**Submission No 18**

# INQUIRY INTO PUBLIC FUNDING OF ELECTION CAMPAIGNS

**Organisation**: National Party of Australia (NSW Branch)

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THE NATIONALS for Regional NSW

22 January 2010

The Chair
Joint Standing Committee on Electoral Matters
Parliament House
Macquarie Street
SYDNEY NSW 2000

Dear Sir,

Please find attached a submission from the National Party of Australia – NSW to the Inquiry into Public Funding of Election Campaigns.

I look forward to presenting a verbal submission on 1 February and may also submit some further written comments on examination of other submissions.

Please don't hesitate to contact me if you require any further information.

Regards,

**Ben Franklin**
State Director

**SUBMISSION**
**JOINT STANDING COMMITTEE ON ELECTORAL MATTERS**
**INQUIRY INTO PUBLIC FUNDING OF ELECTION CAMPAIGNS**

**THE NATIONALS – NSW**

## Overview

The Nationals welcome the opportunity to make a submission to the Joint Standing Committee on Electoral Matters in relation to the current inquiry into public funding of election campaigns.

It is necessary from the outset to declare that The Nationals are strongly supportive of the need to engage in meaningful reform of the current system of donations and election campaign funding. Our Parliamentary team, and that of our Liberal Coalition partners, have taken the lead in demanding reform of the current system of campaign financing.

Quite simply, we consider reform in these areas as being critical to achieve two objectives. First, to reduce the opportunity for, and the instance of, corruption of the political system and the operations of government; and second, to reduce the perception of corruption that attaches to large political donations, thereby restoring public confidence in government.

The donations culture that has flourished under Labor governments for the past decade has added greater impetus to political donation reform in NSW. The reputation of our democratic institutions at both state and local government level has been tainted by revelations of donation related corruption, culminating dramatically with the Wollongong City Council sex and bribery scandal of 2008.

However it is not just these instances of actual corruption that erode public trust in our system of government. Increased public awareness of the donation culture within this Labor government has meant that donations from groups with a perceived conflict of interest, such as property developers, are contentious even in the absence of any evidence of corruption or government favours. This perception of corruption, while less damaging in a real sense, nonetheless diminishes public confidence in government. For this reason, even if it could be argued that actual corruption could be prevented by some other means, effective reform of political financing would still be necessary to ensure public trust in government.

The Nationals would prefer that any such reform be conducted in a cooperative manner between the state and federal governments. This would ensure uniformity of purpose and of regulation, while avoiding any potential jurisdictional problems that may arise as a result of either the state or federal government

embarking on this reform alone. It would also create administrative synergies in the political parties and the government bodies responsible for administering the system.

We would support such a cooperative approach being conducted either through the implementation of complementary legislation at both levels of government, or through a referral of powers to the federal government in accordance with s51(xxxvii) of the Constitution. (Such federal legislation would need to respect that Australian political parties are structured in various ways. In the case of The National Party of Australia – NSW, while it operates in a federated organisation, it remains an autonomous New South Wales political party.)

Notwithstanding a preference for cooperative state and federal reforms, The Nationals believe that New South Wales should pursue reforms unilaterally in the absence of willing engagement from Canberra on the issue, and that ideally those reforms should be implemented before the 2011 state election. The suggestions that are set out below have been specifically developed for the state of New South Wales, as the basis of reform that could be undertaken here. However, they could readily be adjusted (principally with regard to some terminology) to be effective at a federal level as well.

The Nationals note the determination arising from the *Australian Capital Television Pty Ltd v Commonwealth (1992)* High Court ruling that there is an implied freedom of political communication in the Commonwealth Constitution and that political funding laws need to be framed so as to take account of principles and tests that ensure that political freedom is not undermined. For example, such legislation would need to pass the High Court's Lange test (set down by the High Court in *Lange v Australian Broadcasting Corporation (1994), modified in Coleman v Powers (2004))*. Since regulation of campaign finance would most likely burden political freedom to some degree, any reforms be reasonable appropriate and adapted to serve a legitimate end, and serve that legitimate end in a matter which is compatible with the system of government prescribed by the Commonwealth Constitution.

This submission is made under the assumption that addressing corruption within our political system, both proven and perceived, is a legitimate end for the purposes of the Lange test. If the parliament decides to proceed with legislation in this area it will do so under this premise.

