

Members present

Ms Belinda Clark – *ex officio* (Secretary for Justice)
David Henry (Chief Executive)

Dated: 30 April 2009

Decision Number: 2009-31

Initiated by

ELECTORAL COMMISSION

In relation to

**Registered party records of donations
NEW ZEALAND PACIFIC PARTY**

Findings and Determination

Proper records were not kept of all donations received by the New Zealand Pacific Party. There was not a reasonable excuse for the failure to keep proper records however the offence is so inconsequential to the public interest that the matter will not be reported to the Police.

Contravention of section 34(1) of the Electoral Finance Act 2007 by failure to keep proper records of all donations received. No reasonable excuse for the failure therefore offence committed under section 34(2). For the purpose of section 36, the offence is so inconsequential there is no public interest in reporting the facts to the Police.

This headnote does not form part of the decision.

Subject

The New Zealand Pacific Party annual donation return – a nil return – was accompanied by a qualified audit report. The report stated the auditor identified major weaknesses in recording donor information in the party records, and indicated that records had not been maintained of various matters that are required to be included in donation returns.

Issues raised

The Electoral Commission considered whether:

- proper records had been kept of donations;
- any offence has been committed under section 33 of the Act and, if so, whether the offence should be reported to the Police.

Electoral Finance Act 2007

Section 34(1) of the Act requires financial agents to keep proper records of all donations received by him or her.

Every financial agent who fails, without reasonable excuse, to comply with 34(1) commits an offence.

If the Electoral Commission believes an offence has been committed under section 34, section 36 requires the Commission to report to the Police the facts that belief is based on unless the Commission considers that the offence is so inconsequential there is no public interest in reporting those facts to the Police.

Comments from the Pacific Party

The financial agent provided a written explanation through counsel. Counsel explained that the party was new and the financial agent has no accounting experience, and that the auditor also had no experience of the requirements of party annual returns and did not raise with the party what was required to allow the audit to take place.

Counsel explained that the record of donations was kept in an exercise book, and the auditor was provided with the book and bank statements. The records indicate that there were no donations exceeding \$10,000 in value, no overseas donations of more than \$1,000, and none of the donations were made up of contributions of more than \$1,000. However donations of a lesser amount paid directly into the party's bank account may have been made up of contributions, but the party does not know the names and addresses of any such contributors and would appreciate guidance on how to deal with this in their records.

Counsel explained that no donations were received through transmitters or from overseas persons, which is why there is no record of such, and submits that as none of the donations exceeded \$10,000 there is no requirement to record the names and addresses of the donors. The party wishes to comply with the legislation and would appreciate some assistance as to how the information should be collated and presented to the Commission in future. Counsel also indicated that as a new party it lacked the know-how to set up an efficient organisation and that the party is taking steps to make it more efficient in the future, and the party has learnt its lesson and apologises for the oversight.

Electoral Commission's Determination

The Electoral Commission has considered the requirements to keep proper records of donations under the Electoral Finance Act along with the items listed as exhibits (below).

The Electoral Commission considered the reporting requirements in section 51 of the Act and was of the view that, as a minimum, parties ought to maintain records of the information required by that section. This includes the names and addresses of identified donors who make donations of less than \$10,000 because, for completing and filing annual returns and returns of donations exceeding \$20,000, any donations made by the same donor must be aggregated. If a donor cannot be identified then the donation must be treated as an anonymous donation in accordance with section 30.

Consequently, the Electoral Commission formed the view that proper records had not been kept of all donations received by the Pacific Party.

Section 34(2) of the Act provides:

Every financial agent who fails, without reasonable excuse, to comply with subsection (1) 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).

The Electoral Commission considered the matters raised by the party and summarised above, and was not satisfied that there was a reasonable excuse for the failure to comply. In particular, the party had access to the same information that all other parties had access to and the Commission has previously indicated that new parties have an obligation to ensure they are in a position to comply with the legal requirements. The Commission therefore formed the view that the failure to keep proper records occurred in circumstances amounting to the commission of an offence under section 34(2) of the Electoral Finance Act.

Where the Electoral Commission believes that an offence has been committed under Part 2 sub-part 1 of the Act, section 36 requires the Commission to report to the Police the facts that belief is based on unless the Commission:

considers that the offence is so inconsequential that there is no public interest in reporting those facts to the New Zealand Police.

The Electoral Commission is required to make a value judgement in relation to the nature and extent of the public interest and the level of seriousness involved in the concept of "inconsequential" (see the

case of *Judith Kirk v The Electoral Commission* unreported, 9 June 2008, Mackenzie J, HC Wellington CIV 2008-485-805).


The Electoral Commission considered all the information available in respect of the failure to comply with the statutory requirements including that the return was a nil return, the party provided the Commission copies of its records of donations and bank account, and the party is making reasonable efforts to improve its financial administration. The Commission is of the view that on this occasion the offence is so inconsequential that there is no public interest in reporting the facts to the Police.

The Electoral Commission considers however that the minimum financial recording requirements for parties can be clearly implied from the various provisions which set out the requirements of the financial returns required to be filed, and warns that any future failure by the party to keep proper financial records will not be treated with the same leniency.

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

- **proper records were not kept of all donations received by the New Zealand Pacific Party, without reasonable excuse and in circumstances amounting to the commission of an offence under section 34(2) of the Electoral Finance Act 2007**
- **for the purpose of section 36 of the Electoral Finance Act, the offence is so inconsequential that there is no public interest in reporting the facts to the Police**

Signed for and on behalf of the Electoral Commission



David Henry
Chief Executive and Commission Member

30 July 2009

Exhibits

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

1. audit report 28 April 2009
2. letter 22 June 2009 from counsel for Pacific Party
3. Pacific Party records of donations and bank statements for 2008
4. email 24 July 2009 from counsel for Pacific Party