

ELECTION FUNDING, EXPENDITURE AND DISCLOSURES AMENDMENT BILL 2011

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Bill introduced on motion by Mr Barry O'Farrell.

Agreement in Principle

Mr BARRY O'FARRELL (Ku-ring-gai—Premier, and Minister for Western Sydney) [4.01 p.m.]: I move:

That this bill be now agreed to in principle.

After 16 years the time is long overdue to restore honesty and integrity to government and politics in this State.

The SPEAKER: Order! Members will come to order. The Premier has the call.

Mr BARRY O'FARRELL: I gave a commitment in this House in 2010 that, if elected, a New South Wales Liberal and Nationals Government would introduce legislation to restrict political donations to individuals—citizens on the electoral roll, the people who decide elections. I insisted that this State's approach to regulating political donations and expenditure must:

... ensure that those who exercise executive power in New South Wales understand that they are accountable, that we insist on having standards, and that they should operate with integrity and honesty.

This promise is being met by the New South Wales Liberal and Nationals Government. The Election Funding, Expenditure and Disclosures Amendment Bill 2011 contains two reforms that respond to the community's loud and clear demand for real change in this area. These reforms are consistent with amendments that were proposed by the New South Wales Liberals and Nationals last year during debate on the former Government's 2010 election funding legislation. Regrettably for the people of New South Wales, the former Government refused to support the amendments and allow them to be in place for this year's State election.

This bill will ban donations from other than individuals, including corporations, industrial organisations, peak industry groups, religious institutions and community organisations—in other words, third party interest groups. It will do this by making it unlawful for a political donation to be made or received if the donor is not an individual who is on an electoral roll for Commonwealth, State or local government elections. The bill also will link the electoral communication expenditure of political parties with that of their affiliates to ensure that the effectiveness and fairness of campaign finance rules are not undermined. These reforms are a reasonable, measured and fair way to inject more transparency and accessibility into the State's political processes. It will invest the power to donate solely in those who have the power to vote, those with the greatest stake in the system. New South Wales electors deserve nothing less.

I turn now to the details of the bill. Item [1] of schedule 1 provides for the aggregation of electoral communication expenditure of parties and their affiliated organisations. Under the Election Funding, Expenditure and Disclosures Act "electoral communication expenditure" comprises a subset of electoral expenditure that relates to certain campaign expenses,

including advertising, accommodation and staffing costs. The Act caps the electoral communication expenditure that parties are entitled to incur in the lead-up to an election at both a State and electorate level. It is unlawful for a party to breach the caps. Unfortunately, these party expenditure caps are not currently affected by the expenditure of organisations that are affiliated with a political party. This leads to organisations intimately involved in the governance of a political party, sometimes even with office bearers in common, campaigning on behalf of a party with no corresponding offset to the party's own ability to spend.

The Government believes that this is an unfair loophole that undermines the integrity of the whole scheme. The bill closes this loophole by combining the electoral communication expenditure of affiliates with the expenditure of political parties for the purpose of determining whether a party has exceeded the applicable expenditure cap. It does this by aggregating the expenditure of a political party with that of its affiliated organisations. Under the bill an "affiliated organisation" is defined to be a body that under the rules of the party can appoint delegates to the party's governing body and/or has a role in the preselection of candidates for that party. An affiliated organisation may be incorporated or unincorporated in recognition of the fact that a traditional corporate structure may not always be adopted by organisations that affiliate with political parties.

New section 95G (6) will provide that even if a political party spends less than or equal to its applicable expenditure caps, its expenditure will be treated as exceeding those caps if the combined party and affiliate expenditure exceeds the caps. This aggregation will apply for the overall State cap on party expenditure, as well as the \$50,000 electorate cap. It is unlawful under the Act for a party to incur expenditure in excess of the relevant statutory caps. Item [2] of schedule 1 will implement the Government's promise to ban corporate donations. As I said in this House last year, it is the New South Wales Liberal and Nationals' strong view that:

... the only way that you can ensure that the public is going to have confidence about our electoral system is to limit [donations] to the individuals who are on the electoral roll. It must be limited to those Australian citizens who are enrolled, not overseas citizens and non-residents, because of course those people do not get the vote. They do not have a stake in the system and they should not be able to influence the system—and nor should unions, third party interest groups and corporations ...

I stand by that position. Like the industry-specific prohibitions already in place under the Act, the new general ban on corporate and other donations applies to both State and local government elections. The bill contains a new section 96D (3), which will ensure that the new restrictions cannot be circumvented by corporate entities, union entities or others channelling donations through individuals. Such conduct will be unlawful. However, I will continue to urge the Commonwealth Government to extend these reforms in the Federal electoral context so that the same fundamental principles of accountability and transparency apply at every level of government in Australia. Such consistency will enhance the effectiveness of the reforms we are putting in place in New South Wales today. Finally, the bill does not affect the existing bans on donations by property developers and tobacco, liquor and gambling entities and their close associates, such as, company directors and their spouses.

The SPEAKER: Order! The member for Shellharbour will come to order.

Mr BARRY O'FARRELL: It will not be possible, however, under the bill for a person to commit an offence under both the industry-specific bans and a new general prohibition on donations by non-individuals in relation to the same conduct. As I announced earlier in response to a request from the Electoral Commissioner, both the Parliamentary Electorates and Elections Act and the Election Funding and Disclosure Act will be reviewed in this term. Any recommendations that seek to support the intent of this legislation before the House to clean up State politics will be welcomed. These important reforms are long overdue. They will support a system of democracy in New South Wales that does not operate for the benefit of organisations that have no right to elect representatives to this Parliament. They will end the risk, reality and, under Labor, public perception that donations could buy government influence.

It is inevitable that these laws and, I expect, this bill will trigger discussion and debate about constitutional principles. It has always been a great excuse to do nothing and a way to justify the status quo. I believe that a ban on donations other than those by individuals does not place unreasonable restrictions on the implied freedom of political communication mandated by the Commonwealth Constitution. The measures in this bill are designed to rid this State of the risk, reality and perception of corruption and undue influence. To this end, they are consistent with the principles endorsed by the High Court in the Lange case. The bill's symbolic and practical effect should not be underestimated. I am proud to be able to deliver on the Government's promise for all New South Wales electors. I commend the bill to the House.