seeks to legalise the illegal behaviour of certain parties in 2005, and seeks to criminalize the legal behaviour of other parties.

5. **I ask the Justice and Select Committee to vote to recommend to the House that this bill not proceed**, so changes to the Electoral Act can be done in a way which involves the public from the beginning, rather than just allowing them one chance to be heard.

6. **The Bill as it currently stands fails in almost every single purpose listed in Clause 3. It will undermine public confidence in the electoral process, it discourages the public from participation, it fails to bring in greater transparency for parties and candidates and it is so badly drafted the controls will be neither clear nor effective.**

7. It needs to be recognized that MPs have a much vested outcome in the provisions of the Electoral Act, as this lays down the rules for how they get elected. This is arguably our most important constitutional Act, and major changes to it should have maximum public input.

8. A sensible policy process would be as follows

    a. MOJ or some independent body releases an issues paper (or green paper) for discussion and feedback

    b. Submissions are sought on the paper from the public and parties

    c. Submissions are published and cross-submissions called for

    d. A series of public forums also held to discuss issues

    e. Then a white paper is released with specific proposals for change.

    f. Submissions and cross-submissions sought on the white paper

    g. A final policy paper setting out Government policy is published, and then legislation reflecting this known position is introduced

9. It is entirely unacceptable for MPs to consider such wide ranging restrictions on third parties, when there has been no consultation or engagement with third parties on the proposed law. Transparency International pointed out in April that MPs are conflicted in deciding such issues, and recommended use of an independent panel. I would support this, whether a Commission or a Citizen's Jury.

10. The other reason that I submit the bill should be rejected in its entirety is that the changes that would be needed to make it workable, let alone desirable, law would be so great it would almost be a new Bill. The current Bill is simply too flawed to be used as a template. It treats third parties (ie the public) as undesirable players in election year that will be heard only under sufferance.

11. If, however the Select Committee is determined to press ahead with the Bill, my **fallback recommendation is that you reopen submissions on the amended bill to allow members of the public an opportunity to have a say on the acceptability of the bill, as amended**.

12. In case the Select Committee does decide to try and pass the Bill in amended form, I provide a lengthy list of criticism and proposed improvements for their consideration. I do reiterate that my preference is to have a proper public debate and consultation on these issues.

Major Criticisms

13. The EFB will restrict the ability of New Zealanders to speak up on political issues for 30% of their lives by extending the "regulated speech" period to all of election year

14. The EFB defines as election activity almost any New Zealander expressing themselves in any way on almost any issue during the regulated period.

15. The EFB promotes political parties and their MPs and Candidates to first class citizens as once they take a position on a proposition, all the second class citizens are then restricted as to their advocacy on that proposition.

16. The definition of publication is so wide that much speech over the Internet would be subject to regulation, such as newspaper websites, journalist blogs and even e-mails between friends.

17. The proposed system of statutory declarations is unworkable, and would requite tens of thousands of New Zealanders to have to be swearing such declarations under oath just so they can have a say on a political issue.

18. The rules for registered third parties discriminate against groups with a member under 18, and the restriction on when you can register robs individuals and groups from the ability to refute attacks on them during a campaign.

19. The disclosure regime on third parties does not apply to political parties, and is set at such a low level that real issues of privacy will affect supporters of third parties.

20. The low limit on third party advertising, especially in light of the year long period, will muzzle groups from being able to have their message effectively communicated.

21. The Police have not been removed from their role as prosecuting authority for breaches, despite their demonstrated incompetence in this area.

22. The penalties for breaches of the Act remain far far too low, and no mechanism is provided for political parties to be held accountable for breaches.

23. The failure to crack down on anonymous and trust donations on the grounds that such money is needed in the absence of further state funding is grossly hypocritical and also wrong.

Money and Elections

24. I do not argue a libertarian position that there should be no restrictions at all on expenditure by political parties and third parties. I think there is a case for some reasonable restrictions, but they should be based on logical empirical evidence.

25. Research I have done into the correlation between spending and votes in the last four elections, finds it to be a very weak correlation.

