New Zealand Law Society

SUBMISSION ON ELECTORAL FINANCE REFORM PROPOSAL DOCUMENT

1. Introduction

1.1 This submission by the New Zealand Law Society (Society) on the Electoral Finance Reform (Proposal Document) responds to most of the questions asked in that document.

1.2 The Society does not seek confidentiality for any part of this submission; and it intends to publish it on its own website.

1.3 As was the case in responding to the Electoral Finance Reform Issues Paper, the primary submission of the Society is:

(a) that electoral finance law should not restrict the communication of political views nor engagement in political debate (including the opportunity to persuade others of the merits or otherwise of policy or candidate) unless there is an identified reason to do so;

(b) related to (a) above, the first step should be to identify the mischief that gives rise to the need for electoral finance law. The next step is to design laws, including related structures or institutions, that effectively address the identified mischief. Laws that are ineffective or inappropriate (whether because they are too easily avoided or cast too wide) do not enhance the electoral system or the law;

(c) that the Electoral Commission should be an Office of Parliament.

1.4 The Society still considers that the documents issued and the wider debate around electoral finance law suffer from an inadequate definition of the problems or potential problems that the regulation of political activity seeks to remedy. Responses to questions about the content of regulation of political activity should be based on a comprehensive discussion and understanding of what the problems and potential problems of unregulated political activity are. A clear need to regulate should be identified.

1.5 For example, there does not appear to be an explanation of the problems or potential problems of not regulating political activity that justifies significant restrictions on parallel campaigning. The Society considers that an inadequate problem definition may cause the Electoral Finance Reform project to become confused.

1.6 A failure to discuss the need to regulate and to define properly the problems and potential problems that exist will result in inappropriate regulation. Good regulation needs to be well thought through, so the process of regulatory reform should begin with a clear problem definition.

1.7 The Society recognises the practical time constraints around getting legislation in place at the appropriate point in the election cycle. However subsequent debate on the detail of proposed legislation might be shortened, or at least better focused, if the Ministry identified and published the mischief at which the reforms are aimed; using examples (hypothetical, if necessary).

1.8 As well as responding to the issues as raised in the Proposal Document, the Society also makes recommendations on:

(a) the Select Committee process to apply when legislation is introduced. Specifically the Society believes that the Select Committee should invite a second round of submissions once it has decided on proposed amendments following the first round of submissions;

(b) the development of key definitions, particularly "electoral advertisement" for discussion prior to introduction of the legislation.

2. Legislative Process

Double consultation at Select Committee

2.1 It is appropriate that the Government aims to develop electoral finance legislation that is drafted clearly. The legislation should be easy to understand and easy to apply. Confusion in this area can have chilling effect on participation. Reasonable citizens who cannot understand the law can reasonably be expected to give up. That risk should be minimised.

2.2 Assuming that the aims of the electoral finance reform are to create legislation that is clear and a regime that is durable, the Society considers that it would be prudent for the select committee that considers the bill to undertake a second round of consultation on any amendments that it considers should be made to the bill. The usual select committee process can result in a committee recommending significant amendments to a bill based on public submissions, officials' recommendations, and caucus input.. These recommendations are then reported to the House without the opportunity for further public input on these amendments or how they have been drafted. In order to create legislation that is both clear and durable, the select committee that considers the bill should release an interim report seeking submissions on any amendments it proposes before it finally reports to the House.

2.3 The consultation process will of course be determined by the select committee that considers the bill and not by the Government or the Minister of Justice. However the Society encourages all members of Parliament, when referring the Bill to the Select Committee to:

(a) encourage the select committee to seek a second round of submissions on amendments that the committee proposes to recommend; and

(b) set a report back timetable for the bill that allows this to occur.

Drafting of the definition of election advertisement

2.4 The Society also considers that there may be an advantage in consulting on the drafting of the definition of "election advertisement" before the bill is introduced to the House, given that this definition will be of central importance to the bill. Having the drafting of this important definition somewhat settled would allow discussion of the rest of the regime to be more constructive during select committee submissions and consideration.

