

# S O L G M

NZ SOCIETY OF LOCAL GOVERNMENT MANAGERS



## CODE OF GOOD PRACTICE

For the Management of Local Authority  
Elections and Polls

### Part 9 Campaign Expenses and Advertising

Produced by the  
SOLGM Electoral Working Party

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# Introduction

- 9.1 Part 5 of the Local Electoral Act limits election campaign expenditure by candidates and requires such expenditure and electoral donations to be declared.
- 9.2 The features of the regime for candidate expenditure are:
- a set of tiered expenditure limits determined by population that apply to all candidates for all forms of local election;
  - definitions of anonymous, electoral activity, electoral donation and electoral expenses, similar to those prescribed in the Electoral Act 1993 for Parliamentary elections;
  - equitable apportionment of electoral expenses when activity relates to more than one candidate;
  - fair apportionment of electoral expenses when electoral activity is conducted both before and during the 3 month applicable period;
  - campaign activity must be authorised by the candidate;
  - campaign donations must be declared;
  - offence provisions related to excessive expenditure, failure to file a return, false returns and unauthorised expenditure;
  - return of electoral expenses must be open for public inspection and kept for 7 years after the election to which they relate.
- 9.3 In addition to the controls on candidate expenditure, Part 5 also establishes rules for candidate advertising that are underpinned by a general prohibition with exceptions subject to very specific conditions.

## Objective

To provide electoral officers with procedural practices to deal with the rules governing candidates' expenses returns and the provision of information to candidates about electoral expense returns and campaign advertising.

## Legislative requirements

- 9.4 The main provisions in the Local Electoral Act 2001 governing the filing of candidates' electoral expenses returns and advertisements for candidates are:

Section 104	Interpretation
Section 105	Periods for claiming and paying expenses
Section 106	Procedure if claim disputed
Section 107	Leave to pay claim after time limited
Section 108	Payments to be vouched by bill
Section 109	Return of electoral expenses
Section 110	Return to be open for public inspection
Section 111	Maximum amount of electoral expenses
Section 112	Apportionment of electoral expenses
Section 113	Advertisements for candidates
Section 114	Use of public money
Section 132	Payments in breach of section 105

Section 133	Failure to transmit return
Section 134	False return
Section 135	Unauthorised expenditure
Section 136	Excessive expenditure
Section 137	Property may be stated as being in electoral officer
Section 138	Duty to take action in respect of offences
Schedule 2	Return of electoral expenses and electoral donations

## Recommended practices

### Return of electoral expenses

- 9.5 Part 5 of the Act provides that all expenditure related to electoral activity, in the 3 months before the close of polling day must be included in a candidate's expenditure return. It also provides for an apportionment of electoral expenses where electoral activity occurs more than 3 months prior to polling day. Part 5 also requires that electoral donations are included in the return.
- 9.6 The campaign expenditure limits provided in section 111 of the Act are as follows:

TABLE 10: CAMPAIGN EXPENDITURE LIMITS	
Local Government Area Population	Expenditure Limit
Up to 4,999	\$3,500
5,000 – 9,999	\$7,000
10,000 – 19,999	\$14,000
20,000 – 39,999	\$20,000
40,000 – 59,999	\$30,000
60,000 – 79,999	\$40,000
80,000 – 99,999	\$50,000
100,000 – 149,999	\$55,000
150,000 – 249,999	\$60,000
250,000 or more	\$70,000

- 9.7 In the case of multiple candidature at an election e.g. candidate stands for district council ward and a community board, the expenditure limits in section 111 still apply and the total electoral expenses must not exceed the appropriate expenditure limit. For example, if the population of the district was, say 30,000 then the limit of \$20,000 applies whether a candidate stands for 1, 2 or several electoral offices.

- 9.8 With respect to electoral expenses the expenditure return must set out separately the name and description of every person or body of persons to whom or which any sum was paid, and the reason for which it was paid. Sums paid in excess of \$200 (GST inclusive) must be documented with an invoice or a bill and a receipt.
- 9.9 With respect to electoral donations, the return must also state the name and address of each person who made an electoral donation and the amount of the donation. The definition of electoral donation is contained in section 104 and has an amount threshold of \$1,000 GST inclusive which may comprise a series of donations from a person or a combination of money and goods and services to that value. If the donation of money or the equivalent of money is made to the candidate anonymously, and the amount of the donation exceeds \$1,000, the return must set out the amount of the donation and the fact that it has been received anonymously.
- 9.10 These provisions will not be well known or understood by candidates at an election. It is therefore important that candidates be provided with information about these campaign expenditure and electoral donation provisions at the earliest occasion. This is particularly the case as many candidates will only become aware of these provisions when they apply for a nomination form, after the opening of the nomination period.

