

# The Electoral Finance Act and kneejerk legislation



Photo: Bill Nichol

Associate Professor Andrew Geddis: "The politicians have had their turn at making rules for New Zealand's elections. It is time for the voters to have theirs."

**NEW ZEALAND'S ELECTORAL LAW** is like the knee. When it works, you do not even notice it is there. But damaging it can seriously disrupt your everyday life.

Unfortunately, if I may extend the metaphor, this country recently has suffered the equivalent to a torn ACL. The Electoral Finance Act 2007, enacted in response to perceived problems with election funding at the 2005 election, has become the focus of much public angst.

Political parties trade accusations over who has breached the law on a weekly, if not daily, basis. Media organisations, most notably the *New Zealand Herald*, are campaigning

actively against the legislation. Every decision on how the law applies is scrutinised and critiqued from all corners.

Of course, the Electoral Finance Act always was going to be controversial. The balance it attempts to strike between the important democratic values of freedom of participation and general equality of influence is open to reasonable dispute.

Furthermore, politicians have a vested interest when it comes to designing election rules, so their motivations in this area always are questionable. Nevertheless, the level of current dispute, as well as its acrimonious nature, is



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concerning. First, it indicates that a significant portion of those directly involved in the election process (as well as the voting public more generally) do not believe the basic ground rules the Electoral Finance Act sets for our election campaigns are fair.

Belief in the fairness of the election rules is a necessary prerequisite for accepting the final election result. It is why the losers at the polls consent to the winner gaining public power, even though they may violently disagree with the winner's substantive policies and goals. When this belief is threatened, it undermines the whole point and purpose of elections.

Second, unhappiness with the rules contained in the Electoral Finance Act is leading some to question the actions of those charged with overseeing and administering them. In particular, the Electoral Commission's actions have been challenged repeatedly, with an underlying message that this agency is either partisan or incompetent.

Such messages, although demonstrably untrue, undermine public trust in the way our election process is run. Losing this trust would be a disaster. A society that does not think its elections are conducted in an honest and fair fashion ends up in a situation like Kenya or Zimbabwe find themselves in today.

Of course, any claim that the Electoral Finance Act is going to destroy New Zealand's democracy is silly. Even the opponents of that legislation's limits on third-party election expenses would not put them in the same league as stuffing ballot boxes or beating up rival supporters.

But the Electoral Finance Act has caused damage to our electoral process that now needs fixing. How we might now undertake that restorative project depends in part on how the damage was caused in the first place.

A good portion of the blame for the present situation lies with the legislation's authors. While the actions of the Exclusive Brethren and the like during the 2005 election campaign gave the Labour-led Government legitimate reasons to consider changing our electoral laws, the way it

went about enacting those reforms was ill-considered and overly rushed.

The normal parliamentary process for considering and enacting law misfired with regards to the Electoral Finance Act. This failure has important flow-on consequences.

For one thing, it is hard to see how Parliament alone can now put the matter right. The level of vitriol that the Electoral Finance Act has attracted means any replacement legislation promoted by any political party will likely be attacked as equally partisan.

It is questionable whether even a set of measures recommended by outside experts could now generate broad respect and agreement. The selection of those experts, and the terms of reference given to them, would be subject to intensive scrutiny and questioning.

Given this situation, the best way forward may be to put the issue of election funding directly to the New Zealand public. Canada's recent use of citizens' assemblies to address issues of electoral reform provides a model for how this could be done.

A randomly-selected, representative group of voters from around the country would be charged with deciding how to regulate the issue of electoral financing. Over a series of weeks, they would engage in a process of education on the topic, as well as hear submissions from interested persons or groups, before collectively deciding on the best way forwards.

Their recommendations then would provide a signal as to how ordinary, fully-informed New Zealanders want their electoral processes to work. It would then be a brave, or particularly mendacious, government that would dare ignore such a message.

Simply put, the politicians have had their turn at making rules for New Zealand's elections. It is time for the voters to have theirs.

*Associate Professor Andrew Geddis  
Faculty of Law, University of Otago*