For such a law to be reasonably appropriate, it should achieve the desired end effectively whilst imposing the slightest possible burden on political communication. Whilst bearing this in mind, The Nationals believe that a comprehensive overhaul of both supply and demand in campaign finance is necessary in order to address the problem at hand without triggering consequences that would be considered to be incompatible with the system of

government prescribed by the Commonwealth Constitution – for example, favouring one type of political party or candidate over another.

The proposal put forward by The Nationals has first been formulated to be effective in serving the end for which it was designed, and comprehensive enough so as to avoid any unintended consequences which would be incompatible with the system of government prescribed by the Commonwealth Constitution. We have then sought to select the model that fulfils these criteria whilst imposing the least possible burden on political communication, in accordance with the requirement for the test to be reasonably appropriate.

Whilst the need for supply side regulation is well documented, and the obvious means of meeting the end in question, it should be immediately apparent that to restrict the ability of political players to raise money in future campaigns without restricting expenditure in those campaigns confers a significant advantage on major political parties who may have an existing asset base.

Likewise, tighter regulation of the income and expenditure of political parties and candidates in isolation will likely only create other problems. Restricting the ability of parties and candidates to raise money for campaign purposes can be considered an inappropriate curtailment of political communication. For that reason regulation of donations and expenditure must be accompanied by a review (and substantial increase) of current public funding of political campaigns. In addition, since donation revenue is used to fund party administration and policy development as well as campaign expenses, we believe that a system of public support for these activities must be established to ensure the ongoing health of our party political system.

Finally, experience overseas has shown that unless the electoral activities of third parties are regulated in a commensurate manner to those of parties and candidates, fundraising and expenditure will continue by proxy through campaigns that are not officially linked with political players. It is therefore necessary to also regulate the activities of other participants in election campaigns.

Our suggested reforms therefore concurrently address, in a comprehensive manner, each of the following areas:

1. Regulation of donations to parties and candidates.
2. Public funding of election campaigns and parties.
3. Regulation of election expenditure by parties and candidates.
4. Regulation of donations to and spending by third parties which publish electoral matter.

The Nationals support the following key measures as a necessary part of any genuine attempt at reform:

- A ban on all donations to political parties and candidates, other from individuals who are enrolled to vote
- Individual donations to be limited by an annual cap per donor.
- Ongoing requirement for regular disclosure of financial returns by political parties, including disclosure of the name and address of all donors who contribute more than $1,000 in a financial year (if the cap on donations is above that amount).
- An increase in public funding of election costs incurred by political parties and candidates, in recognition of the restrictions placed on funding by donation bans and caps
- The establishment of a Party Administration Fund, as recommended by the Legislative Council Select Committee on Electoral and Political Party Funding
- A cap on election campaign spending by political parties and candidates
- Restrictions on the use of publicly funded Electorate Mailout Accounts by Members of Parliament in the lead up to an election
- Regulation of fundraising and election spending by third parties

## 1. Regulation of donations to political parties and candidates

The first area of reform that must be considered is the regulation of donations to political parties, which could be regarded as the area that most directly raises concern about actual and perceived corruption.

**As a basic principle, if genuine reform efforts are to be undertaken, there must be a ban on donations from any source other than individuals who are enrolled to vote at state elections in NSW.**

While such a proposal forms a radical departure from current practice, it is an effective means of reducing the perception of corruption within the political and governmental system, as it is large donations from corporate and union interests that tend to cause the most concern. In addition to being the most effective means of achieving this end, it is a readily defensible position when considering the nature of our parliamentary system.

Only individual citizens, who have reached the age of majority are eligible to take an active role in selecting parliamentarians, which they do through their votes in Legislative Council and Legislative Assembly elections. No corporation, union or any other association is eligible to vote within our system of government, and there is no obvious reason why they should be able to indirectly take part in the selection of Members of Parliament (and therefore government) through the provision of donations to political parties.

Our political system in this respect significantly lags the United States, which passed laws banning contributions from corporations in 1907 and contributions from Labor organisations in 1947.

An argument may be advanced that unions and other associations, being membership based organisations, should be eligible to participate in this way because they are doing so on behalf of their members, who are electors eligible to participate in the selection of parliamentarians. The same argument could equally be raised with regard to publicly listed companies, whose shareholders are electors (whether through direct holdings or indirectly through investment fund and superannuation accounts). Any such argument is flawed. Citizens exercise their electoral rights directly and in person. A person does not, and cannot, delegate their right to vote to any other person, much less any organisation. Likewise, there can be no justification for delegating the ability to donate, or somehow hypothecating a donation from a union or company back to its members or shareholders.

