

**Submission
No 2**

**THE FINAL REPORT OF THE EXPERT PANEL –
POLITICAL DONATIONS AND THE GOVERNMENT’S
RESPONSE**

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Shooters and Fishers Party

Submission to the Inquiry into the *Final Report of the Expert Panel on Political Donations and the Government's Response*

Introduction

The Shooters and Fishers Party (SFP) supports the general thrust of the Expert Panel Review and its recommendations.

However, consistent with past submissions the SFP has made, over the last two parliaments, to a number of inquiries in this area of public policy, we firmly believe that further increases in complexity, compliance, and penalties does not better serve the interests of democracy in NSW. In particular, as it relates to allowing for fair contests at elections, and the proliferation of political ideas and better representation of those ideas in both Houses of the NSW Parliament.

The SFP have been dragged in as a somewhat reluctant participant in this difficult and evolving process of increased governance and control. Our general position is that though the Expert Panel has looked widely and critically at a large number of issues, we believe that it has adopted a bureaucratic and short-term approach, a somewhat myopic view of what reforms are needed. How these recommendations, if adopted will affect the nature and depth of our democracy in NSW, remains unclear.

Given recent ICAC investigations, the emphasis on the compliance that is required for control and honesty of the major parties is justified. However, the Expert Panel have largely overlooked and ignored the effect of overly complex control and compliance on minor parties and emerging political movements, especially as minor parties are in large part volunteer organisations, with volunteer part-time executives and office bearers. These organisations by their very nature have fewer resources, and significantly less, if any money to pay for ever more onerous and complex compliance measures.

We contend that the majority of recommendations covering the areas of funding of elections, parties and candidates, public funding, governance, expenditure caps, disclosures, penalties and compliance, if adopted would in effect advantage the major parties and The Greens, to the detriment of the SFP and other minor parties. This would be simply undemocratic, and unacceptable.

It is with these perspectives in mind that the SFP makes its submission and comments on the recommendations of the Expert Panel.

Response to Recommendations

Recommendation 1

Agreed in principle, though with the caveat that any review will move the balance in favour of the major parties. Further, involvement of the ICAC in deliberations regarding party governance can and will work against minor parties and volunteering. Simply put, volunteers may well be frightened away from the political participation process by the very spectre of the ICAC.

Recommendation 2

Though in principle a laudable objective, for practical purposes the SFP believes that it is unachievable and would also advantage larger party groupings and create new opportunities for applying a new set of biases to be created. For example, the argument that current preference arrangements federally that get minor parties elected on small initial mandates is somehow inferior to the similar election results down the ticket for the major party, is ludicrous.

In the past when major parties, The Greens, Australian Democrats, various Independents, and others in coalition formed preferences and things were going their way, they did not question outcomes. Why not? It suited their political agendas, and in particular, it suited the major party duopoly, in their respective quests to hold onto power.

The 2013 Federal Senate election broke this cosy arrangement for the first time and now the major parties cry foul. Almost 25% of the national electorate did not vote for the major parties. Not a sign of a broken electoral system, rather, a sign of a healthy pluralistic democracy.

The SFP does not want to see this type of corruption work its way into NSW electoral governance, advantaging major parties and The Greens at the expense of the democratic voice of emerging political movements.

Recommendation 3 – Agreed in principle.

Recommendation 4

Agreed in principle and is consistent with SFP recommendations to previous Committee inquiries.

Recommendation 5 – Agreed in principle.

Recommendation 6 – Agreed in principle.

Recommendation 7

Agreed in principle, though with the caveat and in light of severely lower caps on donations generally applied, we see no logical reason for the ban on property developers, as well as liquor, gaming and tobacco industry business entities.

Recommendation 8

The cap, and the prohibition on certain donors, was envisaged as a means of averting political corruption by parties that either are, or are capable of, forming government (Liberal/Nationals or Labor/Greens). Minor parties, such as the SFP, the CDP and the AJP will never be in a position to

hold government. Also, the SFP has long argued that the relatively low donation cap of \$5,000 (as adjusted) is unfairly biased towards the much larger established parties. They have a much larger pool of possible donors at the \$5,000 limit.

The SFP recommends that, following on from the sliding-scale principle correctly applied to Administration Funding, a similar sliding-scale be applied to political donations. We recommend that a cap of \$20,000 per annum per donor be applied to political parties with less than four parliamentary members, while retaining the \$5,000 cap on the major parties and coalitions.