1996 Election	Expenditure	Votes	$/Vote
ACT	$ 1,746,909.15	126,442	$ 13.82
Alliance	$ 810,008.40	209,347	$ 3.87
Christian Coalition	$ 406,361.46	89,716	$ 4.53
NZ First	$ 1,108,310.47	276,603	$ 4.01
Labour	$ 1,279,880.11	584,159	$ 2.19
Libertarianz	$ 15,071.99	671	$ 22.46
National	$ 1,966,444.00	701,315	$ 2.80
United	$ 142,527.03	18,245	$ 7.81
Total	$ 7,967,454.73	2,072,359	$ 3.84

26. In 1996 NZ First and Labour spent almost the same amount, yet Labour got twice the votes. ACT almost spent the same as National, yet got one sixth the number of votes. The Alliance spent half of what ACT did and got almost twice the votes.

1999 Election	Expenditure	Votes	$/Vote
ACT	$ 787,807.14	145,493	$ 5.41
Alliance	$ 939,694.29	159,859	$ 5.88
Christian Heritage	$ 157,449.18	49,154	$ 3.20
Future NZ	$ 96,884.69	23,033	$ 4.21
Green	$ 279,168.76	106,560	$ 2.62
Labour	$ 1,644,183.00	800,199	$ 2.05
Libertarianz	$ 38,297.67	5,949	$ 6.44
National	$ 2,745,301.84	629,932	$ 4.36
NZ First	$ 216,648.56	87,926	$ 2.46
United	$ 95,466.44	11,065	$ 8.63
Total	$ 7,270,896.14	2,065,494	$ 3.52

27. In 1999 National spent over 50% more than Labour in 1999, yet lost the election by around 10%.

2002 Election	Expenditure	Votes	$/Vote
ACT	$ 1,792,461.72	145,078	$ 12.36
Alliance	$ 215,234.18	25,888	$ 8.31
Christian Heritage	$ 96,474.91	27,492	$ 3.51
Green	$ 765,035.09	142,250	$ 5.38
Labour	$ 2,089,186.52	838,219	$ 2.49
National	$ 1,668,332.44	425,310	$ 3.92
NZ First	$ 453,888.56	210,912	$ 2.15
Progressive	$ 271,307.82	34,542	$ 7.85
United	$ 168,840.61	135,918	$ 1.24
Total	$ 7,684,614.51	2,031,617	$ 3.78

28. In 2002 Labour spent more than National by around 25% yet got around twice as many votes. ACT spent more money than National, yet got one third the number of votes. The Greens got the same votes as ACT for under half the spent. NZ First got 50% more votes than both Greens and ACT despite spending 60% and 25% respectively of what they did.

2005 Election	Expenditure	Votes	$/Vote
ACT	$ 1,172,017.33	34,469	$ 34.00
Alliance	$ 44,257.20	1,641	$ 26.97
Destiny	$ 101,486.30	14,210	$ 7.14
Green	$ 792,842.57	120,521	$ 6.58
Progressive	$ 296,045.88	26,441	$ 11.20
Labour	$ 3,894,384.11	935,319	$ 4.16
Libertarianz	$ 60,532.84	946	$ 63.99
Maori	$ 229,881.75	48,263	$ 4.76
National	$ 3,027,980.57	889,813	$ 3.40
NZ First	$ 623,834.57	130,115	$ 4.79
Unietd Future	$ 311,203.20	60,860	$ 5.11
Christian Heritage	$ 40,147.69	2,821	$ 14.23
Total	$ 10,887,130.21	2,275,629	$ 4.78

29. Labour for two elections in a row has had a higher total spend than National. This time in 2005 they spent around 30% or $950,000 more than National yet got only 2% more. ACT spent twice as much as NZ First for one quarter the votes. The Greens spent more than NZ First yet got less votes. Of the parties that made Parliament the spend per vote ranged from $3.40 to $34.00.

30. This research clearly shows that money does not “buy” elections. Obviously it has an effect, but the effect is more around the margins. Spending money allows a party to communicate its message, but if that message is not palatable then the voters are not overly influenced by it.

31. Transparency is far more important, than limits, even though there is a role for both.

State Funding

32. A leaked earlier version of the Government’s proposals for changes to the Electoral Act, proposed full state funding of political parties. These provisions were dropped after public opposition. A Colmar Brunton poll in April 2007 found only 26% of respondents in favour.

33. The dropping of these provisions has been used as justification by the Prime Minister for the failure of the Bill to crack down on trust and anonymous donations, on the basis that without state funding, the money from these sources is too badly needed.