Individuals not enrolled to vote in NSW (whether residing elsewhere in Australia or overseas) should not be allowed to donate to political parties in this state. There is good precedent for this measure - New Zealand, Canada, the United

States and the United Kingdom all ban or severely restrict donations from foreign nationals.

***Recommendation 1.1. That political parties and candidates be prevented from accepting contributions from any source other than an individual who is enrolled to vote at state elections in NSW.***

While banning donations from sources other than individuals is a significant first step, it is insufficient on its own to adequately address perceptions of corruption. This can only be achieved if the reforms go further, and then limit the amount that can be donated by an enrolled individual. This limit would need to be set at a relatively low amount in order to be effective, and we do not believe that the range of $1,000 - $2,000 should be exceeded in setting the limit. It is further necessary to set such a cap in place not only for each specific donation but for all donations from an individual across a defined period of time. Failure to aggregate all contributions from an individual over a defined period would theoretically allow an individual to donate more than $250,000 by contributing an amount of $1,000 every business day for a year (assuming a cap of $1,000 or more per donation). The financial year, being an established and well known period, would seem to be the appropriate period over which to apply any cap to donations.

***Recommendation 1.2. That donations from enrolled individuals be capped at a relatively low amount (e.g. $1000 - $2,000, indexed to inflation) over the course of a financial year.***

In capping individual donations, consideration needs to be given to the manner in which party membership fees paid by individuals are treated. While in the first instance it may seem appropriate that such fees be considered as part of the recommended cap on donations, the purposes of such contributions, and those of general donations, need to be taken into account.

Membership fees tend to assist political parties in covering the relevant party's administrative costs (although it should be recognised that receipts from membership fees for all major parties fall well short of covering their actual administrative costs). On the other hand, direct donations are made with the intention of supporting a party's campaign and promotional expenses.

To include membership fees of individuals within the cap on donations would effectively prevent members of political parties from contributing to a campaign to the same extent as other enrolled individuals are entitled to do. Their campaign donation would be limited to the difference between the donation cap and their membership fees, while non-members would be entitled to make a campaign donation up to the value of the cap. For this reason, membership fees of individuals should be exempted from the cap on donations.

The exemption for membership fees cannot be open ended, or it could encourage parties to circumvent donation limits by allowing extraordinarily high membership fees. Such fees must therefore be subject to their own cap, which should be set at a rate either equal to or less than the cap on donations.

One advantage to exempting membership fees from donation caps would be the provision of an incentive for parties to engage on a greater level with the community in building their membership base.

This exemption should only be granted on the basis of encouraging individual participation in the political process. For this reason, affiliation fees paid on behalf of an individual to a party by another organisation (such as a trade union) should not be exempted from the donation cap unless the individual in question has authorised the payment of said fee in writing. If written authorisation is not given, the affiliation fee should be counted as a donation from that organisation.

***Recommendation 1.3. That party membership fees from enrolled individuals be exempted from the cap on donations, but subject to a separate cap that is equal to or less than the cap on donations.***

It is necessary also to review the current donation disclosure requirements. The Nationals believe that the current disclosure threshold for donations of $1,000 over a financial year is an appropriate level. There is an obvious and appropriate public interest in transparency within our donation system, particularly in revealing the sources of large donations to candidates and political parties, but this must be weighed against the rights of individual donors to privacy. Reducing the disclosure threshold to a level below $1,000 would deny individuals the right to express their modest support for a political party or candidate privately. The existing threshold of $1,000 per financial year is therefore supported.

Currently individuals paying to attend a function for the benefit of a party or candidate are considered to have made a political donation to the value of the cost of their ticket. A review of disclosure regulation should consider only classing the net profit to the party or candidate from each ticket as a donation, exempting the actual cost of the function to the party or candidate.

The Nationals recognise that there is also a public interest in ensuring that disclosures are made in a reasonably timely manner. We believe that the current requirement for disclosure by parties and candidates every six months, although burdensome to party administration, is sufficient to meet this public interest.

To help ensure compliance with finance and disclosure laws, the requirement that returns be audited should be retained. Provisions should also be put in place, similar to those which currently exist, giving the Election Funding Authority the power to inspect the accounts of all political parties and candidates.