Further, the SFP does not support the quarantining of membership fees for purely administration purposes as it acts to create an ingrained bias against smaller and minor parties. Simply put, members of the SFP, and we assume other minor parties (except The Greens), do not expect their membership monies to be applied only to paying for increased compliance costs. They would rightfully expect that their monies be applied where it is best used, i.e. in funding elections.

The exemptions afforded in the current Act allowing exemptions to major parties and others that impose levies on members of parliament as a fixed amount or a percentage should be abolished, as it seems to have been primarily written to afford advantage to the established parties who may have relatively cheaper membership subscriptions and a wider spread of membership generally.

To this end, the SFP believes that a minimum annual membership should be mandated, at a level that provides for commitment to the party and illustrates ongoing political support. Our recommendation is that an annual minimum membership of \$30 per annum be considered covering all classes of party membership and subscription.

Recommendation 9

Agreed in principle, with the level of donations to parties be set as per our response to Recommendation 8.

Recommendation 10 – Agreed in principle.

Recommendation 11 – Agreed in principle.

Recommendation 12 – Agreed in principle.

Recommendation 13 – Agreed in principle.

Recommendation 14

- (a) The SFP does not support this recommendation because when combined with the existing recommended funding caps it would disadvantage minor parties. We support the existing 2015 election campaign entitlements being retained, with further simplification.
- (b) The SFP does not support this recommendation. We believe that the existing 2015 election campaign entitlements should be retained, with further simplification.
- (c) The SFP does not support this recommendation and would support the current 2015 election campaign funding model with further simplification, because in practice it does not currently guarantee “full” public funding for minor parties, depending as it does on the actual dollar spend, and how that relates to actual first preference votes received.

Recommendation 15

Agreed in principle with the caveat that should the full amount of the loan (at 50% or less) not be repaid, then the unpaid balance, if any, should be forgiven. To do otherwise, unfairly mitigates against minor parties, who do not have the membership spread or commensurate cash flows of the major parties and The Greens.

Recommendation 16 – Agreed in principle.

Recommendation 17

The SFP notes that the current guidelines are very specific, and appear adequate judging by the high level of audit approval applied to the SFP returns by the Electoral Funding Authority.

We believe section 97B of the *Electoral Funding, Expenditure and Disclosures Act 1981* is definitive and guiding in regards to what political parties can and cannot spend monies received from the Administration Fund. Indeed, these are clear rules.

Recommendation 18 – Not supported.

Considering the increased requirements and levels of complexity and sanctions mooted by the Expert Panel, we are somewhat perplexed by this recommendation. In fact, the SFP considers that an increase in Administrative Funding for minor parties would be a more appropriate response. The current levels claimed by the SFP (approximately \$460,000 per annum) is insufficient to meet current compliance requirements as they exist. Given the recommendations of the Expert Panel for added complexity, added compliance, and large penalties, the SFP estimates that the party would require at least an extra \$200,000 per annum, for two additional employees (based on research assistant rates for parliamentary staff). A distinct bias should be applied to minor parties, rather than the reverse, is what is needed.

This is in line with our previous submission on this issue to the Committee when it last reviewed such funding in 2012. At that time we submitted that these funding biases only apply to parties who have four or less members in either House of Parliament. Our position on this issue has not changed.

Further, the Public Education Fund grants of \$50,000 per annum per Legislative Assembly member, should not to be tied to the outcome in the Legislative Assembly only. This grant scheme should be based specifically on educating party members, and the electorate, about our democracy, the NSW electoral process and development of party policy, and this fund should logically be extended to Legislative Council members. This amount should be varied according to the size of the party (ie. number of parliamentary Members), and in accordance with assumed economies of scale, at some agreed rate, similar to the Administration Fund.

Recommendation 19 – Agreed in principle.

Recommendation 20 – Agreed in principle.

Recommendation 21 – Agreed in principle.

Recommendation 22 – Agreed in principle.

Recommendation 23 – Agreed in principle.

However, political parties have set up accounting and reporting systems to comply with current requirements. For example, the SFP have just commissioned design implementation of new systems to improve compliance with current requirements. Continual change of requirements creates resource and administrative challenges, especially for minor parties requiring additional funding.

Recommendation 24 – Agreed in principle.

Recommendation 25 – Agreed in principle.

Recommendation 26 – Agreed in principle.

Recommendation 27 – Agreed in principle.