2.5 Specifically, the Society urges consideration be given to providing certainty to participants in the electoral process (not just candidates and parties) that their advertisements are legal. The Electoral Commission could be empowered (for a cost-recovery based fee if necessary) to give a binding ruling on the compliance of the content of an advertisement. Obviously this would not extend to matters such as compliance with any financial constraints; but it would allow participants a "safe harbour" for content. It might also encourage participants to focus on substantive issues rather than the content of each others' advertising.

3. Guiding principles (Chapter 1)

3.1 The Society agrees that the development of the new electoral finance law should be guided by the seven principles outlined in the Proposal Document (Principles). However, the Society does not believe the principles are appropriate for inclusion in a purpose statement.

3.2 It is difficult to resist asking the question of what Parliament expects the Court to do if the Court was to consider the principles in the context of a purpose clause. If the Court is looking at the purpose clause to aid interpretation then the principle of "clarity" is not going to help the Court much; presumably it is looking at the purpose clause because it has already identified a lack of clarity in the particular provision.

3.3 Similarly, having regard to the principle of "legitimacy" risks blurring the roles of the Courts and Parliament. Courts do not need a stated statutory principle to tell them that they are to decide whether something is legitimate (i.e. complies with the law) or not. That is what Courts have been doing for centuries.

3.4 There is another sense in which the word "legitimacy" is often used – to denote consistency with deeper but unarticulated principles. Hence there is a risk that the inclusion of a principle of "legitimacy" is taken to vest in courts an unstructured power to remake the legislation through interpretation. This highlights the need to make the legislation clear and as unambiguous as possible.

3.5 Expressly requiring the legislation to be interpreted against these Principles, many of which conflict with each other, may only increase ambiguity and complication. People will disagree about how the principles should inform the interpretation of provisions, which may only make the meaning of provisions even more ambiguous and increase the chilling effect on expression.

3.6 In any event, the Courts are likely to interpret electoral finance legislation with a focus on the right to freedom of expression contained in section 14 of the New Zealand Bill of Rights Act 1990 (BORA). Section 6 of the BORA directs Courts to interpret legislation consistently with the rights and freedoms contained in the BORA. Since many of the Principles conflict with each other and as the Principles include freedom of expression, the Courts may use section 6 of the BORA to find that freedom of expression effectively trumps the other principles and will be the dominant guiding principle when resolving interpretation issues. This is appropriate given the importance of freedom of expression, and the recognition of the importance of freedom expression by its inclusion in the BORA.

4 State funding (Chapter 2)

4.1 The Society does not support the retention of the status quo (option 2a). The Society considers that political parties should be able to spend their own money on campaign broadcasting, whether or not they receive an allocation of time or money from the government. The State should not determine a party's ability to campaign using broadcasting through a government decision on how much time and money (if any) the party can use for broadcasting.

4.2 The Society agrees with the proposals in option 2b. The Society agrees that, if political parties are to receive taxpayer funding, then:

(a) political parties should be able to spend any taxpayer funding that they receive for the purpose of campaigning on campaigning through any media (not just television and radio);

(b) any taxpayer funding spent on radio and television broadcasting and other media campaigning should be included in the overall campaign expenditure limit (which would be increased accordingly); and

(c) there should be no limit on the amount of money that a party can spend on radio or television broadcasting or other media campaigning (other than making this spending subject to the overall campaign expenditure limit) so that parties can spend their own money on campaign media broadcasting.

4.3 There is probably a case for prior debate on the meaning of "media" similar to that proposed above for election advertising.

4.4 The Society does not have a view on the wider issue of general funding of political parties by taxpayers as contemplated in option 2c - allowing political parties to spend any taxpayer funding they may receive for any purpose and accordingly requiring this spending to be accounted for on an annual basis. However the Society wishes to point out that the possible rationale for taxpayer funding that supports option 2b would not support option 2c.