**1 Recommended good practice is that all candidates be informed at the earliest occasion that they, regardless if they are elected or not, will be required to complete a return of electoral expenses and electoral donations. This includes individual donations, a series of donations, donations comprising money and goods and services and also anonymous donations of more than \$1,000. Candidates should also be told the expense limit applicable to the local authority area they intend to contest.**

## Population certificates

- 9.11 Section 104 of the Act defines the population to be used for determining campaign expenditure limits in different local authorities and wards/constituencies. For the 2007 local authority elections this will be the population as at 13 July 2007 as specified by certificate issued by the Government Statistician.

“Population means the population, as at the day that is 3 months before the close of polling day, of a local government area as specified in a certificate issued in respect of that area by the Government Statistician.”

**2 Recommended good practice is that the electoral officer write to the Government Statistician, (Statistics New Zealand, Private Bag 4741, Christchurch) prior to giving the public notice of the election under section 52 of the Act requesting an estimate of the latest available resident population for the local authority area and each of its wards/constituencies and community boards.**

## Form of expenses return

9.12 Section 109(2) provides that the form of the election expenses return be in the form prescribed in Schedule 2 of the Act or to similar effect. Appendix A to this Part of the Code reproduces that schedule.

**3 Recommended good practice is that each candidate be issued with a copy of the form in Appendix A to this Part of the Code with the nomination form in the candidate information pack.**

## Timing of expenses return

9.13 Section 109 requires that every candidate must file an electoral expenses return with the electoral officer within 55 days of the day on which the successful candidates are declared to be elected. For those candidates elected unopposed this will be 55 days from the day of the electoral officer's public notice under section 63 of the Act. For those candidates contesting the election this will be 55 days after the day of the public notice of the official result. For candidates out of New Zealand at the time they are declared elected, the return must be filed within 21 days of their return to New Zealand. Section 59 of the Act requires compliance with section 109 before the election deposit is refunded.

**4 Recommended good practice is that electoral officers implement a system to remind each candidate of the date on when their expense return must be filed and monitor compliance with those deadlines.**

## Apportionment of electoral expenses

9.14 Section 112 of the Act governs the apportionment of a candidate's election expenses prior to and during the 3 month period ending on polling day (i.e. the applicable period).

9.15 Potentially, how candidates apportion their electoral expenses could become a public issue given that the election expenses return is open for public inspection. Also, the submittal of a false return is an offence under section 134 of the Act. Furthermore, under section 138, where the electoral officer believes that an electoral expenses offence may have been committed, the matter must be reported to the police. An exception to section 138 is the failure to file a return provided that it is filed promptly when requested by the electoral officer. Accordingly, it is important for candidates to clearly understand the requirements relating to the apportionment of their election expenses.

9.16 Electoral activity, in respect of which electoral expenses may be incurred, is defined in section 104 as an activity:

- (a) that is carried out by the candidate or with the candidate's authority; and
- (b) that relates to the candidate solely in the candidate's capacity as a candidate and not to the candidate
  - (i) in his or her capacity as a member of the local authority or community board, or as the holder of any other office, or
  - (ii) in any other capacity; and

- (c) that comprises
  - (i) advertising of any kind, or
  - (ii) radio or television broadcasting, or
  - (iii) publishing, issuing, distributing, or displaying addresses, notices, posters, pamphlets, handbills, billboards, and cards, etc
  - (iv) any electronic communication to the public, including (without limitation) the establishment or operation of a web site or other method of communication to the public using the Internet; and
- (d) that relates exclusively to the campaign for the election of the candidate; and
- (e) that takes place within the applicable period before the close of polling day.

9.17 Electoral expenses is also defined in section 104, and in relation to a candidate at an election:

- (a) means expenses that are incurred by or on behalf of the candidate in respect of an electoral activity; and
- (b) includes expenses that are incurred by or on behalf of the candidate, before or after the applicable period before the close of polling day, in respect of any electoral activity; and
- (c) includes the reasonable market value of any materials applied in respect of any electoral activity that are given to the candidate or that are provided to the candidate free of charge or below reasonable market value; and
- (d) includes the cost of any printing or postage in respect of any electoral activity, whether or not the expenses in respect of the printing or postage are incurred by or on behalf of the candidate; but
- (e) does not include the expenses of operating a vehicle on which election advertising appears if that vehicle is used in good faith by the candidate as the candidate's personal means of transport; and
- (f) does not include expenses incurred by the candidate in preparing a candidate profile statement; and
- (g) does not include the labour of any person that is provided to the candidate free of charge by that person.

