

2 July 2014

Requested by: Bunny McDiarmid

By email to: bunny.mcdiarmid@greenpeace.org

Dear Ms McDiarmid

Advisory Opinion Number: 2014/287

climatevoter.org.nz website

You have asked whether the climatevoter.org.nz website (climate voter website) is an election advertisement as defined in the Electoral Act 1993.

Electoral Commission's opinion

The Electoral Commission has formed its view on the basis of the information available to it. The Electoral Commission has considered the content of your email and letter of 27 June 2014 which includes the link to the climate voter website. The Commission has based its advice on the current content of the website only.

Section 3A of the Electoral Act provides a definition of election advertisement. Of particular relevance to the climate voter website is that an election advertisement includes "an advertisement in any medium that may reasonably be regarded as encouraging or persuading voters to vote, or not to vote, for a type of party described or indicated by reference to views or positions that are, or are not, held or taken (whether or not the name of the party is stated)".

Considering the overall content and context of the climate voter website, the Electoral Commission is of the view that the climate voter website is an election advertisement.

The homepage of the climate voter website states:

Being a Climate Voter means you care about climate change and you want all political parties to do something about it. It means you want real action on climate change and you're prepared to use your vote to get it. It says you support strategies to rapidly phase out fossil fuels and grow New Zealand's clean energy and low-carbon potential.

The climate voter website also displays and directly links to the climate voter Twitter feed which contains tweets from the climate voter account such as:

The young have most at stake in the fight against climate change #reasonstovote #yvote >>>
<http://www.climatevoter.org.nz>

RT @actparty: "Climate change is an issue that won't be solved by sabotaging our economy.
<https://www.youtube.com/watch?v=zl8cBRM4QhY> ... " <http://bit.ly/climate-voter-qotw01> ...

There are also a number of tweets from groups affiliated with the climate voter website such as Greenpeace and Oxfam including:

Climate change as big a threat as the credit crisis

With enough #ClimateVoters, politicians will have to listen

Care about #climatechange? More than 12k Kiwis are calling for climate action. Join them

RT @WWFNewZealand: Make your vote count in the biggest challenge of our time. Sign on as a #ClimateVoter at <http://shrd.by/fd49Nr> you can ...

Taken as a whole, the climate voter website may therefore reasonably be regarded as encouraging or persuading voters to vote, for political parties that have the same or similar views or positions to the views expressed by the climate voter website on climate change policies at the 2014 General Election.

Promoter statement requirement

As the climate voter website is an election advertisement it needs to include a promoter statement with the promoter's name and street address in accordance with section 204F of the Electoral Act.

The promoter of the advertisement is the person who initiates or instigates the advertisement. If Greenpeace or any of the other affiliated groups, has initiated the advertisement then it will be the promoter.

If the promoter is unregistered, and is an incorporated or unincorporated body, the promoter statement must also include the name of a member of the body who is the duly authorised representative of the promoter. For example:

"Promoted or Authorised by [duly authorised representative's full name], [promoter's name], [promoter's relevant full street address]".

For an incorporated or unincorporated body it can be the full street address of the body's principal place of business or head office.

Written authorisation

Section 204H of the Act requires a promoter to have obtained the prior written authorisation of the party secretary to publish a party advertisement that may reasonably be regarded as encouraging or persuading voters to vote for a party. If a party authorises the advertisement, the costs of the advertisement will be an expense for both the third party and the party being promoted. The costs are double counted.

However, based on the current content, the Commission is of the view that the climate voter website does not require written authorisation from any party under section 204H. The content will change and if at any time you are uncertain about whether the written authorisation of a party would be required prior to publishing the material, you can seek the advice of the Commission.

If Greenpeace (or any other of the affiliated groups) are the promoter and intend to spend more than \$12,300 on election advertisements, as defined in section 3A of the Act, during the regulated period for the 2014 General Election there is a requirement for

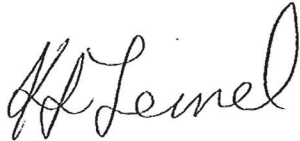
Greenpeace to be registered as a registered promoter with the Electoral Commission. The limit of \$12,300 is set in section 204B(1)(d).

Accounting for the cost as an election expense

The advertisement will also be an election expense for Greenpeace and/or any of the other affiliated groups for the 2014 General Election. Detailed information about registration, promoter statements and expenses for third parties can be found in the Third Party Handbook on the Commission's website: <http://www.elections.org.nz/third-party-handbook>.

The advice expressed about the application of the Electoral Act reflects the Electoral Commission's interpretation of the law and does not constitute legal advice. A court of law may reach a different view. You may wish to consider seeking independent legal advice on questions of compliance.

Signed for and on behalf of the Electoral Commission

A handwritten signature in black ink, appearing to read 'K Temel', written in a cursive style.

