

Committee on Electoral Matters - Review of the Parliamentary Electorates and Elections Act 1912 and the Election Funding, Expenditure and Disclosures Act 1981

Unions NSW response to Questions on Notice and additional questions

- 1. During the 2011 NSW election, did the requirements of the Act place an additional administrative burden on your organisation?*

Yes, the requirements of the previous amendments did place an additional administrative burden on Unions NSW.

According to our finance officer, by far the most onerous task was to decide which payments needed to be recorded – which counted as “electoral communications expenditure” and therefore were to be declared as such and paid from the separate campaign account. This was due to the difficulty in interpreting the legislation. Once a decision had been made to include an amount as reportable it was merely a matter of coding the payment and posting it to the ledger. There was also a need to open a new bank account.

In addition to attendance at NSWEC briefings, in an effort to ensure compliance, over the course of the pre election period and in the lead up to the submission of the return, Unions NSW sought and obtained legal advice at considerable expense. This largely focused on providing guidance in determining what payments would be subject to the new requirements.

As part of our role as a peak organisation, Unions NSW also attempted to assist our affiliates in the new legislation and make them aware of their obligations under the new requirements, by way of issuing circulars and conducting briefings of meetings of affiliates.

The point to be made from this is to that while this issue means one thing for Unions NSW, which does have a small staff of around 20 (around half of whom are administrative), any additional administrative burden is merely unwelcome – while for smaller community and other organisations who may not have any paid staff, or if they do, don't regard participation in public policy debates as core business, this may be enough to make them decide that the extra work in compliance means pursuing their issue publicly is not worth it. Anecdotally some other organisations have said as much – “you just wouldn't bother now”. Presumably others remain blissfully ignorant of their obligations and continue on as previous.

- 2. In your submission you state that there is some confusion about the definition of “electoral expenditure” and “electoral communication expenditure”, as opposed to expenditure on issue-based communication. How might the act be amended to provide greater clarity in this area for Unions NSW and other third party campaigners?*

As stated in our previous submissions, Unions NSW does not support the regulation of third party campaigners in election campaigns though donation and expenditure caps because we believe it to be unnecessary, but also, precisely because it is unworkable. The question of how to improve the workability of such laws is therefore a difficult one. In nearly all circumstances it is impossible to distinguish electoral campaigning from day-to-day issue campaigning; whether it is in relation to unions or other non-profits, or from the business lobby or the mining industry. We do, however, (and see response to question 3 below), support greater transparency as the best means of ensuring integrity of the way in which third party campaigns may interact from time to time with the electoral cycle. We would support a requirement for

third party campaigners to make readily available information on the source of funding for their campaigns.

In relation to the current definitions, whether a particular statement on an issue will “directly or indirectly influence the voting in an election” is inherently subjective, and subject to things outside of the control of the third party organisations subject to the laws that are putting these points of view as part of their campaigns.

A position held by a third party campaigner may be a long-held position, but whether material advocating this position trespasses into the area of “electoral expenditure” or indeed “electoral communications expenditure” depends not on the position taken by the organisation, but on the position taken by political parties in relation to it.

Nevertheless, within the bounds of the current formulation of the legislation and their definitions, an improvement to ease compliance would be to narrow the scope of the definition of “electoral communication material” so that it includes only material that explicitly encourages a vote *for* (or *against*) a particular *named* candidate or party. This would ease the process of determining what is “in” or “out”, reduce the shades of grey and therefore partly ease the additional administrative burden referred to in question 1 above.

3. *In place of mechanisms such as donations and expenditure caps, can you offer any alternative strategies to protect the transparency and integrity of the election funding and disclosure structure in NSW?*

Unions NSW has long argued that the best way to ensure integrity of the election process from the funding point of view is to mandate a high degree of transparency from both donors and parties themselves. To this end we support a low disclosure threshold to be applied inclusive of donations received from individuals. (The specific donation amount beyond which disclosure is required should be well thought through but in the region of \$100 per year would seem reasonable.). Furthermore we note that allowing individual donors above this threshold to maintain their anonymity would not be consistent with such a scheme of greater transparency and disclosure.

Having the source of parties’ funding completely transparent and in the public sphere, it can then be for the voters to decide what influence the funders of political parties have on those parties to which they choose to donate, and whether this influence is improper or undesirable.

A high degree of transparency of donations would not require any further administrative burden on donors or parties than what is currently the practice under the recent changes, with individual donors having to declare that they are not donating on behalf of an organisation and that they are not a prohibited donor.

Unions NSW would happily comply with disclosure requirements that resulted in greater disclosure and greater transparency, with a lower threshold to declare. We consider this to be a better means of achieving the stated objectives of the O’Farrell Government’s amendments to electoral legislation enacted in February this year, without the unworkable, unfair, one-sided and undemocratic effects of the amended law which we criticise at length in our earlier submissions.