Recommendation 28 – Agreed in principle.

Recommendation 29 – Not supported.

The SFP party does not agree with this recommendation. We believe that the period of six months before an election is insufficient for the purposes of the Expert Panel's recommendations. In order that proper accountability is maintained, the SFP believes that the period should be for the whole electoral cycle over 4 years.

Recommendation 30

Agreed in principle with the caveat that we need "see-through" provisions applied, that also apply to organisations controlled by Members of parliament, either as individuals or as special interest groups, which when combined, can or may influence policy or the way Members in government would vote. For example, shareholdings, membership or directorships of lobbying companies or other associated entities.

Recommendation 31 – Agreed in principle.

Recommendation 32 – Agreed in principle.

Recommendation 33 – Not supported.

We believe governance and accountability standards should be commensurate with the size of the organisation. Political parties are not part of the State, however, this recommendation would seek to impose the standards of a government department on the SFP or cut funding. If these standards were imposed without funding, then no minor parties will exist.

Recommendation 34 – Not supported.

These recommendations would mean the NSW Electoral Commission has a veto over who the office holders of parties are. We have never heard of this sort of power being exercised over any other political organisation by a regulator.

Political parties should be free to appoint appropriate office holders and determine their roles without a regulator veto.

Recommendation 35 – Not supported.

Recommendations 35, 37 and 38 all assume political parties are not legal entities already subject to other legislation. The SFP as an incorporated association (as are other minor parties) is already required to produce audited accounts in accordance with accounting standards. Hence, there is no need to duplicate legislation. Political parties should be mandated to incorporate.

Recommendation 36 – Agreed in principle.

Recommendation 37 – Not supported.

SFP claims for payment are audited by the Party's auditor as required by the Act then checked 100% by the NSW Electoral Commission. Replacing the NSW Electoral Commission with the NSW Auditor General does not remove double auditing. The claim audit requirements is not necessary given the Electoral Commission 100% checking.

Recommendation 38 – Not supported.

The SFP produce annual audited financial statements as required by the Incorporated Associations Act. We see no point in having the NSW Auditor General audit our financial statements again. SFP audited financial statements are also required as part of our annual electoral returns. This also raises the question of who would be paying the NSW Auditor General.

Recommendation 39 – Agreed in principle.

Recommendation 40 – Agreed in principle.

Recommendation 41 – Agreed in principle.

Recommendation 42

Agreed in principle with the caveat that referrals to the independent body are not limited as referrals from the Premier only, but must also include, as is currently the case, an ongoing review of that body and electoral law generally by the NSW Joint Standing Committee on Electoral Matters.

Recommendation 43 – Agreed in principle.

Recommendation 44 – Agreed in principle.

Recommendation 45 – Agreed in principle.

Recommendation 46 – Agreed in principle.

Recommendation 47 – Agreed in principle.

Recommendation 48 – Agreed in principle.

Recommendation 49 – Agreed in principle.

Recommendation 50 – Agreed in principle.

Conclusion

Given the character, reach and scope of the Expert Panel's work, it appears to us that the report is written from the perspective of the Liberal Party. It is a significantly long and complicated "teachers excuse note" designed to assuage the significant guilt the Liberal Party must be feeling from the revelations during the ICAC hearings involving illicit fund raising activities and general disregard for the spirit and letter of the current NSW electoral laws.

It is absolutely impossible to understand how the Expert Panel can recommend a complete overhaul of NSW electoral laws; how it can recommend sweeping changes to accountability, legal sanction, and indeed, criminal sanctions; and yet expect minor and emerging parties to somehow comply, and with less resources.

The Expert Panel in recommending decreases in Electoral and Administrative Funding in general misses the point entirely. If the government intends to lift the compliance bar so high, then the Government needs to ensure that minor and emerging parties in the democratic process are not disadvantaged. This report does not do enough, if anything in this area at all.

This report seems to want to change our simple pluralistic democracy to a bureaucratic maze that can only be navigated by the financially well-heeled and savvy lawyers at the big end of town.

We would counsel the Committee to look at all the issues properly, and take a balanced view of what it will take to comply with the sort of electoral law reforms that are sought by the Expert Panel, and its effect on our democracy in NSW, when making its recommendations to the Government.

The SFP also expects the Government to take a fair and balanced view and ensure that the democratic process is enhanced by any legislation it wants to introduce, in order that it can be supported by all sides of politics, including cross bench members.