Kristina Temel
Manager, Electoral Policy

Attachments

The following documents were received and considered by the Electoral Commission in providing this advisory opinion:

- 1 The email, letter and link to the climate voter website dated 27 June 2014.
- 2 The content of the climate voter website and the Twitter feed.

Relevant legislation

Section 3A of the Electoral Act provides a definition of election advertisement, which is set out below. In addition, section 3A provides certain exceptions to the meaning of what is an election advertisement which are also summarised below.

Section 204F of the Electoral Act requires that an election advertisement published at any time must include a promoter statement.

An **election advertisement**

- (a) means an advertisement in any medium that may reasonably be regarded as encouraging or persuading voters to do either or both of the following:
 - (i) to vote, or not to vote, for a type of candidate described or indicated by reference to views or positions that are, or are not, held or taken (whether or not the name of the candidate is stated);
 - (ii) to vote, or not to vote, for a type of party described or indicated by reference to views or positions that are, or are not, held or taken (whether or not the name of the party is stated) and
- (b) includes
 - (i) a candidate advertisement; and
 - (ii) a party advertisement.

A **candidate advertisement** means an advertisement in any medium that may reasonably be regarded as encouraging or persuading voters to do either or both of the following:

- (a) to vote for a constituency candidate (whether or not the name of the candidate is stated);
- (b) not to vote for a constituency candidate (whether or not the name of the candidate is stated).

The definition of **candidate** means a constituency candidate and includes a person who has declared his or her intention of becoming a constituency candidate.

A **party advertisement** means an advertisement in any medium that may reasonably be regarded as encouraging or persuading voters to do either or both of the following:

- (a) to vote for a party (whether or not the name of the party is stated);
- (b) not to vote for a party (whether or not the name of the party is stated).

None of the following are election advertisements:

- contact information published in any medium by a member of Parliament that satisfies certain requirements as set out in section 3A of the Electoral Act,
- editorial content of a periodical, a radio or television programme, or a publication on a news media Internet site,
- any transmission of proceedings in the House of Representatives,
- personal political views published by an individual on the Internet or other electronic medium, where no payment is made or received.

The Electoral Commission
PO Box 3220, Wellington 6140

Attention: Dean Shirley

Email: dean.shirley@elections.govt.nz

SECTION 204I REQUEST – www.climatevoter.org.nz

1. Pursuant to section 204I of the Electoral Act 1993, we request the Commission's opinion whether the website www.climatevoter.org.nz (and other potential material which will be substantively similar in content) is an "election advertisement". We make this request without prejudice to our contention such materials are not "advertisements".
2. The material has been developed by a number of non-governmental organisations including Greenpeace. Greenpeace is a non-partisan, non-political independent global campaigning organisation that acts to change attitudes and behaviour, to protect and conserve the environment and promote peace. The other NGOs associated with the material all engage in non-partisan advocacy on climate change and other issues. The material is an example of issue specific advocacy of the type regularly engaged in by Greenpeace and other organisations.
3. Section 3A of the Electoral Act 1993 was not intended to prevent issue advocacy. It has its roots in section 5 of the Electoral Finance Act 2007, its terms being substantively the same in regards to this issue. The select committee report on the Electoral Finance Bill and Hansard make the intention of the definition clear. We note in particular:

a. The select committee's comment:

We sympathise with issues-based organisations who pointed out that they may be captured by this definition, and so would have to list under the legislation as third parties, since their work routinely involves "taking a position on a proposition which 1 or more parties or 1 or more candidates is associated", even though their intention is to raise public awareness of particular issues rather than to influence voting for or against particular parties or candidates...

We consider that the bill is not intended to capture all issues based advertising and promotions without exception, and recommend the deletion of these subclauses to make this clear.

b. The speech of the Hon. Annette King (the Minister responsible for the Bill):

This bill does not restrict free speech. It simply restricts the right to purchase speech through advertising.

...

Many groups, such as the National Council of Women, Greenpeace, and the Coalition for Open Government, have said that the changes made to the bill address their concerns. The product now is legislation that promotes freedom of expression by ensuring that a few wealthy individuals cannot use their money to buy an election and swamp the voice of ordinary New Zealanders.

GREENPEACE

Aimee Bell

From: Kristina Temel
Sent: Friday, 27 June 2014 3:13 p.m.
To: Aimee Bell; Dean Shirley
Subject: RE: from Greenpeace

Aimee can you log this as a AO?

From: Bunny McDiarmid [<mailto:bunny.mcdiarmid@greenpeace.org>]
Sent: Friday, 27 June 2014 2:57 p.m.
To: Dean Shirley; Kristina Temel
Subject: from Greenpeace

Dean,
please find attached.
regards,
Bunny



Bunny McDiarmid
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