

Members present

Hon Andrew McGechan (President)
Dr Helena Catt (Chief Executive)

Dated: 12 June 2008

Decision Number: 2008-04

Initiated by

ELECTORAL COMMISSION

In relation to

**Annual return of party donations for 2007
DIRECT DEMOCRACY PARTY**

Findings and Determination

The Direct Democracy Party's donation return for 2007 was filed after the due date. There was a reasonable excuse for the late filing therefore no offence was committed.

Failure to comply with section 214G(1) of the Electoral Act 1993 by failure to ensure the Electoral Commission received the annual return of party donations by 30 April 2008. No offence committed under section 214G(3) as there was reasonable excuse for the failure to comply.

This headnote does not form part of the decision.

Subject

Annual returns of party donations were required to be filed with the Electoral Commission by 30 April 2008. The Electoral Commission received an annual return of party donations from the Direct Democracy Party on 8 May 2008.

Issues raised

The Electoral Commission considered whether the return was received by 30 April 2008 and, if not, whether an offence had been committed.

Electoral Act 1993

Section 214G(1) of the Electoral Act (the Act) requires every secretary of a registered political party to ensure the Electoral Commission receives by 30 April a return of party donations received in the preceding calendar year.

Every party secretary who fails, without reasonable excuse, to comply with section 214G(1) commits an offence (section 214G(3)).

Comments from the Direct Democracy Party

The secretary of the Direct Democracy Party provided a written explanation of the reasons the return was filed late including that:

- in March 2008 both the party secretary and the party president resigned from their positions
- an interim secretary took up the position until a special AGM could be held to determine the future of the resigned positions

- the interim secretary had not been made aware of the requirement to file an annual return and upon discovering it was required he took immediate steps to do so
- the current secretary was appointed as of 3 May 2008.

Electoral Commission's Determination

The Electoral Commission has considered the requirements to provide returns of party donations under the Act along with the items listed as exhibits (below). It determined that the return was not received by 30 April 2008.

Section 214G(3) of the Act provides:

Every secretary of a political party registered under Part 4 who fails, without reasonable excuse, to comply with subsection(1) or subsection (2) commits an offence ...

It is settled law that the reasonableness of an excuse must be considered in light of the particular circumstances (see, for example, the case of *R v Hyde* (1990) 7 CRNZ 366).

In the view of the Electoral Commission the matters outlined by the party secretary in her letter and summarised above indicate there were temporary internal resourcing complications which under the circumstances constitute a reasonable excuse for the failure to comply on this occasion and therefore no offence has been committed by either the interim secretary or the current secretary.

For the above reasons it is the view of the Electoral Commission that:

- **the interim secretary for the Direct Democracy Party did not commit an offence for the purposes of section 214G of the Electoral Finance Act 2007**
- **the current secretary for the Direct Democracy Party did not commit an offence for the purposes of section 214G of the Electoral Finance Act 2007**

Signed for and on behalf of the Electoral Commission



Dr Helena Catt
Chief Executive and Commissioner
New Zealand Electoral Commission

11 July 2008

Exhibits

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

- 1 The Direct Democracy Party annual return of party donations
- 2 Letter from Electoral Commission to the secretary of the Direct Democracy Party inviting comment
- 3 Letter from secretary of Direct Democracy Party to the Electoral Commission