

## Members present

Hon Andrew McGechan (President)  
Acting Chief Judge Wilson Isaac – *ex officio* (Maori Land Court)  
Ms Belinda Clark – *ex officio* (Secretary for Justice)  
Dr Helena Catt (Chief Executive)

Dated: 9 October 2008

Decision Number: 2008-35

Initiated by

**ANDREW KISSLING ON 14 MAY 2008**  
**SHANE HEWSON ON 28 MAY 2008**

In relation to

**Election advertisement**

**WEBSITE: [www.beehive.govt.nz](http://www.beehive.govt.nz)**

## Findings and Determination

Specified items on the Government website [www.beehive.govt.nz](http://www.beehive.govt.nz) are not election advertisements within the meaning of section 5 of the Electoral Finance Act 2007.

**This headnote does not form part of the decision.**

## Subject

Various items were published on the Government website [www.beehive.govt.nz](http://www.beehive.govt.nz) and the website contains links to the websites for the Labour Party and Jim Anderton's Progressive.

The items queried are:

- article by Ruth Dyson 'Beneficiaries better off under Labour' dated 11 May 2008
- media release of 27 May 2008 by Trevor Mallard 'Workers to lose Kiwisaver boosts for Nats tax cuts'
- media release of 27 May 2008 by David Cunliffe 'Populist statements on bonding don't equal policy'.

The Dyson article overviews the government support provided for beneficiaries and the relevant policies, and refers to the "Labour-led government". The two media releases mention government policy on the relevant topics and criticise the corresponding National Party proposals.

The items were removed from the website prior to the Electoral Commission determining the matter.

## Issues raised

The Electoral Commission considered whether the website contains election advertisements within the meaning of the Electoral Finance Act 2007 and, if so, whether the provisions of the Act have been complied with.

## Electoral Finance Act 2007

Section 5 of the Act defines an election advertisement to be, in summary, any form of words and/or graphics that could reasonably be regarded as encouraging or persuading voters to vote or not to vote in a particular fashion.

## **Comments from Department of Internal Affairs**

The Department of Internal Affairs advised that the prime function of the beehive website is to display the press releases, policy announcements and speeches of Ministers of the government of the day. The Department acknowledged that the legitimate communication of a government policy or initiative might conceivably be considered by some complainants as encouraging or persuading to some voters, but suggested that the issue is about where to draw the line.

The Department suggested the items are not election advertisements but advised that they have nevertheless been removed during the audit process.

The Department suggested that the links to other websites also do not constitute election advertisements, as the weight of Crown Law opinion is that providing links to other sites is not "publishing" which requires a degree of control over the publication that could not be exercised merely by providing a link.

## **Comments from the Office of the Prime Minister**

The Office of the Prime Minister indicated that the item was posted prior to written guidelines from Ministerial Services being circulated. The Office stated that systems have now been put in place to ensure all documents are checked a second time prior to posting, and Ministerial Services have now issued written guidelines.

## **Electoral Commission's Determination**

The Electoral Commission has considered the requirements of the Electoral Finance Act along with the items listed as exhibits (below).

Whether any particular item is an election advertisement within the meaning of section 5 of the Electoral Finance Act is a question of circumstances and degree. In the Electoral Commission's view the statutory test is not whether an item "can be regarded" as encouraging or persuading voting in a particular way – as a matter of logic, almost anything "can" be so regarded – the test is whether the item "can reasonably" be so regarded, allowing inclusion within the definition only when it is objectively reasonable to do so.

The Electoral Commission believes it is essential to democratic elections that parties can inform the public of the policies which will be implemented if elected and that, particularly in light of New Zealand Bill of Rights Act considerations, it would not be reasonable to regard mere statements of policy as election advertisements and subject to the restraints of the Electoral Finance Act. Therefore the Commission is of the view that items which are accounts or reasoned criticisms of policy, or accounts or reasoned criticisms of actions or inactions, generally are not "reasonably" regarded as election advertisements as they are essential to informed democratic elections.

The Electoral Commission considers that accompanying identification of the proponents of such items does not of itself convert the items into election advertisements, but disproportionate display of photographs, names or logos could do so. Other matters that might bring such items within the definition of an election advertisement include the addition of persuasive content which lack an information base such as party slogans, self promotion or unreasoned criticism of opponents, and exhortations to vote in a particular manner.

The Electoral Commission considers the article and press releases are statements of policy and actions taken, and that the criticisms do not go beyond what might be considered robust debate. The content of the items fall just short of what could reasonably be regarded as encouraging or persuading voters to vote or not to vote in a particular manner.

In respect of the links to party websites that may contain election advertising, the Electoral Commission is of the view that a link to such websites is not necessarily of itself an election advertisement particularly if, as in this case, the link is not prominently or disproportionately displayed and there is no exhortation to utilise the link.

As a result the Electoral Commission formed the view that the website does not contain election advertising for the purposes of the Electoral Finance Act.

The Electoral Commission understands that the State Services Commission has issued guidance on content for departmental websites, in respect of the requirements of the Electoral Finance Act and also in respect of more general departmental obligations such as political neutrality and so on. Issues about compliance with such guidelines is a matter for the State Services Commission.

**For the above reasons it is the view of the Electoral Commission that the content of the government website [www.beehive.govt.nz](http://www.beehive.govt.nz) considered by the Commission does not contravene the election advertisement provisions of the Electoral Finance Act 2007 as it is not an election advertisement within the meaning of section 5 of the Act**

Signed for and on behalf of the Electoral Commission



Dr Helena Catt  
Chief Executive and Commission Member  
New Zealand Electoral Commission

15 October 2008

### **Exhibits**

The following items were received and considered by the Electoral Commission when it determined this matter:

1. email correspondence 28 May 2008 and earlier with Shane Hewson
2. email correspondence 20 June 2008 and earlier with Andrew Kissling
3. four web grabs from [www.beehive.govt.nz](http://www.beehive.govt.nz) taken on 22 July 2008
4. article by Ruth Dyson 'Beneficiaries better off under Labour' dated 11 May 2008
5. media releases of 27 May 2008 by Trevor Mallard and David Cunliffe
6. letter 22 August 2008 from Department of Internal Affairs
7. letter 9 September 2008 from the Office of the Prime Minister