***Recommendation 1.4. That political parties and candidates be required to regularly lodge audited financial disclosures, including details of any donations over $1,000.***

Allowing the exemption of membership and/or affiliation fees paid by individuals to political parties from a cap on donations should not also exempt those amounts from being disclosed, should they exceed the $1,000 threshold. Nor should the exemption of membership and/or affiliation fees from the donation cap be used to avoid disclosure of total contributions exceeding the $1,000 threshold if part of the contribution is membership and/or affiliation fees and part a direct donation. The public's interest in transparency demands that this exemption does not in any way facilitate avoidance of disclosure.

***Recommendation 1.5. That for disclosure purposes, membership and/or affiliation fees be treated as donations.***

The current disclosure regime requires the Registered Agent of a political party to be responsible for the disclosure of all MPs who are members of the party, as well as any candidates endorsed by the party. This is in addition to the Registered Agent's obligation to submit a return on behalf of the party proper. In order to lessen the administrative burden that is imposed by the disclosure regime, it would seem appropriate that the returns of candidates and MPs be incorporated into the returns of the party whose Registered Agent is responsible for making them. Provisions for independent MPs and candidates to submit separate disclosure would need to remain, or their financial activities would be inadvertently exempted from any disclosure requirements.

***Recommendation 1.6. That the financial and donation disclosures of Members of Parliament and candidates whose official agent is the official agent of a political party be incorporated into the party's declaration.***

Avoidance of the limits that are imposed under any reform of donation laws, whether along similar lines to the restrictions recommended above or otherwise, will be a very significant matter. However, a number of simple steps can be taken to close off potential loopholes in the system.

First, bans and caps on donations should apply not only to cash contributions, but also to all in-kind contribution, with the exception of volunteer labour. Failure

to incorporate such a measure would leave open the possibility of widespread avoidance, with donors instead paying expenses on behalf of political parties and candidates in order to thwart the bans and caps on direct donations. Any in-kind contribution should be given a cash equivalent value, for the purpose of both applying the caps and bans on donations, and also for disclosure purposes. This cash equivalent should be based on the market value of the goods or services donated.

***Recommendation 1.7. That donation caps and bans, and disclosure requirements, incorporate both cash and in-kind contributions.***

Second, personal contributions by a candidate to their own campaign should be deemed to be donations for the purpose of any caps and bans on donations. Failure to incorporate such a measure opens two potential avenues for avoidance:

1. It would open the possibility that donors could circumvent the caps and bans by giving "personal" gifts to the candidate, who could then use these "personal" funds to cover campaign expenses.
2. It would open the possibility that a wealthy candidate would be able to self-fund a campaign to a significant extent, effectively avoiding the caps and bans on donations that would apply to everyone else. A system with significant restrictions on external donations whilst allowing personal contributions would be immensely favourable to wealthier candidates.

A limit on personal contributions by a candidate should cover in-kind donations as currently defined by the Election Funding and Disclosures Act (1981). This means that <u>all</u> expenses incurred during the campaign should be paid from the campaign account of the candidate or party.

***Recommendation 1.8. That a candidate's personal contributions to their own campaign be treated as donations.***

Third, any loans that are forgiven by the lender, in part or in full, should be treated as a donation, the value of which should be taken to be the amount by which the borrower's obligation to repay the loan has been reduced. Failure to incorporate such a measure may result in the caps and bans on donations being readily avoided by the making of loans which are then forgiven. This potential loophole must be closed for a system of bans and caps to be effective.

***Recommendation 1.9. That the full or partial forgiveness of any loan be treated as a donation.***

The case for reform of political donations to prevent corruption (both actual and perceived) is well known. However the system recommended by The Nationals not only assists in addressing those concerns, it also seeks to ensure that the financial resources of political players better reflects their public support. In particular, these reforms would, if adopted, assist in allowing independent candidates and candidates representing minor parties and new parties to have more equal access to campaign funding, providing they could generate sufficient community support. One of the most significant financial advantages available to major party candidates at present is access to substantial union and/or corporate donations, which are rarely provided to independent or minor party candidates. Under the reforms recommended above, this advantage would be lost and candidates would be forced to seek financial support from the same pool of individuals from whom they must seek support on election day.

## Public funding

Should donations from sources other than enrolled individuals be banned, and individual donations be capped as recommended, there will be a very significant reduction in funds available to political parties for their administration, as well as a significant reduction in funds available to political parties and candidates in the conduct of election campaigns.

As mentioned previously, severe reductions in the funds available to parties for electoral campaigning could be considered an inappropriate restriction of political communication if parties and candidates are not otherwise compensated.