9.18 Nomination deposits should not be included in the candidates' return of electoral expenses. Electoral expenses are defined in section 104 of the Act as specifically relating to electoral activity, which is also defined as (amongst other things) relating exclusively to the campaign for the election of the candidate. The definition of electoral activity neither includes nor excludes nomination deposits. However, it does exclude such things as the preparation of candidate profile statements, certain vehicle costs and donated labour. The inference is that these costs do not relate exclusively to the campaign for the election of a candidate and therefore, may be excluded. The nomination deposit is also not exclusively related to the election campaign and similarly should also be excluded. It is also noted that in the majority of cases the deposit is refunded so that any effect on costs is neutral.

9.19 In terms of the apportionment of electoral expenses, paragraph (b) in the definition of electoral expenses is important. It specifically includes expenses that are incurred by or on behalf of the candidate before or after the applicable period before the close of polling day in respect of any electoral activity. Likewise, section 112 provides that for any electoral activity, in relation to a candidate at an election, which is carried on "both before and within" the applicable period before close of polling day:

- (a) the expenses incurred in respect of the activity (being expenses incurred by or on behalf of the candidate) must be properly apportioned so that a fair proportion of those expenses is attributed to the carrying on of the activity in the applicable period before the close of polling day; and

(b) the fair proportion of those expenses are electoral expenses.

9.20 There has been concern amongst electoral officers as to the interpretation of the provisions governing the apportionment of electoral expenses over both the “before” and “applicable” periods. For the purposes of the Code, the interpretation recommended is as follows:

- (a) where an election activity is carried on both before and within the “applicable period” then its costs must be apportioned in terms of section 112. An example could be the costs associated with the development, preparation and production of hoardings or a web site, before the 3 months prior to polling day, but which will be used throughout the applicable period (i.e. 3 months leading up to polling day). A fair proportion of these pre applicable period costs would contribute towards the expenditure limits applicable to the candidate;
- (b) where an election activity is carried on before the 3 months prior to polling day and is finite or completed, then it would not need to be accounted for against the expenditure limit. An example could be the costs for developing and placing an advertisement in the media prior to the 3 months prior to polling day, which is not used again through the “applicable period”.

9.21 It is expected that there will be ‘grey’ areas in the above approach and that it may cause some electoral officers and candidates some angst. It is likely to be an issue requiring further examination based on real life experiences.

**5 Recommended good practice** is that electoral officers provide with nomination papers and include in their candidate information pack an explanation that the apportionment of electoral expenses on electoral activity should be approached on the following basis:

- (i) the expenses of any electoral activity, as defined in section 104(a) to (d) of the Act, which is carried on, by or on behalf of the candidate, must be fairly apportioned under section 112 of the Act for the purposes of the expenditure limit applicable to the candidate having regard to the definition of applicable period as being the 3 months before the close of polling day;
- (ii) the expenses of any electoral activity, as defined in section 104(a) to (d) of the Act, which is completed, by or on behalf of a candidate on or before 3 months before the close of polling day and is not carried on during the period 3 months before the close of polling day, need not be apportioned under section 112 of the Act.

## Returns available for public inspection

9.22 Section 110 of the Act provides that the electoral officer shall keep all electoral expense returns for 7 years, during which period the returns must be open for public inspection and thereafter destroyed.

9.23 The intention of section 110 is that members of the public (including the media) have the right to satisfy themselves that no offending against the provisions of the Act has taken place. Electoral officers should ensure that returns are available for inspection at the main office of the local authority for 7 years after receipt and that they are destroyed after that period.

- 6 Recommended good practice** is that electoral officers keep the originals centrally at the principal office of the local authority and available for inspection on request from any person.

## Electoral offences

- 9.24 The Local Electoral Act contains several provisions dealing with electoral offences related to candidates' expenses returns. In Part 7 of the Code on candidate information packs, it is recommended that the pack include the sections relating to electoral offences to provide an ongoing reference for candidates.
- 9.25 The maximum penalties contained in the Act are quite large and include possible imprisonment for a term not exceeding 2 years and a \$10,000 fine for filing a return knowing it is false in any material particular. Candidates should therefore be informed of the offence provisions and the seriousness of the penalties.

