



The New Zealand Television Broadcasters' Council
Comments on the Electoral Finance Issues Paper

Submitted by
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Introduction

The New Zealand Television Broadcasters' Council represents the common interest of its members, the majority of the Free to Air broadcasters in New Zealand. The members are TVNZ, Maori Television Service and MediaWorks TV. As Free to Air broadcasters, we have a very direct interest in the political process and electoral finance is an integral part of that process.

We applaud the concept of a review as there were clearly issues in the last election that affected all media and we would hope this review will lay the framework for a better managed electoral finance process in future elections.

Many of the issues raised in the issues paper we will leave to others to comment on, as they do not directly affect the television networks. We agree with and support the six guiding principles and the responses provided are consistent with those principles.

Issues and Responses

1. Continued Public Funding for Advertising on Radio and Television (q. 2.19 to 2.26)

The NZTBC supports the continuation of public funding for election advertising on television and radio. There are several issues around that funding that need to be dealt with.

The amount of public funding has not kept pace with the rise in the cost of advertising and the amount in the last election was insufficient for political parties to achieve principles 2 and 3, Freedom of Expression and Participation. Typically during an election period, there are some issues that develop more importance and others that drop off, so for parties to be able to reach virtually all of the public within a very short period of time requires more airtime than can currently be provided with the funding allocation. Television and radio are the only mass media that can respond with enough speed and obtain enough reach during a campaign to allow parties to get their messages across as the campaign develops. Our recommendation is for a significantly increased allocation, and a mechanism to have that allocation altered at each election by the percentage of change in the average rate cards provided by broadcasters.

The threshold for inclusion by political parties in the allocation currently eliminates many of the parties and therefore many legitimate points of view. We would recommend that the threshold be lowered to allow participation by more minority parties.

This allocation may still not be large enough to allow parties to communicate their range of messages so private funding should be allowed to top up the public funding and private funding limits for purchase of television and radio time should be set for each party based on the percentage of party vote received in the last election.

One of the real issues with some past elections is that the broadcasters were reliant on the parties to stay within the spending limits allowed, but the broadcasters had no way of knowing if the parties were actually doing so. In the case of the 2005 election, there was overspending due to clerical error, and it took several years of discussion and meetings to clear up the matter, with the broadcasters not receiving payment for some of the airtime provided as a result. Our recommendation would be that responsibility for staying within the set limits rests with the political parties, but if there is overspending, the broadcaster is not penalised; rather it is an issue between the party and the Electoral Commission.

2. Third Party Advertising (Q2.27, 2.28, 5.1, 5.2)

Clearly, this issue was very contentious in the last election, and there need to be regulations around this issue that allow for expression of views while not permitting third party single issue advertising to dominate the electoral process.

Our view is that these individuals and groups need to be heard. In many countries such as Canada and Australia third party advertising is permitted with no limitation. We would recommend the same practice be adopted here.

If this practice is adopted, the advertising must meet the same advertising standards as party advertising. We would recommend that all third party advertising be clearly identified as such on the advertisement, and that any suspected breaches of the advertising codes be dealt with in the same manner as party advertising. With the intensity and short duration of a campaign, any complaints must be dealt with in a very short period of time, a few days at most. Penalties for infringement of the rules may also need to be modified, to ensure that the risk of infringement and the accompanying benefit does not outweigh the penalty imposed.

3. The Complaints Process

Although the complaints process is not specifically mentioned in the Issues Paper, we would advocate for all complaints regarding election advertising to be dealt with by the Advertising Standards Complaints Board. This independent group with five public members and four industry members deals with all other advertising complaints and has a long history of fair and unbiased decisions delivered in a timely manner. They are the most experienced body when it comes to measuring advertising against the standards that are in place. The ASCB already deals with all non broadcast election advertising, so the exclusion of radio and television seems to be an anomaly that should be corrected. An election billboard and a television advertisement for a party that both contain statements that are challenged as breaking the code would need to have a complaint made to two different bodies. Surely, if the ASCB is deemed fit to judge election advertising in all other media, radio and television should also be judged by that body.

We have no doubt that the ASCB would be willing and able to gear up for the quick turnaround required for election advertising.

The complaints window, whether handled by the BSA or the ASCB, should be shortened. Currently that window is 60 days, and that makes no sense, as the period of interest only extends to Election Day. If there is a complaint to be made and heard, its intent should be to stop the advertisement or have it altered so as to not be in breach of the applicable code for the remainder of the campaign. Any complaint beyond Election Day is purely vexatious and a waste of everyone's time and money. We would recommend that the window has a cut-off of the day prior to Election Day.

4. What is Election Advertising (Q 4.1 – 4.3)

We would recommend using the definition of advertising contained within the Advertising Standards Authority's Codes of Practice to help develop a definition of an election advertisement. That definition reads as follows:

"The word "advertisement" is to be taken in its broadest sense to embrace any form of advertising and includes advertising which promotes the interest of any person, product or service, imparts information, educates, or advocates an idea, belief, political viewpoint or opportunity. The definition includes advertising in all traditional media and new media such as on line advertising, including websites.

Email and SMS messaging that are selling or promoting a product, service, idea or opportunity are also covered by the codes as are neck labels or promotions attached to a product. Other examples include posters, pamphlets and billboards (whether stationary or mobile) and addressed or unaddressed mail."

While this definition is broader in scope than may be required for election advertising purposes, it is very inclusive of all media. The BSA has a definition of an election advertisement which reads as follows:

'Election programme' means a programme that:

- *Encourages or persuades, or appears to encourage or persuade voters to vote, or not to vote, for a political party or the election of any person at an election; or*
- *Advocates support for, or opposes, a candidate or political party; or*
- *Notifies meetings held or to be held in connection with an election*

If the BSA definition were used and updated, and the part of the ASA definition that defines the media to be included were added to it, an appropriate updated definition could be developed. Here is the NZTBC's suggestion:

An 'Election Advertisement' is an advertisement that:

- Encourages or persuades, or appears to encourage or persuade, voters to vote, or not to vote, for a political party or the election of any person at an election; or
- Advocates support for, or opposes, a candidate or political party; or
- Notifies meetings held or to be held in connection with an election

The definition includes but is not limited to advertising in all traditional media and new media such as on line advertising, including websites, email and SMS messaging, neck labels, messages attached to a product, posters, pamphlets and billboards (whether stationary or mobile) and addressed or unaddressed mail.

Thank you for the opportunity to participate in this process. If there is anything in this submission that requires more explanation or raises more questions, I would be pleased to elaborate further.


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