

INQUIRY INTO PUBLIC FUNDING OF ELECTION CAMPAIGNS

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From: George Williams
To: "electoralmatters.committee@parliament.nsw.gov....
Date: 9/12/2009 10:33 am
Subject: Inquiry into Public Funding of Election Campaigns

Dear Sir

Thank you for the opportunity to make a submission to this inquiry. Rather than repeat what I've really written, I attach a submission made earlier this year to the federal government in regard to its first green paper on these same issues.

I have also written on these matters at 'Curbs on Campaign Ads Should not be Beyond Us' Sydney Morning Herald (11 August 2009) and gave evidence on the same at a roundtable convened by the federal Parliament's Joint Standing Committee on Electoral Matters (see <http://www.aph.gov.au/hansard/joint/commttee/J11974.pdf>).

In regard to Term of Reference (m) ('the compatibility of any proposed measures with the freedom of political communication that is implied under the Commonwealth Constitution'), my view in summary is as follows:

* It is possible for the New South Wales Parliament, consistent with the Australian and New South Wales Constitutions, to regulate donations to political parties taking part in State and local government elections in New South Wales. It is equally possible to provide for other measures such as public funding, restrictions on electronic advertising and caps on expenditure. Such measures can be found in other nations with more stringent protections for freedom of speech than can be found in Australia.

* Such regulation could impose significant restrictions upon the making of donations to the participants in such political processes, such as by capping the level of donations or restricting the making of donations to natural persons. It would be important in each case to provide a careful and rational justification as to why any restriction serves to enhance the quality of democracy in the State as well as the quality of participation in democratic processes by electors and candidates.

* A regulatory scheme would likely fall foul of constitutional limits should it seek to regulate political donations and other like matters in regard to federal elections, or if it brought about a scheme that could be characterised as being discriminatory or as not creating a level playing field (including not only as between the major and minor political parties, but also as between such parties, independents, third parties and new participants). It is for these reasons that I believe that any attempt to ban only donations from a single source, such as developers, would likely be unconstitutional. Such donations could certainly be regulated, but would be better addressed as part of a general scheme that did not discriminate against donations from any particular source.

I would be happy to elaborate on any of these matters if I can assist further.

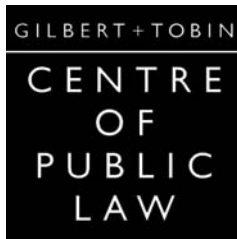
Yours sincerely

George

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25 February 2009

Electoral Reform Secretariat
Department of the Prime Minister and Cabinet

By email: electoralreformsecretariat@pmc.gov.au

Dear Sir

Electoral Reform Green Paper: Donations, Funding and Expenditure

Thank you for the opportunity to make a submission on these issues.

At present, as media reporting in any particular week can attest, there are a myriad of problems that corrode public confidence in the system and in those who serve in parliament. I support a comprehensive overhaul of electoral law as it relates to donations, funding and expenditure. Importantly, the reforms in each of these areas must reinforce each other to produce a system that operates in the best interests of Australian democracy and the Australian people. Electoral reform is needed to bring about a more effective and fair electoral system. The long term strength of Australian democracy depends upon such reforms.

Reforms should be founded on the principle of the maximum possible transparency and disclosure and should include caps on donations and expenditure. Combined with restrictions on the use of funds for purposes like electronic advertising, this might mean that the current level of public funding will be sufficient, or near to sufficient.

It is important that reforms are undertaken in a holistic manner. There is no point, for example, in capping donations if the expenditure side of the equation is not also dealt with. It is also important that the reforms do not merely amount to changes in legal regulation, but also have an impact upon the culture within political organisations. Australia needs to develop a system that has clear rules that direct political campaigning into more useful and appropriate channels, but these rules by themselves will not be adequate unless they are backed by a clear understanding and recognition of their worth on the part of participants in the political process.

When it comes to donations, non-residents should not be entitled to make monetary contributions to Australian political parties. Their involvement in this way has the capacity to distort the Australian electoral system and to provide an inappropriate outside influence on

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democratic decision making in Australia. I also favour placing a cap on donations, and perhaps even preventing donations from anyone other than individuals, but only on the basis of adequate public funding of political campaigning and expenditure caps on campaigning.

I support a cap on the expenditure of funds on campaigning by political parties, candidates and other participants both in and outside of the formal election period. Proven expenditure should be the only basis upon which a person or party can receive public funding. It should be made clear that taxpayers' funds relating to political campaigning can only be received where they can be matched to actual expenditure.

One major concern lies in the demand for money in order to undertake electronic and other forms of advertising. An attempt to limit such advertising was struck down in 1992 by the High Court in *Australian Capital Television*. The idea of limiting electronic advertising should be revisited. That High Court decision struck down a particular scheme that was found to be deficient in light of a freedom of political communication then implied from the Constitution. That was not an implication that was taken into account in the drafting of the legislation because at the time the law was drafted the implication had not yet been recognised.

I believe that it would be possible to design a new scheme to limit electronic advertising that would be consistent with the constitutional implication. It is not, for example, clear (as is stated in para 10.20) that 'a complete ban on election advertising would likely be unconstitutional'. This was not the finding of the High Court, and any judicial assessment would depend on matters such as the nature of the ban and the other avenues still available for political campaigning.

Reform of electronic advertising should be undertaken because any cap on donations or expenditure is unlikely to be effective unless the demand for funds by political parties and candidates is also reduced. Other nations with more stringent limitations on freedom of speech and related political freedoms have proven capable of enacting limitations on advertising (and hence the demand of money) within the political system. They have recognised the clear imperative of regulating matters such as electronic advertising in order to produce a fair and open electoral contest that is not distorted by money. It is time that Australia again sought to go down this path.

In regard to the reforms already proposed, I strongly support the measures set out in the Commonwealth Electoral Amendment (Political Donations and Other Measures) Bill 2008. These changes are essential reforms that should help pave the way for larger reforms to bring about a fairer electoral system for Australia.

Yours sincerely

A handwritten signature in dark ink, reading "George Williams", followed by a vertical line.

George Williams