34. Putting aside the moral issues of labeling such donations as dirty money, and then legislating to keep them as you need the dirty money, I do wish to draw to the Committee’s attention the wide gap between the current level of anonymous and trust donations, and the regime looked at for state funding.

	Total 1997 - 2008	Anon/Trust Dons	Net Gain
ACT	$ 2,708,892	$ 880,000	$ 1,828,892
Alliance	$ 2,380,410	$ 10,000	$ 2,370,410
Christian Heritage	$ 1,015,098	$ 2,387	$ 1,012,711
Destiny	$ 85,260	$ -	$ 85,260
Green	$ 2,215,986	$ 40,000	$ 2,175,986
Labour	**$ 12,555,002**	**$ 1,754,324**	**$ 10,800,678**
Legalise Cannabis	$ 454,920	$ -	$ 454,920
Libertarianz	$ 45,396	$ -	$ 45,396
Maori	$ 289,578	$ 10,000	$ 279,578
National	$ 12,115,123	$ 3,223,657	$ 8,891,466
NZ First	$ 4,233,336	$ 6,300	$ 4,227,036
Progressive	$ 365,898	$ 55,000	$ 310,898
United Future	$ 1,494,726	$ 37,500	$ 1,457,226
Others	$ 555,498	$ 19,900	$ 535,598
Total	**$ 40,515,124**	**$ 6,039,068**	**$ 34,476,056**

35. The table above shows how much money each political party would have gained from state funding since 1996, and how much actual money they have received from anonymous and trust donations.

36. This shows that for example Labour has only had $1.7 million of anonymous donations over 12 years. Hardly enough to claim one can't survive without. Incidentally the state funding proposal would have delivered $12.6 million over the same period.

37. In setting limits for spending, the limit should be high enough so that a party can be effective in its communications. This should be based on empirical evidence. A limit should not just be picked out of thin air. It is no small thing to ban a person, party or group from spending their own money as they see fit. Such restrictions must be clearly justified, and be set at a level which is not artificially low.

Definition of Publication

38. Clause 4(1) defines a publication as including (g) disseminate by means of the Internet or any other electronic medium; or (h) store electronically in a way that is accessible to the public.

39. This addition of electronic messaging to the definition of a publication poses major problems. Without a massive list of exemptions, one can end up including bulletin boards, websites, e-mails, blogs and the like. It will be incredibly complicated to work out what portion of the costs of such facilities would be tied to any political advertising.

40. I suggest there is a fundamental difference between traditional advertising and Internet communications, and that the Act will work better if it limits its coverage of the latter.

41. Generally the money one spends on traditional advertising means your message gets sent by more and more people regardless of whether or not they wish to see it. People buy a newspaper to read the news. A political advertisement in a paper takes advantage of that. The same goes for television. Again not many people clear their letterboxes wanting to see a newsletter from a candidate. Traditional advertising is all about placing your message in front of people who are not actively seeking it out.

42. Internet communications work very differently. They are on a pull, not a push, model. One can spend $100,000 on a website but that doesn't mean a single extra person will see it unless they choose voluntarily to do so.

43. The same applies for e-mail. Only those who have asked to receive e-mails from a party or organization will receive such e-mails. So why should this be regulated by the state when it is a voluntary communication, asked for by the voter?

44. The equivalent to traditional advertising is not a website or e-mail, but online advertising of your own website. If someone spends $5,000 on advertising and promoting their website, then that should count as election advertising. But merely running a website or an e-mail list should not count, as only those who voluntarily choose to do so, will see any messages on that site.

45. With third parties especially, it will be near impossible to separate out the costs of their overall Internet presence with the costs of those parts of their presence which advocate on political issues.

Regulated Period

46. Extending the regulated period from 90 days to all of election year will favour the incumbent Government massively. Opposition parties and third parties will be severely limited in their ability to respond to Government initiatives and campaigns.

47. The low limits for third parties make the length of the regulated period quite draconian, but even with higher limits there is no sound public policy reason for a regulated period of up to eleven months.

48. There is a very sound reason for the existing 90 day limit. Considerable research shows many people decide during that period. The active intense campaign occurs during that period, and it is also a short enough period of time that one can halt Government and Parliamentary advertising.

