

**Members present**

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

Dated: 30 July 2009

Decision Number: 2009-35

Initiated by

**ELECTORAL COMMISSION**

In relation to

**Contributions to a donation**

**ROAD TRANSPORT TRUST**

**Findings and Determination**

The Road Transport Trust made donations to political parties and failed to advise the parties that the donations were funded from contributions and provide information about the contributors. However no offence was committed as there was no intention to conceal the identity of the contributors.

Contravention of section 24 of the Electoral Finance Act 2007 by failure to disclose to parties that donations were funded from contributions and relevant information about the contributors. No offence committed under section 25 of the Act as the donor did not fail to disclose the information with the intention of concealing the identity of the contributors.

**This headnote does not form part of the decision.**

**Subject**

The Road Transport Trust made various donations to political parties in 2008, which were included in the parties' donation returns. The funds were collected by the Trust to make donations to political parties and undertake other campaign activities.

**Issues raised**

The Electoral Commission considered whether:

- the donations were funded from contributions and the donor failed to disclose information about the contributions
- any offence has been committed under section 25 of the Electoral Finance Act and, if so, whether the offence should be reported to the Police.

**Electoral Finance Act 2007**

Section 24 of the Act requires donors to disclose to parties when donations are funded from contributions and to provide certain information about any contributor who contributes more than \$1,000.

A donor who fails to disclose the information with the intention of concealing the identity of all or any of the donors commits an offence (section 25).

If the Electoral Commission believes an offence has been committed under section 25, 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 Road Transport Trust**

The secretary for the Trust explained the background to establishing the Trust and the collection of the funds. The Trust was established to campaign for the road transport industry to be heard in relation to issues arising in the political sector which affected it. The trust took legal advice and at no time intended to conceal the identity of contributors to the various donations.

The secretary provided a breakdown of donations and contributions, along with copies of the letters sent to political parties with the donations and receipts provided for the donations. He explained that the funds were collected to fund both donations to political parties and any political action proposed to be taken by Road Transport Forum New Zealand for the benefit of the road transport industry.

Counsel for the Trust indicated he had advised the Trust about their political activities. He submitted that the funds collected may have been used for political donations but depended on the circumstances and the Trustees had a discretion in applying the funds. The intent in making the payments to the Trust was to support political activity and not specifically donations. Counsel suggested that the funds collected do not come within the section 21 definition of "contribution".

### **Electoral Commission's Determination**

The Electoral Commission has considered the requirements of the Electoral Finance Act along with the items listed as exhibits (below).

Section 21 of the Electoral Finance Act requires donors to disclose to parties when a donation is funded from contributions and, where any contribution is greater than \$1,000, to disclose certain details about that contributor. The Electoral Commission formed the view that the funds collected by the Trust and applied to donations to political parties come within the definitions pertaining to contributions in section 21 of the Act, and that the Road Transport Trust was required to disclose to the respective parties the details about each contributor who contributed more than \$1,000 to those funds.

Section 25 of the Act provides:

*A donor who fails to comply with section 24 with the intention of concealing the identity of any or all of the contributors commits an offence ...*

The Electoral Commission is satisfied that although the Trust failed to disclose the information required by section 24, it did not do so with the intention of concealing the identities of the contributors and that therefore no offence was committed under section 25 of the Act.

**For the above reasons it is the view of the Electoral Commission that donations from the Road Transport Trust to political parties were made in contravention of section 24 of the Electoral Finance Act 2007 but no offence was committed under section 25 of the Act**

Signed for and on behalf of the Electoral Commission



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. letter 17 June 2009 and attachments from Road Transport Trust
2. emails 15 July 2009 with Road Transport Trust
3. email 16 July 2009 to Road Transport Trust
4. letter 20 July 2009 on behalf of Road Transport Trust
5. bundle of documents from Chief Electoral Office
6. political party 2008 annual donation returns