Accompanying any donation restrictions, therefore, current public funding of elections must be reviewed to consider whether it is adequate to support the role that candidates and political parties play in our democratic system. There are two aspects of public funding that need to be considered in the context of what would be substantial reductions in ability of candidates and political parties to attract private contributions:

- Whether current levels of public funding for election campaign expenses are adequate; and
- Whether funding should be made available to support the administrative functions of political parties.

### Public funding of campaigns

The rationale that justified the introduction of public funding of election campaigns was that it would reduce the reliance of candidates and political parties on private donations to run campaigns, and demonstrate that political parties are not for sale. While this was a noble intention, it is argued by many that the system failed to meet this objective. In practice, although to some extent private financing may have become less significant, public funding primarily served to supplement donations to candidates and political parties.

The system that is now proposed, however, is a substantial shift away from the current system. Within a system of meaningful caps and bans on donations, public funding would not only lead to reduced reliance on private funding in a practical sense, it would be essential to providing candidates and political parties with the means to communicate their policies and positions to the electorate. Campaigns would become to a large degree reliant on public funding.

Public funding is currently allocated to the Central Fund (for parties and candidates campaigning at a state-wide level) at a rate that is double that allocated to the Constituency Fund (for parties and candidates campaigning in individual Legislative Assembly Districts). Parties and candidates who secure more than 4% of the primary vote or who win a seat in the Legislative Council

election can access the Central Fund. Parties and candidates who secure more than 4% of the primary vote in a District at a Legislative Assembly election can access the constituency fund for that district. There are strong arguments that can be made for retaining the funding spilt between the Central and Constituency Funds.

The fundamental logic in this area supports the status quo –changing the funding ratio will adversely affect small parties or independents that do not run candidates for both the Legislative Council and Assembly. The major parties, on the other hand will benefit from any increase in public funding of elections, no matter what ratio is used, as they run candidates for both houses.

For example, a relative increase in funding to the Constituency Fund compared to the Central fund would benefit the major parties to the disadvantage of minor parties such as the Shooters Party, who do not run candidates in Legislative Assembly seats and therefore cannot access monies from the Constituency Fund.

Conversely a relative increase in funding to the Central Fund compared to the Constituency Fund would benefit the major parties to the disadvantage of independent candidates who cannot access the Central Fund.

There is no possible way to rearrange this funding situation without disadvantaging small parties or independents.

Therefore in the absence of any evidence to suggest that the proposed restrictions on donations will affect campaigns for one house of parliament more than the other, The Nationals can see no reason to change this funding allocation.

***Recommendation 2.0. That public funding continue to be divided between a Central Fund, available to parties and candidates contesting Legislative Council elections, and a Constituency Fund for parties and candidates contesting seats in the Legislative Assembly and that the current 2:1 ratio of funding allocations between the funds be maintained.***

The Nationals believe that the current primary vote threshold of 4% should be retained to prevent the proliferation of candidates nominating for election who have no realistic chance of winning a seat in Parliament.

***Recommendation 2.1. That the threshold for eligibility for public funding in respect of an election remain at 4% of the primary vote in either the Legislative Assembly or Legislative Council (or election of a candidate to either chamber);***

The current system of allocating monies for campaign funding is based primarily on the number of enrolled electors in the state, and adjusted for inflation. This is entirely appropriate, and takes into account the fact that the real cost of election campaigning will rise with population growth.

***Recommendation 2.2. That total public funding continue to be allocated at a set rate per enrolled voter, and indexed to inflation.***

Public funding of elections is currently tied to a party's primary vote. The main problem with this system, and one which must be addressed if public funding is to become such a major part of campaign finance, is that parties suffering a particularly adverse result at the polls are placed at a financial disadvantage for future elections. This entrenches incumbents and provides uncertainty for small parties and independents, whose political fortunes may fluctuate more dramatically than those of the major parties.

For this reason, although we propose the retention of primary vote as the basis for funding allocation, we recommend that the committee consider ways of making allowance for singular adverse electoral events.

The main alternative to this system is the matching funds model, widely employed in the U.S., where the party is allocated public funding in proportion to the amount of money each is able to raise from donations. Matching funds to monies raised under donation caps confers an advantage to parties and candidates with strong grassroots support (i.e. strong enough to financially support the party or candidate).

