



26 June 2009

Freepost Authority No 224498
Electoral Finance Reform
Ministry of Justice
C/- PO Box 180
Wellington 6140

By Email: electoralfinancereform@justice.govt.nz

To Whom It May Concern

Submission: Electoral Finance Reform – Issues Paper (May 2009)

INTRODUCTION

Preliminary

1. The Screen Production and Development Association ([SPADA](#)) welcomes the opportunity to respond on the Electoral Finance Reform Issues Paper.
2. SPADA's submission focuses on the definition of electoral advertising and relates to Questions 1.1, 1.3, 4.2 and 4.3 in the Issues Paper.

Contact Details

3. SPADA's contact person for this submission is:

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BACKGROUND ON SPADA

1. Formed in 1982, SPADA is a non-profit, membership-based organisation with three full-time staff.
2. The Screen Production and Development Association of New Zealand (SPADA) represents the interests of producers and production companies on all issues affecting the commercial and creative aspects of independent screen production in New Zealand.

KEY POINTS

1. In 2008 SPADA considered the implications of the Electoral Finance Act 2007 (EFA) on the ability to create screen productions that may, by virtue of their content, fall within the definition of an 'election advertisement' (section 5 of the EFA).
2. This arose, in part, as a result of concern over a documentary feature film that could, on strict interpretation, have come within the provisions of the EFA but was intended to inform, enlighten and entertain audiences with a historical perspective on New Zealand politics threading through to then present day events, released before the 2007 election, but some time in the making.
3. Advice received at the time suggested that the EFA could *prima facie* apply to some types of artistic works such as feature films and documentaries as a result of the broad definition of 'election advertisement' and the lack of an express exception from the definition for artistic works or film.
4. The EFA provided an explicit exemption (section 52(2)(c)) for content of a radio or television programme selected by or on the authority of a broadcaster for the purposes of informing, enlightening or entertaining its audience. However, no such exemption was provided for artistic works or film.

5. SPADA submits that in considering any amendments to the definition of **election advertising** (in the Electoral Act 1993), the definition either excludes the possibility of an artistic work (including film and internet media) being captured by its scope or an explicit exception is provided. The forms artistic works now take commonly extend to the electronic media and film.
6. It is noted in 4.9 of the Issues Paper that the definition of 'advertising' does not mention new electronic media such as the internet or visual broadcasting on a building or film and also that in some countries the rules on election advertising are media neutral.
7. SPADA supports the adoption of the general principle of 'freedom of expression' to the development of new legislation governing electoral finance and would support the inclusion of this principle in the legislation consistent with the Bill of Rights Act 1990, which affirms everyone's right to freedom of expression, including freedom of expression in the arts and freedom of the media. The EFA could restrict media freedom.
8. SPADA submits that if this issue is not dealt with by the EFA it could lead to an undesirable restriction of media freedom in New Zealand, affecting the ability of the media to fulfil its role in the proper functioning of a democratic society.
9. The exemptions should include a wider range than simply content of a radio or television programme selected by or on the authority of a broadcaster for the purposes of informing, enlightening or entertaining its audience. They should also extend to film, and electronic media.
10. This position is also consistent with the Bill of Rights Act 1990. SPADA does not believe that limiting freedom of expression in the context of electoral (finance) law is justifiable in a free and democratic society.
11. I would be happy to provide any further information that might be of interest in relation to the matters raised.

Thank you for your consideration of SPADA's recommendation.

Yours sincerely

A handwritten signature in black ink, appearing to read "Penelope Borland". The signature is fluid and cursive, with the first name "Penelope" and last name "Borland" clearly distinguishable.

Penelope Borland
CEO