49. This last point is critical. The regulated period should see all but the most necessary and basic taxpayer funded campaigns come to an end, at the same time as the actual parties are restricted as to their

expenditure. If you do one without the other you greatly advantage the Government.

50. The rationale put forward for extending the period from 90 days is that last election some parties started spending money before that 90 day period. Well this is hardly anything new and has been the case for the last 20 years that parties sometimes expend money to campaign on issues in between election campaigns.

51. The reality is today the campaign is permanent. It starts the day after the last election. If one accepts one should regulate political speech back to 1 January of election year, then one day someone will argue it should apply for some or all of the year before. And then maybe we should never have a period where political speech is not regulated, and it will apply for all the time.

52. If the period of regulated speech is kept at the traditional 90 days, then one has a far stronger case to have a lower limit for third parties. If it remains at all year, their limits must increase by close to a magnitude.

53. Also if one does increase the limit from 90 days to 11 months (a 250% increase in time), then the limit for political parties (which is already far too low) should be increased by at least 50%.

54. The one redeeming characteristic of the proposal to have the regulated period start at 1 January of election year is that it is a known fixed date. The current situation where one may be halfway through the 90 day period before you know the election date is intolerable. It makes it almost impossible to run a sensible planned campaign. The date of the election should be required to be set before whatever date the regulated period comes into force.

Definition of Election Advertisement

55. Paragraph (a)(iii) of Clause 5(1) is cast far too wide with its definition of "taking a position on a proposition with which 1 or more parties or 1 or more candidates is associated"

56. This will cover almost all political discourse. In fact it will also cover commercial advertising and allow candidates to close down commercial advertising by becoming associated with a proposition.

57. The Chief Electoral Officer would need to update the Elections website several times a day with an ever expanding list of propositions that are now "off limits" for non regulated discourse. It would be a laughable proposition if it were not actually in a Bill before Parliament.

58. If the regulated period is reduced back to 90 days, then a modified definition such as the UK law [material that can reasonably be regarded as intended to enhance the standing of or promote electoral success for one or more registered parties] has, could be suitable. If the

regulated period stays at a full year, then such a clause will be too restrictive on advocacy. An organization which promotes climate change policies for example should not have to close down most of its advocacy every third year.

59. Clause 5(2) deals with the exemptions to election advertising. The fact that these exemptions are needed show how ridiculously wide the bill is drafted.

60. The exemption for media does not extend to their online activities. It also does not cover purely online media such as Scoop.

61. The exemption for an organization communicating with its members should be expanded to include a company communicating with its shareholders, and an employer communicating with its staff. It is unfair to only allow organizations which are incorporated societies to be exempt.

62. The exemption for blogs is welcome. However the limitation being they must be non commercial may nullify this. Many blogs accept advertising yet are not run primarily for profit. Also blogs by political journalists as part of their job are not exempted. I propose the exemption should be for generally all Internet communications unless it is specifically paid advertising on sites which are not your own.

Financial Agents

63. The establishment of financial agents is generally welcome, and one of the few beneficial areas of the Bill.

Third Party Eligibility

64. Clause 14(1), paragraph (c) states that an unincorporated society can only be a third party if all of their members are registered electors.

65. This would stop churches and many other groups from registering.

66. The restriction should either be dropped, or replaced with a percentage requirement – ie that at least 75% of members must be registered electors.

67. Clause 17(a) stops a third party being registered in the period immediately prior to an election. This means a third party has to register before it even knows who the candidates are. It also means that if a third party is attacked during the campaign by a party or candidate, they will be unable to spend any significant money refuting the attack, as it will be too late for them to register. This restriction should be abolished.

Specified Amount

68. The specified amounts in Clause 22(2) are the levels at which a donation must be publicly notified. They are $500 for third parties, $1,000 for candidates and $10,000 for political parties.

69. The failure of the bill to ban anonymous and trust donations for parties and candidates means that their specified amounts are effectively unlimited. One could give $500,000 to a political party and have it recorded as anonymous or go through a trust.

70. Hence the $500 for third parties is far too small. It is hypocritical to require such disclosure for the incidental players but not require it for the main players.

71. There is a wide variety of views on what the specified amount should be. A sensible approach is to look at whether one is just sating curiosity or wanting disclosure to apply only when a donation is large enough to suggest undue influence may be involved.