- 7 Recommended good practice** is that the offence provisions in sections 132 to 136 of the Act be provided to all candidates either separately or as part of the Candidate Information Pack.

## Duty to take action in respect of offences

- 9.26 Section 138 of the Act is a general offence provision which also applies to electoral expense returns. If an electoral officer receives a written complaint or otherwise believes that an offence relating to a candidate expense return has been committed, the electoral officer must report that matter to the Police together with the result of any enquiries conducted by the electoral officer.
- 9.27 However, section 138(3) provides that an electoral officer is not required to report the failure to file a return if the candidate files that return promptly after being required to do so by the electoral officer.

- 8 Recommended good practice** is that electoral officers:
- (i) make contact with the Police and establish liaison prior to any election; and
  - (ii) ensure that their Police Liaison is familiar with the offences provisions of the Act; and
  - (iii) promptly report all written complaints and all reasonable suspicions of offences related to the filing of electoral expense returns to the Police.

## Advertisements for candidates

- 9.28 Section 113(1) generally prohibits any person from publishing or permitting to be broadcast any advertisements procuring or promoting the election of a candidate at an election unless subsection (2) or subsection (4) applies. Subsection (2) allows such advertisements if the publication is authorised in writing by the candidate or the candidate's agent and the advertisement contains a statement setting out the true name of the person for whom or at whose direction the advertisement was published and the address of his or her place of residence or business. The intention of this provision is to allow the public to be aware from whom candidate advertising originates and make their own judgement about the credibility of the information and views expressed.
- 9.29 Subsection (4) authorises the publication of advertisements that are endorsed by an organisation or body representing residents or ratepayers in the community or district in which the advertisement is published. Again there are certain requirements as to the names and addresses of persons directing the publication of the advertisement and the body endorsing the advertisement.
- 9.30 Subsection (5) makes it clear that this section does not restrict the publication of any news or comments relating to an election in any media.
- 9.31 Section 113 is included within the Part of the Act dealing with electoral expenses. The advertising to which it relates may take place at any time – not only during the three months prior to the election.
- 9.32 A breach of subsection (1) constitutes an offence under section 135 of the Act which is punishable by a fine of up to \$1,000. Therefore, all candidates, local media organisations and ratepayer and political groups should be informed of the requirements of section 113.

**9 Recommended good practice is that electoral officers provide clear advice:**

- (i) **to candidates, local media organisations and political groups that all advertising must be with the written authorisation of the candidate or the candidate's agent and include a statement specifying the true name and address of the person or persons that directed its publication; but**
- (ii) **if an advertisement is endorsed by residents or ratepayer organisations in the community or district in which it is published, it need not be authorised by the candidate or candidate's agent provided**
- the true name and address of the person(s) that directed its publication, and**
  - the true name of the organisation that endorsed the publication of the advertisement and place of business address**
- are stated in the advertisement.**

# Return of Electoral Expenses and Electoral Donations

## Under section 109 of the Local Electoral Act 2001

I, [name] a candidate at the election held on the 13th day of October 2007, make the following return of all electoral expenses incurred by me or on my behalf at the election and of all electoral donations made to me or to any person on my behalf.

### ELECTORAL EXPENSES

*(Here set out separately the name and description of every person or body of persons to whom or which any sum was paid, and the reason for which it was paid. Sums paid for radio broadcasting, television broadcasting, newspaper advertising, posters, pamphlets, etc, must be set out separately and under separate headings.)*

### ELECTORAL DONATIONS

*(Here set out the name and description of every person or body of persons from whom or which any donations (whether of money or the equivalent of money or of goods or services or of a combination of those things) of a sum or value of more than \$1,000 (such amount being inclusive of GST) and of a series of donations made by or on behalf of any one person that aggregate more than \$1,000 (inclusive of GST)) was received by the candidate or by any other person on the candidate's behalf for use by or on behalf of the candidate in the campaign for his or her election. The amount of each donation received is to be set out separately. If a donation of a sum of more than \$1,000 was received from an anonymous person, the amount of the donation must be stated and the fact that the person who made the donation is anonymous must also be stated.)*

Dated at \_\_\_\_\_ this \_\_\_\_\_ of \_\_\_\_\_ 2007.