Under the current system (which we propose to maintain for the sake of continuity) funding is awarded on the basis of primary vote, which reflects the breadth but not necessarily the depth of support for a party in the community. A strong argument can be made that matching funds better rewards the type of engagement that parties should be seeking with the community.

A matching funds model better insulates parties and candidate from temporal fluctuations in electoral fortune and ensures that a landslide loss at an election will not provide a party with a large financial disadvantage at the next poll.

As such, The Nationals would have no objection to the introduction of a matching funds model for public funding of elections if it were to be introduced. However in the context of broader reform, we consider such a model too radically different from the current system (which serves its purpose adequately) to justify its inclusion in this submission.

***Recommendation 2.3. That monies from the Central Fund continue to be allocated according to Legislative Council primary vote share to those parties and candidates eligible to access the fund.***

***Recommendation 2.4. That monies from that portion of the Constituency Fund allocated to a Legislative Assembly district continue to be allocated according to primary share vote in that district to those parties and candidates eligible to access the fund.***

The Nationals strongly support the principle that election funding serve purely as a reimbursement for election expenditure. The purpose of public campaign funding is to enable parties and candidates to communicate their policies with the electorate. It would seem inappropriate therefore to allocate monies for any purpose other than to reimburse parties and candidates for such expenses.

***Recommendation 2.5. That public campaign funding only be allocated as reimbursement of actual campaign expenditure, and that copies of receipts to verify the same be provided to the Election Funding Authority before funding is issued.***

The rate of public funding will obviously need to be increased to take account of reductions in the availability of private funding to political parties and candidates. Otherwise the introduction of donation limits could be inappropriately impact upon freedom of political communication.

***Recommendation 2.6. That the rate of funding be increased from existing levels.***

It would arguably run contrary to the purpose of this reform if the system imposed were to unfairly benefit incumbents. The current stipulations that no party receive more than 50% of the Central Fund or of the Constituency Fund in any one district ensure that an adverse election result does not significantly shift the balance of funding to the government or to the incumbent candidate in a district.

***Recommendation 2.7. That no party receive more than 50% of overall campaign funding and that no party or candidate receive more than 50% of funding in respect of any district.***

With smaller income streams for parties and candidates under supply side restrictions public funding becomes very important to their ability to meet their expenses. A new system of public funding should ensure that payments are

made promptly to enable parties and candidates to meet their election expenses in a timely fashion.

Whilst at federal elections parties and candidates need not prove expenditure, Commonwealth law requires the payment of at least 95% of election funding on the 21st day after the election. It is therefore not without precedent that we recommend that election funding be paid at a state level within 21 days of a party or candidate lodging their electoral return.

The current NSW government has an appalling record when it comes to reimbursement of electoral expenses. It must be noted that such tardiness not only inconveniences political parties and candidates, but often small businesses awaiting payment for election materials.

***Recommendation 2.8. That election funding be paid after the declaration of the poll, and full payment should be made to each recipient within 21 days of the lodgement of an electoral return.***

***Recommendation 2.9 That funding should be paid to the registered agent of each party or candidate, as they are responsible for the finances and returns to the EFA.***

Public funding of party administration

Political parties are the cornerstone of the Westminster system of democracy. The major parties have formed the governments and formulated the policy that determines the course of history in New South Wales.

Widespread decline in membership of political parties has meant that administration costs, once covered by party membership dues, are increasingly paid for by corporate and union donations. With the reduction in these funding sources under a reformed system, the parties will need a new source of funding in order to meet administration costs between elections.

***Recommendation 2.10. That a Party Administration Fund be established, as proposed by the Legislative Council Select Committee on Electoral and Party Funding in their report of June 2008.***

This fund would supplement the current Political Education Fund which we believe is inadequate to meet party policy formulation and education costs under a system of restricted donations.

Monies from this fund should be paid to parties quarterly, and based on a linearly weighted moving average of primary vote share in the Legislative Assembly in the previous three elections. A separate allowance should be provided for parties with representation in the Legislative Council who do not contest seats in the Legislative Assembly to receive some funding.

The rate of funding per vote should be indexed to inflation.

**Expenditure**

As a general principle, election expenditure should be regulated by a cap on overall spending by each candidate / party. Expenditure caps have been used in New Zealand, Canada, the United States and the United Kingdom. There is historical precedent for expenditure caps in Australia, although they proved unworkable because they were set at inappropriate levels, not indexed to inflation, and were only applied at a constituency level.