72. New Zealanders value their privacy greatly. Unlike the United States we do not register our political affiliations. Only a very small majority publicly declare which party they support or belong to. The right to privately support causes you believe in should not be unduly constrained.

73. The current level of $10,000 for political parties seems adequate to me. I don't think anyone can make a serious case that one can "buy influence" for anything close to $10,000. $10,000 also represents well under 1% of a major party's total income for the year.

74. Third parties should have the same limits as political parties. If $10,000 is not enough to buy influence with a political party, it is not enough for a third party.

75. Generally speaking the limits should be set so they can be adjusted by regulation to keep pace with inflation.

76. The level of NZ$10,000 is not inconsistent with some other countries. In Denmark the level is DKR20,000, in Ireland Euro5,000, in Norway NOK20,000, and in Singapore SGD 10,000.

77. Some groups have argued for a cap on contributions. I argue this is unnecessary if you have full disclosure. Of 111 countries which I have data on, only 30 or 27% have a cap on donations from a donor. It is not common practice to have such a cap.

Continuous Disclosure

78. The move towards a form of continuous disclosure in Clause 38, for party donations over $20,000 is welcome as a move in the right direction. Disclosure some months after an election is not as useful.

79. However it would seem more sensible to have continuous disclosure apply for any donation above the specified amounts (if they are made the same for parties and third parties).

80. The provision to aggregate donations should be on the same basis as for the main disclosure requirements – over the calendar year rather than the preceding 12 months. Having two different aggregation regimes will be confusing

Anonymous Donations

81. The provisions for third party anonymous donations should apply also to political parties, or they should be scrapped as submitted by Professor Geddis.

82. It would be quite outrageous for MPs to require incidental players such as third parties to hand over to the Chief Electoral Officer any anonymous donations, yet leave untouched their own anonymous donations.

83. An April 2007 Colmar Brunton poll found 81% in favour of political parties being required to disclose where there campaign funding comes from. The public should be listened to.

84. A specified amount of $10,000 should apply for both political parties and third parties. One should be able to donate $600 to Greenpeace without it being deemed an amount of significance which requires disclosure.

85. The provisions to require disclosure of donations through trusts in Clause 44 should also apply to political parties.

Election Advertisements

86. The requirement for the name and address of promoters of election advertisements is sound in a general sense.

87. However if the very wide definition of what constitutes an election advertisement and a publication remains, then it becomes impractical. Every protest march placard and every e-mail on a political issue would need such a disclosure statement.

88. The system of statutory declarations detailed in Clause 53(3) is a bureaucratic nightmare and should be scrapped. A promoter who spends over the limit will have committed an offence anyway, without the need for statutory declarations.

89. The proposed regime would see Internet users having to file statutory declarations with their ISPs merely so they can e-mail their views on a political issue.

90. It would also see protesters on a protest march needing to file such declarations to cover the costs of their advertisements

91. The limit one can spend up to, before having to register as a third party is far too low at $5,000. If the regulated period is not changed, then this represents a mere $100 a week.

92. More sensible limits would be $1,000 for expenditure in one electorate and $25,000 for total nationwide expenditure. One should be able to spend such relatively modest amounts of money without registering with the state.

Candidate Expenses

93. It is my view that the existing limit of $20,000 including GST for an electorate candidate is set so low that it prevents effective communication from a candidate to voters.

94. If a candidate wished to post a direct mail letter (a recommended form of communication) to every voter, that would soak up their entire $20,000 budget – just one letter.

95. The low level of the existing limit is bad enough. But if the regulated period was extended from 90 days to all year, this would seriously disadvantage any candidate challenging an incumbent MP.

96. An incumbent MP starts with huge advantages in terms of profile and ability to attract media attention. Add onto that their ability to spend $60,000 a year from their parliamentary budget on newsletters and advertisements and their incumbency is even stronger.

97. The period before the 90 day period is when a new candidate needs to be working to establish some profile – and that costs money. It is far too late to only start spending in the last 90 days.

98. The extension of the regulated period to all of election year will be a huge advantage to incumbent MPs and make it much more difficult for new candidates to win. Democracy will be the loser and incumbent MPs the winner. This is another reason why a public policy process should have been used in developing this bill.