4.5 Taxpayer funding for campaigning during an election period can be supported by a rationale that parties communicating with voters is a public good that taxpayers should support. It is important that voters are able to receive information about parties' policies so that voters can best decide who to vote for to represent them. According to this rationale, taxpayers do not fund the political parties generally but instead fund political parties' communication to voters. In contrast, taxpayer funding in option 2c would see taxpayers supporting political parties generally and potentially funding activities other than communication with voters, such as the cost of the party developing policy (for example, by holding conferences). This form of funding, if it were to happen, needs a different rationale, possibly one that sees a public good in the existence of political parties and their activities generally.

4.6 The Government proposes to increase the total campaign expenditure limits in line with inflation. It may be appropriate that the appropriation for taxpayer funding for political parties is also increased. If general inflation is not a fair proxy for changes in media production and time costs (or indeed for campaign costs generally), then there could be a requirement on the Electoral Commission to recommend to Parliament appropriate adjustments that could be enacted say, 12 months before a scheduled election.

4.7 As a refinement, the law could provide that adjustments precisely as recommended by the Electoral Commission could be made by regulation; but if anything else is proposed, then an amendment Bill is required. This would create a strong incentive to accept the Electoral Commission's recommendations.

5 Parliamentary Service funding (Chapter 3)

5.1 The Society supports the proposal to ensure consistency between the work of the Parliamentary Service Commission and the work on this electoral finance reform. However, it would be more appropriate for a review of the Parliamentary Service to be undertaken by an independent authority than a body made up of those who directly benefit from the Parliamentary Service, Members of Parliament.

5.2 The Society considers that the definition of electioneering in the Parliamentary Service Act 2000 should only differ from the definition of election advertisement in the electoral finance

legislation if there are compelling reasons. If it is decided that these definitions should be different, then these reasons should be clearly and publicly explained. The current process for review of Parliamentary Service funding implies that the definition of election advertisement will be worked out in that process. If so, this reinforces the need for consultation on this important definition prior to Select Committee (where 10 minute presentation slots can only achieve so much).

5.3 Suspending all Parliamentary Service funding for communication services during an election period is a proposal that has many merits, and the Society supports this proposal being considered further. MPs arguably do not need communication services funding during this time because almost all of their communication with constituents in this time will be electioneering, and Parliamentary Service funding cannot be used for electioneering. In this context "election period" might start when the House last rises before the election. Some interesting tensions would be created, but that is not necessarily a bad thing.

5.4 Suspending communication services funding could also improve the equity and legitimacy of the electoral finance system. Candidates who are incumbent MPs already have a financial advantage over other candidates since, for example, incumbent MPs can access funding for travel.

5.5 Suspending communication services funding during the election period may go some way towards addressing the imbalance between incumbent MPs and other candidates. Alternately, and more drastically, all Parliamentary Service funding could cease during an election period, with the exception of salaries paid to permanent staff and other fixed costs.

5.6 This potential for incumbent MPs to benefit from the Parliamentary Service during elections is just one reason why it is much more appropriate for a review of the Parliamentary Service to be undertaken by an independent body. This reasoning is not based on a mistrust of politicians, but on the need for a proper separation of functions in a system of government.

5.7 Suspending communication services funding during the election period would also add clarity and simplicity. It would reduce pressure on officials to make judgments about whether proposed communications constitute electioneering or not. It would reduce the risk of, and the perception of the risk of, the misuse of taxpayers' money.

5.8 Finally, the Society also supports making information held by the Parliamentary Service subject to the Official Information Act 1982 (OIA). Information about the use of appropriations and general spending decisions (including applications for spending that are declined) should at least be subject to the OIA and its principle of availability. Any concerns about whether it is appropriate for information held by the Parliamentary Service to be made available to the public should be satisfied by the grounds for withholding information that already exist in the OIA.

6. Private donations (Chapter 4)

6.1 If the Government is to retain the regime governing donations that was developed as part of the Electoral Finance Act 2007 then it should consider re-drafting these provisions so that they are clearer and easier to understand. The Electoral Finance Act was drafted in short time frames and was subject to ongoing amendment. It is likely that significant improvements can be made to the drafting of any provisions from it that are to be retained. Making these provisions clearer and easier to understand would best accord with the principle of clarity, which is said to be guiding the development of the new electoral finance legislation.