The principal motivation for the imposition of expenditure caps is to limit the ability of the parties to use preexisting assets and future income from these assets to outspend newer parties or independent candidates who are prevented from using preexisting assets to fund their campaigns by new supply-side regulation imposed as a result of this reform.

Expenditure caps should not be intended to provide equity between all political players, but rather should ensure that the respective ability of these players to inform the electorate is not affected by wealth accumulated without the constraints of donation limits. As such they can be considered to serve a legitimate end under the *Lange* test. Such expenditure caps must be reasonably appropriate with respect to the levels and time period applied to them

The timing of the expenditure caps is crucial. The closer the date of the imposition of the cap is to the election, the more likely parties and candidates are to splurge on election advertising in the lead up to that date, negating the purpose of the caps entirely. Such problems have been encountered in the United Kingdom, where constituency expenditure caps apply only after the dissolution of parliament.

Whilst a strong argument can be made for continuous expenditure caps over the life of a parliament, we believe that the administrative burden that would accompany such a system would be too onerous to pass the *Lange* test as reasonably appropriate to achieve the desired outcome. As expenditure caps impose limits on a wide spectrum of political communication, it is desirable that they be as short as possible whilst achieving the purpose for which they were designed.

For accounting purposes the timing of expenditure caps would ideally correspond to the disclosure periods for donations, which are biannual, beginning on the 1st of January and the 1st of July each year. An expenditure cap period beginning the 1st of January, which is less than three months from a March election, is arguably too short to adequately fulfill the purpose of the expenditure cap. A period beginning the 1st of July the previous year provides for almost nine months in which expenditure is capped, which should be considered long enough to achieve the desired end without imposing an inappropriate burden on political communication in non-election periods. In addition, such a timeframe would be

ideal from an administrative point of view, being the longest possible that encompasses only two disclosure periods and one financial year.

***Recommendation 3.1. The expenditure cap should apply (assuming a fixed election date in March) from the 1st of July the previous year.***

With the imposition of expenditure caps on all candidates, the use of the Electorate Mail-out Account becomes a powerful advantage for incumbents, who whilst unable to use the EMA for campaign purposes are able to take advantage of the account to communicate with constituents about electorate matters.

The Nationals believe that although the EMA is essential to the performance of a parliamentarian's duties and should thus be exempted from the expenditure cap, steps should be taken to ensure that the provision of this account to members of parliament does not unduly inflate the benefits of incumbency in the context of a campaign expenditure cap.

***Recommendation 3.2. During the period where spending is capped, the Electorate Mail-out Account for Members of Parliament should be significantly reduced. The allowance should still be sufficient to permit the MP to carry out basic correspondence on an individual level.***

Other jurisdictions have differing views on what exactly constitutes electoral expenditure. Without trying to recommend an authoritative list of what should be included under these caps, we suggest that they should cover as much campaign spending as is practically enforceable. It must be recognised that electoral expenditure extends far beyond spending on "electoral matter", as defined under s151B(6) of the Parliamentary Electorates and Elections Act (NSW). Any glaring omissions from the caps (such as telecommunications) will provide those entities possessing the means and motive to do so with a sterling opportunity to circumvent the regulation and unfairly distort the political process.

There are two viable options for setting a spending cap. One is a flat cap that applies equally to all parties and candidates, and the other is a tiered system in which major parties (and candidates with a realistic prospect of success) have a higher tier, while other candidates and parties face a lower limit.

The vital question to be answered in determining which system to pursue is whether donation reforms will be sufficient to prevent 'dummy' candidates and parties from being used to circumvent expenditure limits to the benefit of a major party or other candidate. If donation reforms are adequate for the system to be self-regulating (i.e. they prevent a 'dummy' candidate from gaining the finances necessary to aid in the circumvention of spending limits) then a tiered system is

unnecessary. If there is a risk that donation reforms will be inadequate, a tiered system is essential.

