

From: "Graeme Orr"
To: "ElectoralMatters Committee" <ElectoralMatters....
Date: 15/02/2010 10:55 pm
Subject: Re: Additional question on notice

CC: "Joo-Cheong Tham"
Dear Helen, Emma

May I address The Hon Mr Harwin's question in general terms?

A state can legislate on almost anything unless it is within exclusive Commonwealth power, or the Commonwealth has legislated inconsistently.

A state thus can legislate on donations to political parties, members or residents of that state. Indeed there is an obvious logic to a state saying: if developer donations are a blight on state governance, given the fluidity of money and federal structures we will ban them in the hands of anyone related to a state branch.

If the party member happens to be a federal candidate or the money is for campaigning on federal electoral issues, or for broadcasting, the Commonwealth potentially has power over these.

The question thus is, has the Commonwealth legislated inconsistently.
I believe it has not. Not yet.

The Commonwealth broadcasting law is too general; it does not pretend to address questions of financing political broadcasting.

That leaves Part XX of the Commonwealth Electoral Act. It is titled 'Funding and Disclosure' but only deals with public funding and donation disclosure. Whilst we often talk of each electoral act as a 'code', that is really only true of election management. It is not, eg, true of campaigning. Thus local by-laws can govern placement of election posters, state defamation legislation governs much of political speech, and so on.

But should Commonwealth laws come to consider political finance holistically, including considering donation limits, there would be a strong argument that the state restrictions on donations would be limited to state MPs, ministers, candidates.

Graeme

On 15/02/2010, at 14:44, "ElectoralMatters Committee"
<ElectoralMatters.Committee@parliament.nsw.gov.au > wrote:

>
> Dear Assoc Professor Orr,
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> During the recent public hearing held on Monday 1 February, Dr
> Twomey took a question on notice regarding the operation of
> particular State legislation. The Committee would be grateful if you
> could also provide a response to the question. Please find attached
> an extract from the transcript with the question highlighted.
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> If you could provide a response to the Committee by Friday 19
> February that would be much appreciated.
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> Regards,
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>
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> <1 Feb transcript page 40.pdf>