

Members present

Hon Andrew McGechan (President)
Ms Belinda Clark (Secretary for Justice)
Dr Helena Catt (Chief Executive)

Dated: 19 August 2008

Decision Number: 2008-27

Initiated by

ELECTORAL COMMISSION

In relation to

Annual return of party donations for 2007

THE ALLIANCE

Findings and Determination

The Alliance'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 Alliance on 8 May 2008 but the return was not accompanied by an auditor's report at that stage.

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 Alliance

The Alliance provided a written explanation of the reasons the return was filed late and the auditor's report was not available. At the time the party secretary was out of the country. The party advised that the auditor was also now out of the country and had not undertaken his report before departing, and proposed that the auditor file his report by 16 June 2008 or if that was too long another auditor would be located.

Auditor's report and comment from the Secretary of the Alliance

The Electoral Commission decided to defer further consideration of the matter until the Alliance's auditor had returned and provided his report. The report was received on 17 June 2008.

The Party Secretary apologised for the delay and, among other things, explained that:

- the Party is small without huge administrative resources
- there were no actual donations that required returning
- the absence of the auditor's report was an oversight
- the lateness of the auditor's report was due to an unanticipated overseas holiday of the auditor
- steps have been put in place to ensure the Party does not miss further deadlines including purchasing an "Electoral Commission diary" with important dates and reminders noted therein.

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 a duly completed 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 Party was to an extent at the mercy of the auditor who was overseas, which under the circumstances constitutes a reasonable excuse for the failure to comply on this occasion and therefore no offence has been committed. The Commission considers however that such excuse is marginal and expects that contingency plans would be in place for auditing in the future, as a recurrence would be viewed seriously. The Commission commends the step of establishing a diary dedicated to reporting requirements.

For the above reasons it is the view of the Electoral Commission that the secretary for The Alliance did not commit an offence for the purposes of section 214G of the Electoral Act 1993

Signed for and on behalf of the Electoral Commission



Dr Helena Catt
Chief Executive and Commissioner
New Zealand Electoral Commission

26 August 2008

Exhibits

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

- 1 The Alliance annual return of party donations as filed on 8 May 2008, along with copy of envelope postmarked 2 May 2008
- 2 Email correspondence between the Alliance and the Electoral Commission, 19 May to 17 June 2008
- 3 Fax on 17 June 2008 from Andrew MacKenzie on behalf of the Alliance