***Recommendation 3.3. That a flat-cap system be applied to electoral expenditure based on the following model:***

**Parties**
***Electoral spending for political parties would be restricted to the following:***

- ***For parties contesting Legislative Assembly elections - a set amount (for example $2.00) per elector in Legislative Assembly districts contested by the party.***
- ***For parties only contesting Legislative Council elections - a set amount per elector (for example $0.66) eligible to vote in that Legislative Council election.***

***For parties engaged in a joint Legislative Council ticket, the spending cap in respect of their Legislative Council expenditure should be divided by agreement between the parties concerned.***

***Parties only contesting Legislative Council elections, but doing so in a joint ticket arrangement with parties contesting Legislative Assembly elections, should not be able to incur electoral expenditure under the Legislative Council cap.***

**Independent Candidates (Legislative Assembly)**
***Electoral spending for each candidate would be restricted to an amount per elector in the district contested by the candidate (equal to the amount determined for party candidates).***

**Non-party Legislative Council Groups**
***Electoral spending for non-party Legislative Council Groups would be restricted to 1/10$^{th}$ of the amount per elector available for a Legislative Council ticket, minimising the incentive for third parties to register LC groups in order to circumvent restriction on third party expenditure.***

**Ungrouped Legislative Council Candidates**
***Electoral spending for ungrouped candidates in the Legislative Council would be restricted to 1/15$^{th}$ of the amount per elector available for a Legislative Council ticket (based on the requirement for a group being 15 candidates).***

## Third parties

Third parties have proven to be the bane of campaign finance reform worldwide. In the US, “527 groups” which do not specifically campaign for or against a candidate, have played significant roles in election campaigns without being subject to federal campaign finance laws. In the 2005 New Zealand elections the Exclusive Brethren, operating outside of any party spending limits, campaigned heavily against the Labour and Green Parties, prompting the government to pass laws in 2007 (since repealed) that regulated election spending by third parties.

There should be no question that third party production of electoral matter should be regulated. Left unchecked third parties would dominate the political landscape if political parties were subject to donation and expenditure limits. Trade unions already compete with the major parties as election spenders – in the twelve month leading up to the 2007 federal election the ACTU spent more money on television advertising than any political party.

At the same time, it would not be appropriate to prevent third parties from producing electoral matter altogether. Many organisations that participate in electoral campaigning represent legitimate interests distinct from any party affiliation, and deserve to be able to communicate these views effectively to the public.

In order to ensure that the ability of these groups to present these views is roughly in keeping with their public support, they should be regulated in a similar manner to political parties.

***Recommendation 4.1. That all third parties intending to produce electoral material be required to register with the electoral commission before incurring election spending or accepting donations.***

Limits on donations to registered third parties are necessary to prevent political players funneling large amounts of money to issues campaigns that attack their opponents.

Third parties wishing to solicit donations for activities other than electoral spending (e.g. Greenpeace) could continue to do so by establishing a separate body to act as a registered third party for the organisation, to which all electoral donations are directed and by which all electoral spending is incurred.

***Recommendation 4.2 That donations to registered third parties be regulated in an identical manner to that employed for political parties.***

Expenditure limits must also apply to third parties to maintain proportionality with political parties and candidates.

The Nationals believe that whilst third parties have legitimate interests at stake at elections, it is appropriate that parties and candidates seeking election to parliament are awarded a more prominent platform in public discourse around this time.

***Recommendation 4.3. That expenditure by third parties during an election period be limited to 5% of the maximum expenditure for a party running candidates only in the Legislative Council at that election.***

***Recommendation 4.4. That expenditure by third parties during an election period in any one Legislative Assembly district be limited to 5% of the maximum expenditure for a party or a candidate in that district.***

***Recommendation 4.5. That accounts of registered third parties be audited and made available for inspection by officials of the Electoral Funding Authority.***

Insomuch as they do not intend to have candidates elected to public office third parties should not be eligible for any public funding.

## Conclusion

The NSW Nationals are broadly supportive of campaign finance reform in this state, ideally in the context of concurrent reform at a federal reform but conducted unilaterally if federal cooperation is not forthcoming.

We maintain that in order to prevent such reform from unfairly disadvantaging particular parties or candidates any such reform agenda must be wide ranging and comprehensive.

In this submission we have made recommendations as to the method by which we think this reform should take place. We look forward to participating in further discussions relating to this issue, but stand by basic principles, outlined in this submission, which we believe should be at the core of campaign finance reform in NSW.

Essentially, any reform agenda must:

- Prohibit political donations from corporations, trade unions and other organisations.
- Set a low cap on individual donations
- Treat personal contributions from candidates to their own campaigns as donations, subject to the same restrictions as donations from any other individual
- Compensate parties and candidate for lost donation revenue by increasing public funding
- Include limits on election expenditure
- Regulate election campaigning by third parties

Any legislation that does not address these issues in a comprehensive manner has the potential to produce distortions in the political system and harm future prospects of meaningful campaign finance reform in New South Wales.