6.2 The provisions that regulate donations from overseas people should also be re-considered. First, it is unclear what improper impact overseas people could have on New Zealand by making donations to New Zealand's political parties if there is full and timely disclosure. Second, the definition of overseas people may not be appropriate. In particular, the definition of overseas corporations and unincorporated associations has been taken from the Overseas Investment Act 2005, where it is used for a quite different purpose, and is not particularly apposite here.

6.3 Electoral finance legislation should expressly and clearly prohibit public agencies (including SOEs) from making donations to political parties and candidates or paying for election advertisements. Public agencies should be apolitical and it is not appropriate for them to form political views or spend public money to express political views or participate in political debate. Accordingly, the Society agrees with the sentiment of the now repealed section 67 of the Electoral Finance Act 2007. Similarly, the Society agrees with the sentiment of section 13(2)(e) of the Act in the context of that Act's third party expenditure regime, although it does not agree with the regime itself.

6.4 The Society notes that anonymous donations are not necessarily sinister. They may arise from collections at a public rally or the sale of raffle tickets, for example.

6.5 As a general principle, the threshold for the publication of the names of donors should be wherever society decides the identity of a donor should be disclosed because it is in the public interest to do so, not just because the identity is of public interest. Publication might be expected to have a deterrent effect and to encourage the use of "sweeping mechanisms" and other devices to avoid disclosure; neither is desirable.

6.6 That said, once publication is determined to be in the public interest, it must necessarily be timely. If the identity of donors might influence decisions of votes then necessarily the disclosure must be before the election; not in returns filed months later.

6.7 As a general principle, whatever disclosure is required should have to be continuous throughout the election period, and should include items such as loans that potentially could be forgiven and turned into donations after the election.

7. Campaign expenditure limits (Chapter 5)

7.1 The Society supports a review of the campaign expenditure limits on the basis that they have not changed since 1995. The Society does not have a view on what the amount of the campaign expenditure limits should be.

7.2 If the campaign expenditure limits are to be pegged to inflation then, for the purposes of clarity, the amounts of the limits at each election should be confirmed. At each election there should be an authoritative determination of the result of any formula in legislation that calculates the campaign expenditure limits.

7.3 As noted earlier, general inflation indexes could be a poor proxy for election expenses. A better option might be for limits to be recommended by the new Electoral Commission say 12 months out from the scheduled election date. If Government accepts the recommendation, then the increases could be set by regulation. If the Government of the day wanted a different adjustment then an Act of Parliament would be required.

7.4 There could be a single limit for campaign expenditure by a political party, rather than the current situation where a party's expenditure limit increases as the number of electorate seats that it contests increases. Parties already receive a regulatory benefit by contesting more electorate seats, as "two tick" campaigning is attributed to a candidate's expenditure

and not a party's expenditure. Given this and the desire for clarity, there could be a single party campaign expenditure limit, with perhaps some refinements, for example limits in blocks of, say, 10 seats so that gross distortions by small wealthy parties doe not occur.

8. Regulated campaign period (Chapter 6)

8.1 The Society recognises that there are difficult issues in setting the regulated campaign period given that some expenditure incurred before the regulated period begins can contribute strongly towards campaigning during the regulation period. (This issue was considered in *Peters v Clarkson* [2007] NZAR 610 (HC).) For example, signs that will be displayed in the regulated period may be made and paid for before the regulated period begins. Increasing the regulated period may reduce the need to attribute expenditure incurred before the regulated period begins, making it easier to apply electoral finance legislation.

8.2 The Society does not support the regulated period commencing on writ day (option 6a), which would result in a regulated period of only four to five weeks. The Society considers that, snap elections aside, significant campaigning may take place before writ day, especially when an election date has not been announced and the three-year expiry of a Parliament is approaching. Given that there is a limit on campaign expenditure at general elections, this limit should cover all significant campaigning. A regulated period commencing on writ day would be too short.

8.3 The Society supports option 6b on the grounds that it gives certainty for most cases and reduces the benefit of "gaming" by the Prime Minister of the day.

