

The Electoral Commission
PO Box 3220, Wellington 6140

Attention: Dean Shirley

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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.

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c. The speech of Lynne Pillay:

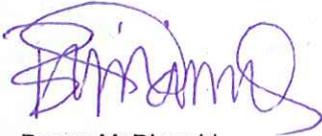
This bill will not destroy free speech. It will not stop people from expressing their views or particularly from lobbying on issues. By amending the definition of "election advertising" we can ensure that people can lobby on issues unfettered, and we think that is really important. Why? Because people's lobbying was what brought about great policies such as 4 weeks' holiday, paid parental leave, early childhood education, interest-free loans for students, and policies on environmental issues.

d. The speech of Charles Chauvel:

This clarifies that taking a stand on issues, as opposed to advocating for a party or candidate, will not fall under the definition of "electoral advertisement" for the purposes of this bill. Any person or organisation will remain free to say whatever they like about any matter. It is only when they enter into advocacy for or against a party or candidate, as Peter Dunne has said, that their actions or expressions will be regulated.

4. Further, a finding that the material is an election advertisement would be an unnecessary and unlawful restriction on the right of freedom of expression guaranteed by section 14 of the New Zealand Bill of Rights Act 1990.
5. Even if the website would otherwise be caught by the definition of election advertisement, in our view the exception under section 3A(2)(e) of the Electoral Act 1993 would apply to the website. In line with the decision of the High Court in *Kirk v Electoral Commission* [2008] 3 NZLR 125 the exception should include legal as well as natural persons.
6. We look forward to a response as a matter of urgency.

Yours sincerely,



Bunny McDiarmid
Executive Director, Greenpeace New Zealand

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