

Members present

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

Dated: 19 August 2008

Decision Number: 2008-28

Initiated by

ELECTORAL COMMISSION

In relation to

Annual return of party donations for 2007

**NEW ZEALAND DEMOCRATIC PARTY FOR
SOCIAL CREDIT**

Findings and Determination

The Democrats for Social Credit donation return for 2007 was filed after the due date. There was not a reasonable excuse for the late filing. The offence will be reported to the Police.

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 reasonable excuse for the failure to comply therefore offence committed under section 214G(3). The facts will be reported to the Police in accordance with section 214I(2).

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 Democrats for Social Credit on 19 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)).

If the Electoral Commission believes that an offence has been committed against section 214G(3) the Commission must report the facts upon which that belief is based to the Police (section 214I(2)).

Comments from Democrats For Social Credit

The Party Secretary of Democrats For Social Credit provided a written letter of explanation for the reasons the return was filed late including that he had encountered difficulties obtaining the information from the Treasurer, there had been a delay sending the information to the auditor on 9 May, the Auditor had already prepared a report based on original documents but was instructed to

prepare another report in accordance with the proper procedures. The Secretary expressed his frustration in attempting to obtain the information on time and apologised for the delay.

The Secretary followed up with an email indicating that the information had actually been provided to the auditor in advance and the delay was with the auditor.

Comments from the Auditor

The auditor provided dates that the information was supplied by Democrats for Social Credit (13 May 2008) and after completing the audit posted the return to the Electoral Commission on 16 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 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).

The Electoral Commission considered the explanations provided by the Party Secretary and the Party's Auditor and concluded that there were still some anomalies. In light of this the Commission is not satisfied that there was a reasonable excuse for the failure to comply.

Section 214I(2) provides:

If the Electoral Commission believes that any person has committed an offence against section 214G(3) or section 214G(4), the Electoral Commission must report the facts upon which that belief is based to the Police.

The Electoral Commission will accordingly report the facts to the Police.

For the above reasons it is the view of the Electoral Commission that the annual return of donations for New Zealand Democratic Party For Social Credit was, without reasonable excuse, filed late in contravention of section 214G of the Electoral Act 1993 and in accordance with section 214I(2) the Commission will report to the New Zealand Police the facts upon which it bases its belief that an offence has been committed

Signed for and on behalf of the Electoral Commission



Dr Helena Catt
Chief Executive and Commissioner
New Zealand Electoral Commission

3 September 2008

Exhibits

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

1. NZ Democratic Party for Social Credit annual return, received 19.05.08
2. Letter 20 May 2008 to secretary of NZ Democratic Party for Social Credit inviting comment
3. Letter 21 May 2008 from secretary of NZ Democratic Party for Social Credit (received 25 May 2008)
4. Email 30 May 2008 from secretary of NZ Democratic Party for Social Credit
5. Letter 16 June 2008 to secretary of NZ Democratic Party for Social Credit advising further information will be sought from the auditor
6. Letter 18 June 2008 to auditor of the return for NZ Democratic Party for Social Credit
7. Letter 31 July 2008 from auditor (received 7 August 2008)