8.4 The Society is always mindful of the concerns associated with legislation that has retrospective effect. However, we are also concerned to acknowledge that this is an issue of degree and policy balance to be addressed in the particular circumstance.

8.5 To exempt expenditure within 3 months but before the date the election is announced simply encourages the Prime Minister's party, and others "in the know" to spend up large before the announcement of the election date, and encourages the Prime Minister to delay announcing the election date even though the last possible date for the election is set by statute. As seen in 2008, the date was not announced until fairly late in the cycle, though it was obvious to all that the choice was between 2 or possibly 3 Saturdays only.

8.6 The Prime Minister of the day may well have good reason to delay the announcement, and undoubtedly has the right to do so when he or she chooses; but the Society believes that electoral finance advantage should not be a relevant factor.

9. Election advertising (Chapter 7)

9.1 The Society agrees with the proposed approach to the definition of election advertising. The Society agrees that the definition should be media-neutral and cover both positive and negative campaigning.

9.2 The drafting of the definition of election advertisement will of course be critical to achieving the proposed approach. As stated above, the Society also considers that there would be an advantage in consulting on the drafting of the definition of election advertisement before the bill to reform electoral finance legislation is introduced to the House.

9.3 Exceptions to the definition of "advertisement" should include:

(a) books sold at commercial value. DVD's are conceptually similar, though commercial value might be harder to establish; and

(b) use of party colours, without more.

9.4 There will undoubtedly be many issues around this area, which is why the Society urges that there be consultation and discussion of drafts sooner rather than later, and certainly before legislation is introduced.

9.5 For example, party colours and widely used flags can overlap. The Red Flag may, as a flag if not an anthem, have been consigned to history, but very possibly flags associated with the Maori Party and perhaps the Green Party are arguably close to being advertisements; or could be by 2011.

9.6 The approach to the definition that is outlined in the Proposal Document states that websites maintained by political parties and candidates will not be included in the definition of election advertisement. The Society submits that this is appropriate but that the definition should be drafted to make it clear that advertisements placed on other websites for a fee are election advertisements.

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.

10. Parallel campaigning (Chapter 8)

Level of regulation

10.1 The Society prefers option 8b (the status quo) to option 8a. The Society does not favour option 8a, although agrees that it is much more favourable than the regime that existed under the Electoral Finance Act 2007. Increasing the threshold at which a person must account for their expenditure on election advertisements would certainly reduce the chilling effect on political expression.

10.2 The Proposal Document defines parallel campaigning as simply campaigning by those other than political parties and candidates (page 32). The Society considers that there is an important distinction to be made within this form of campaigning between campaigning that encourages voters to vote for a particular party or candidate (which could be called "**support campaigning**") and campaigning that does not do this, such as negative advertising and issue promotion (which could be called "**general campaigning**"). These different types of campaigning require different regulatory responses.

10.3 It is appropriate that support campaigning must be authorised by the party or candidate that it encourages voters to vote for and that its cost be included towards that party's or candidate's expenditure. This form of regulation makes it unnecessary to regulate the expenditure of support campaigning in other ways. This regulation will also prevent a party or candidate avoiding the campaign expenditure limits by having friendly interests do their campaigning.

10.4 The Society agrees that all election advertisements, including general campaigning, should disclose the identity of their promoter (subject to refinements discussed above). This requirement for transparency may also be an adequate and proportionate response to the possible problems that can arise from general campaigning. The need to limit the amount of expenditure on general campaigning should be demonstrated and accepted before such a limit is implemented. Electoral finance law should not restrict the communication of political views or engagement in political debate (including the opportunity to persuade others of the merits or otherwise of policy or candidate) unless there is a compelling reason to do so.

10.5 The Society considers that the main problems of support and general campaigning is the possible spread of false information and the appearance that some campaigners or campaigns are associated with political parties and candidates who do not want this association. Trying to regulate these areas is fraught with difficulties and is likely to result in more harm than good. Moreover, transparency and general laws that regulate all speech (such as defamation) probably adequately deal with these problems as they seem to do outside the election period. Knowing the identity of the person disseminating material containing false information will better enable parties and candidates to deal with situations where false information is spread about them. Parties and candidates can also manage unwanted associations using the knowledge of who is running general campaigning, knowledge that voters will also have and can use to inform their opinions.