99. The maximum expenditure for a candidate should be $1 a voter in the last 90 days, or $40,000. Spending $1 per voter is light years away from "buying an election". If the regulated period is longer than 90 days, then the limit should be adjusted accordingly to give new candidates a fair chance to compete with the resources of incumbent MPs.

100. The maximum expenditure for a by-election should remain double that of a normal election.

Party Expenses

101. Clause 80, paragraph (d) exempts as a party expense "anything done in relation to a member of Parliament in his or her capacity as a member of Parliament".

102. This is an outrageous attempt to legalise actions which were previously illegal – namely publications such as the infamous pledge card.

103. The public will be very unimpressed with legislation which massively clamps down on third party expenditure with draconian definitions, yet gives a green light to hundreds of thousands of dollars of parliamentary expenditure in the last few weeks of the campaign, without it even counting towards the limit.

104. The Wairarapa Electoral Petition made it very clear that parliamentary expenditure is included as an election expense if it effectively promotes a candidate (or party). This settled law should not be over-turned.

105. 80(d) and 81(2)(g) should be deleted. Parliamentary expenditure should be considered on the same basis as all other expenditure – does it encourage people to vote for a party or candidate.

106. The total limit for a political party is left at $1 million and $20,000 per electorate. That is a total limit of $2,400,000 for a party which contests all 70 seats. This is basically unchanged since 1996.

107. However since 1996 the adult population has grown by 13.4% and there has been a 27% increase in the Consumer Price Index (projection to 2008).

108. What this means is that the limit in 1996 was 94c per voter. Today, in 1996 dollars, it is 65c per voter. This has been a 31% reduction.

109. There is no sensible case to be made for effectively reducing the limits on expenditure for parties.

110. The limit should be adjusted every three years to take account of both population growth and inflation. This can be done by regulation.

111. I would keep the base limit at $1 million (it is undesirable to increase this greatly as third parties may be encouraged to become parties with no candidates just for the bigger limit) but have the allowance per electorate increased to $25,000. So a party which stands in all 70 electorates gets a $2,750,000 limit. One which stands in say just 40 electorates has a $2,000,000 limit.

112. A 2003 study of election finance laws found that only 24% of 111 countries actually have a ceiling on party expenditure. Most limit funding only, using that as a natural brake on expenditure.

113. I would also advocate that the restriction on purchasing your own broadcasting time be removed. It makes no sense to allow parties to decide what level of newspaper advertising they want, but not for broadcasting advertising. Parties should be allowed to spend money on top of their broadcasting allocation, so long as it is still within the overall limit. This is a proposition that was supported almost unanimously at the Victoria University symposium on electoral financing.

114. The current wording of Clause 53 effectively bans political parties from publishing issue advertisements. They are only authorized to run party or candidate advertisements. This is a major restriction on the rights of political parties and has no justification.

Third Party Expenditure

115. The limit of $60,000 is so low that it represents an assault on freedom of speech

116. The shorter the regulated period is, the lower an amount one can justify. Likewise the less wide ranging the definition of an election advertisement is, the lower the limit can be.

117. It should be noted this limit applies regardless of whether the third party has a million members like the NZAA or ten members. It also applies regardless of whether the third party is a single issue lobby group, or a group which comments and advocates on a wide range of policy.

118. Governments and parties often infringe the rights of various groups, such as with Maori and the Foreshore & Seabed legislation. They should have the ability to campaign vigorously against parties and candidates who took away their rights. The ability to campaign against repressive laws is part of what makes NZ a democracy.

119. For example those New Zealanders who feel that the Electoral finance Bill is a massive attack on their democratic rights should be able to form a lobby group and campaign against those MPs who vote for the bill to become law. This is the NZ way. But the pernicious nature of the Electoral Finance Bill means its opponents won't even be able to hold responsible those who impose it on us.

120. The activities of the Exclusive Brethren are cited as justification for these draconian limits. However the major fault of the Exclusive Brethren was their lack of transparency over their activities.

121. Once the media provided that transparency, the effectiveness of their campaign was greatly diluted. In fact most commentators would say that the net effect of their campaign was to damage National more than Labour or the Greens.

122. Interestingly the April 2007 Colmar Brunton poll found only minority support for regulating third party expenditure, despite the activities of the Brethren. Only 39% of respondents wanted tighter controls on political advertising by groups outside Parliament.

