

Members present

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

Dated: 30 July 2009

Decision Number: 2009-32

Initiated by

ELECTORAL COMMISSION

In relation to

**Registered party 2008 donation return
DIRECT DEMOCRACY PARTY**

Findings and Determination

The Direct Democracy Party 2008 donation return has not yet been filed. There was not a reasonable excuse for the failure to file a return within the required timeframe. However the offence is so inconsequential to the public interest that the matter will not be reported to the Police.

Contravention of section 51 of the Electoral Finance Act 2007 by failure to file duly completed annual donation return by 30 April 2009. No reasonable excuse for the failure to comply therefore offence committed under section 56(1). 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 Direct Democracy Party 2008 annual donation return has not yet been received by the Electoral Commission.

The return must be filed by 30 April 2009. This date was published on the Elections New Zealand website.

Issues raised

The Electoral Commission considered whether:

- a return was filed within the timeframe specified in section 51 of the Electoral Finance Act;
- any offence has been committed under section 56 of the Act and, if so, the offence should be reported to the Police.

Electoral Finance Act 2007

Section 51(1) of the Act requires financial agents to file with the Electoral Commission an annual return of party donations by 30 April each year.

Every financial agent who fails, without reasonable excuse, to comply with section 51 commits an offence (section 56(1)).

If the Electoral Commission believes an offence has been committed under section 56, 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 Direct Democracy Party

The party has been in regular contact with the Electoral Commission, both prior to the Commission cancelling its registration at its request and after the registration was cancelled. The party had experienced difficulty in completing the return and, more recently, in engaging an eligible auditor.

Electoral Commission's Determination

The Electoral Commission has considered the requirements to provide annual returns of donations under the Electoral Finance Act along with the items listed as exhibits (below).

The Electoral Commission determined that, on the basis of the timeframe specified in section 51(1) of the Act, annual donation returns were due to be filed by 30 April 2009 and the Direct Democracy Party return was not received within that timeframe.

Section 56 of the Act provides for offences relating to the filing of party donation returns, and section 56(1) provides:

Every financial agent who fails, without reasonable excuse, to comply with section 51 is liable on summary conviction ...

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 is not satisfied that there was a reasonable excuse for the failure to comply with the statutory timeframe. Consequently, the Commission formed the view that the failure occurred in circumstances amounting to the commission of an offence under section 56(1) of the Electoral Finance Act.

Where the Electoral Commission believes that an offence has been committed under Part 2 sub-part 4 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 party's request to have its registration cancelled appears to have been at least partly motivated by its difficulty in meeting the statutory requirements, and is of the view that on this occasion the offence is so inconsequential that there is no public interest in reporting the matter. However the Commission warns that if the party seeks registration again the Commission expects full compliance with all statutory obligations.

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

- **the 2008 annual return of donations for Direct Democracy Party was not filed within the statutory timeframe, without reasonable excuse and in contravention of section 51 of the Electoral Finance Act 2007, amounting to the commission of an offence under section 56(1)**
- **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 matter to the Police**

Signed for and on behalf of the Electoral Commission

A handwritten signature in black ink that reads "David Henry". The signature is written in a cursive, slightly slanted style.

David Henry
Chief Executive and Commission Member

4 August 2009

Exhibits

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

1. emails 29 – 30 July 2009 with the Direct Democracy Party
2. previous correspondence with the Direct Democracy Party (previously considered)