

New Zealand Law Society

SUBMISSION ON ELECTORAL REFERENDUM BILL

1. The New Zealand Law Society does not express any view on the underlying political party policy and political aspects surrounding the Bill. These include decisions on whether there should be a referendum, and whether on any review it is appropriate for the question of Maori seats and the number of Members of Parliament to be excluded from that review.
2. These are matters on which members of the Society, just like the community at large, would hold a range of views. The Society as such does not have an opinion.
3. However, there are two matters of principle in relation to Part 3 of the Bill (Advertising), on which the Society does wish to comment.

Identification of promoters

4. Clause 36 requires the publication of a referendum advertisement to include a statement of the promoter's name and address. The obligation to give the address applies to all promoters, not only those who spend over \$12,000.
5. "Address" is defined in clause 29 in relation to an individual as the full street address of a person's residence or the full street address of their place of business.
6. For other entities it is a full street address of a place of business or head office.
7. There are valid reasons for the Electoral Commission to be able to identify the promoter of an advertisement. The public is also entitled to know the name of the promoter. It is not clear, however, why members of the public should be able to contact a promoter at their place of residence or place of business (which in many cases might be the same place).
8. The requirement to publish an individual's residential or business address is an unreasonable deterrent to an individual taking on the role of promoter and therefore an unjustified potential deterrent to free speech.
9. The Bill contains some recognition of the need to protect privacy. The Electoral Commission is to keep a publicly available register of promoters, to enable members of the public to identify registered promoters and find out their name and contact address (clause 44). Any search of the

register carried out for a purpose not specified in clause 44 constitutes an interference with an individual's privacy under the Privacy Act.

10. That is cold comfort to a promoter who has to reveal his or her residential address in the advertisement itself.
11. The Society made submissions on this matter recently, in relation to the Electoral Finance Reform Proposal document. Paragraphs 9.7 to 9.13 of the Society's submission dated 5 November 2009 are attached to this submission (Appendix A).
12. It is also the case that an individual promoter could avoid disclosure of their place of residence or place of business by operating through an incorporated or unincorporated body.
13. In that case it may be possible to identify some place to call head office or principal place of business. Such an arrangement then becomes a fiction, especially if the entity or unincorporated body was created only for the purpose of campaigning on the referendum.
14. It is unprincipled to say that legislation requiring disclosure of an individual's residential address can be enacted without harm because the individual can circumvent the requirement by creating another legal identity. Most importantly, the aim of the legislation, to identify promoters, can be defeated by creating another legal identity.

Recommendation

15. Promoters should be required to provide information in referendum advertisements about how they can be contacted during normal business hours.
16. This provides a reasonable balance between the rights of the public to know who is promoting an advertisement, the duties of the Electoral Commission to monitor spending, and the public interest in preventing undue harassment of individuals.

Definition of advertisement

17. "Advertisement" is not defined in this Bill but "referendum advertisement" is defined in clause 30.
18. An editorial that urges a particular point of view may be caught within the definition of "referendum advertisement". Clause 30(2)(b) only excludes editorials if they are written for the purpose of informing, enlightening or entertaining readers.

19. An editorial might try to persuade or encourage readers to vote in a particular way, or not support a particular option. This seems to be outside the Clause 30(2)(b) exclusion and editorials of this nature would therefore be subject to Part 3 of the Bill as a “referendum advertisement”. This would be a perverse outcome.

20. The appropriate place to address this is in the Electoral (Finance Reform and Advance Voting) Amendment Bill, which is also to be considered by the Select Committee. The Society has not fully developed a submission on this point, because it believes the matter is better addressed in the context of the other Bill, with consequential changes here as appropriate.

Conclusion

21. The Society does not wish to appear in support of this submission. However, the Society is able to meet with the Committee or officials advising it if the Committee felt that would be of assistance.



Jonathan Temm
President
10 June 2010

Attachment A:

Excerpt from the New Zealand Law Society's submission dated 5 November 2009, on the Electoral Finance Reform Proposal document.

- 9.7 The society believes that it is appropriate that the promoters of election advertisements be able to be identified; but it may be too simplistic to refer to an address at which the person can usually be contacted during the day.
- 9.8 Presumably the reason for not requiring residential addresses is to balance interests of privacy, including others residing at that address, and to prevent undue harassment.
- 9.9 Consider the following:
- (a) the promoter is a farmer. That person would presumably have to give their home address even if they are out working on the farm, and their family has to deal with the crank calls and callers;
 - (b) the promoter is an employee of an employer which may or may not share the employees views, or does not want its address used on a political advertisement anyway. Conceivably, the employer could be a government department or crown entity and publishing its address as the day time contact of the promoter, while true, is hardly appropriate.
 - (c) the promoter is a candidate. If out campaigning, how can that person give an address at which they can usually be contacted. Email or mobile phone might actually be the most appropriate, and desirable, form of contact.
- 9.10 If the objectives are:
- (a) that promoters should not be able to be anonymous; and
 - (b) that promoters and their co-residents should not be subject to undue harassment –
- then the solution might be to require publication of the name of the person and require (or allow) a range of details to be lodged with the electoral commission. The person could be required to identify those contact details that can be made public, and they could be made public on a website.
- 9.11 If the person did not respond to contact made that way, then a complaint could be made to the electoral commission.
- 9.12 It is not clear to the society why promoters of advertisements would need to be contacted by others, but if that is the case, then it could be managed by the electoral commission having powers to order withdrawal of the advertisement or using "name and shame".
- 9.13 Of course, publication of a name only will often allow a person's residence to be identified through electoral rolls or the white pages, but at least the promoter knows that when he or she chooses to be the promoter.