123. There is however a case for some limits on third parties, as political parties have a limit. The combined limit of party and candidate and broadcasting expenditure for a political party is around $5 million (Labour spent $4.6 in 2005). A limit of 5% of this or $250,000 for the last 90 days would seem reasonable. If the regulated period is longer than 90 days then this should be increased greatly.

124. This figure should also be inflation adjusted.

125. As third party expenditure would now be regulated, the prohibition on broadcasting should be lifted, as any expenditure on broadcasting would be subject to their overall limit.

Enforcement

126. The Police investigation into the 2005 election was incompetent, and that is a word I do not use lightly. I documented in a series of posts in early 2006 how they stuffed up almost every aspect of the investigation. They investigated the wrong offences, ignored clear case law, failed to realize what strict liability meant, and confused their role under the Electoral Act with that of the Auditor-General under the Public Finance Act.

127. I have absolutely no confidence in the Police as the enforcers of the Electoral Act. As a bulwark against corrupt practices, they showed they could not be relied upon. Their actions last election should have forfeited them the right to remain involved. It is obvious they don't treat breaches of the Electoral Act as "real crime". I am happy to provide dozens of pages of writing to the Committee on how appalling their investigation was. They did serious damage to the authority of the electoral agencies with both their investigation and their decision not to prosecute.

128. Not only did they fail to prosecute Labour officials for the deliberate over-spending, which was a matter of strict liability, they also failed to prosecute National for broadcasting breaches even though National effectively pleaded guilty and assumed responsibility for the breach.

129. All the other clauses in the Electoral Act don't matter if you do not have proper enforcement of it. This is the area that most needs changing. I would propose three major changes

130. The first is to remove the Police as the prosecuting authority and to grant these powers to the Electoral Commission. The Electoral Commission has the necessary judicial and legal experience to undertake this role.

131. The second is to make parties, not just individuals, liable for breaches of the Act. The punishment of individuals only is a hangover from FPP when losing your seat is sufficient deterrent. With MMP parties have little deterrent as a minor fine to the party's secretary is nothing compared to the benefit gained for example by overspending by $800,000. Again I note at the Victoria University symposium there was widespread support for making parties liable for any breaches of the Act. Parties gain the most from breaches of the Act, so they should be held accountable.

132. The third is to massively increase the penalties form the joke levels they are at. As the Coalition for Open Government says, if you can get seven years for stealing a bike, then stealing an election should be worth at least that. I would support a regime where parties can be fined up to $1 million, individuals up to $100,000 and a maximum jail sentence of five years. The 2005 election showed that some parties, despite the explicit warnings of the Chief Electoral Officer, chose to break the law. No doubt the low level of punishment available for such breaches was a factor in that decision.

133. The provisions in Clause 121 allowing for search warrants and in Clause 122 allowing for longer time limits for prosecutions are both welcome.

134. While not possible for 2008, it would be highly desirable to merge together the three major electoral bodies into one body, and give that body full powers to enforce the Act.

General Provisions

135. It is regrettable that this bill is the Electoral Finance Bill rather than the Electoral Act (Finance) Amendment Bill. It is highly desirable for all the election laws to be in one Act, so that parties and candidates can easily be aware of the rules they operate under. If this Bill is rejected, the Government should be asked to come back with a bill as an amendment to the Electoral Act.

136. If this Bill does proceed back to the House, it needs to be given full scrutiny in the Committee of the Whole stage. The eight subparts of Part 2 mean that each subpart will have minimal debate – maybe as little as seven minutes based on the standard one hour per part discretion from the Deputy Speaker. Each of the subparts deals with complex issues which need long scrutiny on their own.

137. I recommend that the eight subparts be changed into eight parts. This will allay fears that an amended bill will be rammed through under urgency just before Christmas.

Finally I urge the Committee once again to reject the Bill rather than amend it, even if for example all of my amendments were adopted. Because the public deserve a chance to have their say on the Bill as amended. It is vital that the public have confidence in the process used to amend the Electoral Act. If 51% of Parliament forces through changes against both public opinion and significant opposition in Parliament, then the respect for electoral laws will be greatly diminished. It is better to do the job properly than to do it quickly.

David Farrar