10.6 The society is not convinced that there is any need or justification for preventing overseas persons from parallel campaigning. Disclosure of the identity of the promoter should be sufficient to enable voters to evaluate the campaign.

10.7 In any case, local organisations ranging from Greenpeace to the Business Roundtable could so easily be funded by their overseas members or affiliates, or have their local people shown as promoters that it would be impractical to stop breaches of any overseas campaign restriction if campaigners wished to avoid it. Only the uninformed or naïve would be caught by the restriction.

The Proposal Document refers at paragraph 8.15 to "undue influence from wealthy overseas interests". The Society believes that to the extent that the influence of wealth has to be controlled then it does not matter whether the wealth comes from New Zealand or overseas. There is no greater evil, if there is evil at all, because some of the wealth is not held in New Zealand. It also needs to be realised that "wealthy interests" and "wealthy people" are not synonymous. Wealth can reside in entities ranging from unions to the Automobile Association without their members necessarily being wealthy.

Access to television and radio

10.8 The Society does not agree that the only options are to retain the current ban or allow campaigning on television and radio only if a system of proportionate regulation (option 8a) is chosen. Under the status quo (option 8b) there could be regulation of the broadcasting expenditure.

The Society has not seen any evidence to justify a ban on parallel radio, television (or other media) campaigning; but logically the rules should be similar to those for the parties/candidates themselves.

There would of course, be no taxpayer funding, and the result would then be no restriction. If there is a restriction then it is solely on the "influence of wealth" basis and there should be a high threshold.

11. Monitoring and compliance (Chapter 9)

Consideration of making the new Electoral Commission an Office of Parliament

11.1 The Society would have welcomed publicity on the issue of whether the new Electoral Commission should be established as an Officer of Parliament rather than as an independent Crown entity. This issue warrants further public consideration. Making the new Electoral Commission an Officer of Parliament would make it accountable to Parliament rather than to executive government. Hopefully this debate will occur at the Select Committee stage of the Electoral (Administration) Amendment Bill.

11.2 The Auditor-General is an Officer of Parliament. Its core functions relate to the Government's constitutional obligation to account to Parliament for government spending - its core functions relate to Parliament's need for financial accountability. The Auditor-General is hence Parliament's watchdog and, by being an Officer of Parliament, is also constitutionally accountable to Parliament. A similar argument can be made in respect of the new Electoral Commission. Its core function will be to ensure that elections that determine the Members of Parliament are democratic and robust - its core functions relate to Parliament's need for robust elections. It can be considered to be Parliament's watchdog and it seems more constitutionally prudent for it to be established as an Officer of Parliament.

11.3 The arguments given at page 12 of the Explanatory Note for the Electoral Commission not being an Officer of Parliament are not convincing or are easily dealt with (in the Society's view).

Ensuring that an independent Crown entity is independent

11.4 If the new Electoral Commission is to be made a Crown entity, then there are some other steps that should and should not be taken to ensure the independence and integrity of the new Electoral Commission.

11.5 It is important that the bill that establishes the new Electoral Commission clearly expresses the Commission's statutorily independent functions (in terms of the Crown Entities Act 2004 (CEA)). Although Ministers cannot direct individual independent Crown entities (CEA, s 105), it is still important that legislation outlines the statutorily independent functions of an independent Crown entity. This safeguards against the possible effects of whole of government directions on an independent Crown entity such as the new Electoral Commission (see CEA, s 113).

11.6 A Minster should also not be empowered to add to the functions of the new Electoral Commission, as is contemplated by section 112 of the CEA. Only Parliament should be able to amend the functions and design of the Electoral Commission. Section 105 of the CEA provides that a Minister cannot direct an independent Crown entity unless specifically provided in another Act. This default position should be reinforced. The Electoral Commission legislation should expressly state that no Minister can direct the new Electoral Commission.

These points reinforce, rather than detract from our primary submission which is that the Electoral Commission should be an Office of Parliament.

John Marshall QC
President
5.11.09