

31 July 2019

Guidance on Crowdfunding for Candidate Donations

A new issue these elections is the matter of how candidates' crowdfunding donations should be accounted for. Legal advice is as follows:

All crowdfunded money must be returned if there are grounds to believe that more than \$1,500 came from one contributor whose name, address and contribution is not known.

1. If a candidate was to use crowdfunding to raise election money, donations raised on crowdfunding websites would be treated as donations "*funded from 1 or more contributions*" (Local Electoral Act 2001 (LEA), section 103A).
2. If any individual contributor's contribution to a crowdfunded donation exceeds \$1,500 (either through one contribution or multiple contributions from the same individual), section 103D(2) of the LEA will require whoever transfers the money raised to a candidate or a candidate's representative to disclose that individual's name, address and the total amount of their contribution.
3. Section 103D(3) requires candidates to return the entirety of a donation if they know, or have reasonable grounds to believe, that section 103D(2) has not been complied with.
4. This means that if a candidate had reasonable grounds to believe that one contributor had donated more than \$1,500 to their crowdfunding campaign but had not been informed of that contributor's name and address, and how much they donated, the candidate would have to return everything raised by the crowdfunding.
5. Given that contributors could easily use false identities while making multiple contributions, we consider that candidates could easily find themselves in a position where they have reasonable grounds to believe section 103D(3) has not been complied with, and therefore have to return everything raised.

Major crowdfunding websites are unlikely to host campaigns for election candidates

6. Givealittle have received legal advice and decided against hosting campaigns for election candidates due to difficulties complying with regulations.
www.nzherald.co.nz/nz/news/article.cfm?c_id=1&objectid=11686445),
7. Like Givealittle, the other major crowdfunding service, PledgeMe, only pay out once a project is "successful" (<https://www.pledgeme.co.nz/pages/terms>). This means that both platforms' processes are unlikely to enable compliance with the requirement in section 103C of the LEA to transmit donations to candidates within 10 working days.
8. Sections 103E and 103K of the LEA contain offences relating to concealing the identity of people who contribute more than \$1,500, or circumventing the requirement to only keep \$1,500 of any anonymous donations that exceed \$1,500. "Anonymous" donations are where the candidate does not, and could not reasonably be expected to, know the identity of the donor.
9. It is understandable if crowdfunding providers will not host crowdfunding for election candidates, given that their platforms could be used to conceal the identity of people contributing more than \$1,500, thereby putting them at legal risk.