

Subject: Electoral Financing Act: notes of meeting with Helena Catt, Chief Executive, Electoral Commission

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Date: Tuesday, 22 April 2008

Candyce Christensen and I went to meet Dr Helena Catt, CE of the Electoral Commission today. This note has been reviewed by Dr Catt to ensure that it is an accurate record of the matters covered at the meeting.

Dr Catt advised (from a standard aide memoir) that she was not in a position to make definitive statements of the laws. In effect the Electoral Commission's opinions are just opinions, subject to judicial review. She said that there were currently two separate court actions reviewing the Electoral Commission's decision (namely, the decision to allow the EPMU to register as a third party and the decision to not prosecute the Labour Party)

I outlined the structure of the Federation as an incorporated society with the provinces nearly all being separate incorporated societies. I explained the history of this structure. Dr Catt mentioned that one difference between us and the EPMU is that we do not have support for a named political party enshrined in our constitution.

I said that the Federation is a political organisation but it is based on issues, not parties or candidates. I explained that Federated Farmers assumes that amongst its members would be supporters of all the political parties. For that reason the Federation does not support any particular party or candidate. That said, Federated Farmers New Zealand cannot prevent any province or office holder from making any statements on this issue.

I gave Dr Catt examples of the types of material that we publish including Friday Flash, Update, the RMA booklet and sticky labels ("I want to be a farmer" etc and "Change the RMA")

By way of example, I outlined the way the dog-chipping and the access campaigns worked. Points I noted were:

- These were issue based campaigns. One was based on influencing the votes on a bill in Parliament (dog-chipping) and one was around government policy on an issue (the right for farmers to require people to ask for permission to come onto their land)
- We did not know which parties supported us as the campaign progressed and this actually changed over time.
- Much of the action is based on a call to action with the action being done by individuals who may not even be members. The action might be organised by us, or by the provinces, or by individuals. By way of example, the dog-chipping campaign was mainly conducted by individual farmers meeting together and holding a bark-up of their dogs after a ceremonial turning away from Wellington/politics.
- The Access Campaign made great use of a call to everyone to tie an orange ribbon on their fences and gates to indicate that supported the campaign. We did not pay for most of the ribbon and had no control over how it was used.
- We could not control who supported us or how they expressed their support.

Dr Catt explained that the key to the whole question of registration is whether we have published an "election advertisement", as defined in the Act. Provided we stick to issues, we should be OK.

The act provides as follows:

Section 4 Interpretation

...

- publish, in relation to an advertisement, means to—
  - (a) print or insert in a periodical published or distributed in New Zealand; or
  - (b) issue, hand out, or display, to the public; or
  - (c) send to any member of the public by any means; or
  - (d) deliver to any member of the public, or leave at a place owned or occupied by a member of the public; or
  - (e) broadcast (for example, in the form of a radio or television broadcast); or

- o (f) include in a film or video displayed to the public; or
- o (g) disseminate to the public by means of the Internet or any other electronic medium; or
- o (h) store electronically in a way that is accessible to the public

...

## Section 5 Meaning of election advertisement

- (1) In this Act, election advertisement—
  - (a) means any form of words or graphics, or both, that can reasonably be regarded as doing 1 or more of the following:
    - (i) encouraging or persuading voters to vote, or not to vote, for 1 or more specified parties or for 1 or more candidates or for any combination of such parties and candidates:
    - (ii) encouraging or persuading voters to vote, or not to vote, for a type of party or for a type of candidate that is described or indicated by reference to views, positions, or policies that are or are not held, taken, or pursued (whether or not the name of a party or the name of a candidate is stated); and
  - (b) includes—
    - (i) a candidate advertisement; and
    - (ii) a party advertisement.
- (2) The following are not election advertisements:
  - (a) an advertisement that is published by the Chief Electoral Officer, the Chief Registrar of Electors, the Electoral Commission, or any other agency charged with responsibilities in relation to the conduct of any official publicity or information campaign to be conducted on behalf of the Government of New Zealand and relating to electoral matters or the conduct of any general election or by-election and which either contains a statement indicating that the advertisement has been authorised by that officer or agency, or contains a symbol indicating that the advertisement has been authorised by that officer or agency:
  - (b) any editorial material, other than advertising material, in a periodical that is written by, or is selected by or with the authority of, the editor solely for the purpose of informing, enlightening, or entertaining readers:
  - (c) any content of a radio or television programme, other than advertising material, that has been selected by, or with the authority of, a broadcaster (within the meaning of the Broadcasting Act 1989) solely for the purpose of informing, enlightening, or entertaining its audience:
  - (d) any editorial material, other than advertising material, published on a news media Internet site that is written by, or selected by or with the authority of, the editor or person responsible for the Internet site solely for the purpose of informing, enlightening, or entertaining readers:
  - (e) a book that is sold for no less than its commercial value, if the book was planned to be made available to the public regardless of any election:
  - (f) a document published directly by—
    - (i) an incorporated body to its shareholders or members:
    - (ii) an unincorporated body to its members:
  - (g) the publication by an individual, on a non-commercial basis, on the Internet of his or her personal political views (being the kind of publication commonly known as a blog).

Dr Catt advised that in her view:

### 1 Multi party activities

- A meeting to which many parties were invited to send a representative, and the publicity of that meeting, would not be an election advertisements long as the parties invited were not a selection from a particular type (e.g., all left wing parties). E.g., our multi-party panel at National Conference would be fine as there is a clear non-party criteria for the invitation (in essence that are in parliament and not one-man bands)

- If only one type of party is invited or the criteria for selection is unclear we could have a problem.
- Inviting only the 2 major parties would be OK.
- Making a statement on an issue is not an election advertisement
- A multi-party survey of the main parties positions would be OK, again, provided it is clear what our criteria for the selection (and omission) of parties is.
- Where parties or candidates align with Federated Farmers or the positions taken by Federated Farmers, we won't be caught by the Act. In effect we can't control this. We need to be clear that they are supporting us, not us supporting them. Hence, Federated Farmers it is not an election advertisement is we publish materials that say that parties/candidates X, Y and Z support us on an issue and we can say that parties A, B and C are against our positions.

## 2 Spending limits

It is clear to Dr Catt that the Federated Farmers structure with provinces as separate incorporated societies has a long history and we have not been set up in this way to circumvent the act. The spending limits would therefore apply to each incorporated society separately. This means that the \$12,000 trigger is separately calculated and the \$120,000 maximum spend would also be separately calculated.

## 3 Overheads

Dr Catt advised that overheads must be included in the calculation of the cost of any election advertisement. She referred to the method used by universities to calculate overheads, namely, 140% of the salary of the staff involved for the proportion of time that they were involved.

## 4 Effect of minor inclusions

If there is even the slightest reference in a publication that is caught by the definition of "election advertisement" than the whole publication is included.

## 5 Effect of parties aligning with us

Dr Catt accepts that we can do nothing about parties and candidates who publicly align themselves with Federated Farmers and Federated Farmers positioning on issues. Someone else endorsing us and our positions does not make the publications on those positions into "election advertisements"

## 6 Effect of commentary on publications

If we publish on an issue and someone from Federated Farmers or elsewhere refers to that publication as a reason to vote for a party or candidate, it could make the publication an "electoral advertisement". It may be that this only happens where there appears to be a deliberate scheme to do the two things together. Dr Catt is obtaining legal advice on this issue.

## 7 Financial Agent of registered third party

The "financial agent" does not have to be the Federated Farmers trained accounting staff. If Federated Farmers NZ Inc registered, it would be fine for the National President to be the "financial agent". His street address would have to be on any publications.

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