

**Submission**

**No 17**

# **Review of the Parliamentary Electorates and Elections Act 1912 and the Election Funding, Expenditure and Disclosures Act 1981**

**Organisation:** Liberal Party of Australia (NSW Division)

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08 June 2012

The Hon Trevor Khan MLC  
Chairman  
Joint Standing Committee on Electoral Matters  
Parliament of New South Wales  
Sydney NSW 2000

Dear Mr Khan

**Review of the Parliamentary Electorates and Elections Act 1912 and the Election Funding, Expenditure and Disclosures Act 1981**

On behalf of the Liberal Party NSW I provide a submission to the above inquiry. This submission focuses on two areas of state legislation-the *Parliament Electorates and Elections Act 1912* and the *Election, Funding, Expenditure and Disclosures Act 1981*.

**Parliamentary Electorates and Elections Act 1912 NSW**

Detailed below are the areas of concern with this Act for the Liberal Party NSW.

- (a) Whether the terms and structure of the PE&E Act remain appropriate having regard to changes in electoral practices and the nature of modern political campaigning.
  - Include regulations on the social media platforms
    - Establish clear guidelines on the use of social media platforms such as Facebook and Twitter that impact campaigning.
    - Section 151A should also include a provision for “printing false information online” since electronic platforms are also used to mislead and interfere with an elector casting his or her vote.
- (b) The effectiveness of amendments made by the *Parliamentary Electorates and Elections Amendment (Automatic Enrolment) Act 2009* to facilitate automatic enrolment for the NSW elections.

It is a long stated position of the Liberal Party that we hold significant concerns over the Automatic Enrolment of voters and have stated this in our previous submission to the Joint Standing Committee on Electoral Matters and to the Commonwealth Joint Standing Committee on Electoral Matters. Details why the Liberal Party NSW does not support the continuation of Automatic Enrolment has been provided in a previous submission.

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(c) Those provisions of the Local Government Act 1992 that relate to local government elections and that are administered by the Electoral Commissioner under section 21AA(2) of the PE&E Act.

- Inconsistency of Act
  - Local government candidates are required to complete 5 forms to nominate as a candidate. This does not match the process for the state and federal level. This system is too bureaucratic and we recommend a reduction of forms for both State and local government elections to match the Commonwealth requirement.

### **Election, Funding, Expenditure and Disclosures Act 1981**

(a) Whether the terms and structure of the EFE&D Act remain appropriate having regard to changes in electoral practices and the nature of modern political campaigning.

This Act tries to cover both state election campaigns and local government election campaigns but it can't because the materiality between local and state government is vastly different and thus brings everything down to a lower level. It is impractical from both an administrative perspective and also for compliance purposes.

Detailed below are the reasons why the Liberal Party NSW feels that the terms and structure of the Act are not appropriate in regards to modern political campaigning.

- Inadequacies and Impracticalities in the Act
  - There is very little recognition of GST, either in income (fundraising donations) or expenditure (electoral expenditure) under the Act.
  - The Act should follow generally accepted accounting principles and declare both income and expenditure exclusive of GST.
  - There is no recognition or suggested treatment of joint donations and other payments under the Act.
  - Clarification of donations given and used for Party administrative purposes. Donations are quite often given to the Party (mainly from Party members) to be used for administrative purposes, i.e. they are not used for state elections campaigns, local government election campaigns or federal election campaigns. What sections of the Act apply to donations such as these?
  - An 8 week time period for the disclosure return to be lodged is too short (Part 6, Division 2 of the Act). The disclosure timeframe should match that in the Commonwealth Act.
  - The claim for public funding timeframe is less than the disclosure timeframe yet the claim must be accompanied by the disclosure (Part 5, Division 3 of the Act).
  - Disparate funding levels between candidates and the Party. Under Part 5, Division 2 of the Act public funding can be claimed for electoral communication expenditure of an endorsed candidate under either

candidate claim or the Party claim. However, under the candidate claim the maximum rate of public funding equates to 30 cents in the dollar whereas the Party claim the maximum rate of public funding equates to 75 cents in the dollar. This area needs to be consistent.

A revised Act needs the following recommended changes:

- Segregation between State and local government:
  - Whilst there are a lot of common issues between State election campaigns and local government election campaigns there are also a lot of differences. It is our opinion that for the sake of clarity, matters regarding political donations and electoral expenditure currently addressed under Part 6 of the Act should be split into two Parts, one covering State elections and elected members of Parliaments and one covering local government elections and elected members of councils.
  - If segregation of laws regarding political donations and electoral expenditure are adopted, then consideration should be given for State election disclosure levels and donation caps to more closely reflect those applying by the Commonwealth.
  - If the Act has separate parts for State elections versus local government elections (as recommended above) then introduce a yearly cap on donations to local government campaigns of \$2,000 per person.
  - Maintain property developer prohibitions for donations to local government campaigns.
- Greater recognition of the role of the Party
  - If a candidate is endorsed by the Party then treat them as part of the Party, i.e. no separate disclosures and expenditure caps to be inclusive, etc.
  - Logically, overall caps and funding need to be based on the number of endorsed candidates.

(b) The role and functions of the Election Funding Authority in New South Wales.

- The degree of vouching required by the EFA is far too extensive (Part 5, Division 3 of the Act and Part 6A, Division 4 of the Act). The supply of a detailed invoice from the supplier should suffice.
- It is not necessary to publicly disclose every single line item of electoral communication expenditure, summarised broad classifications should be all that is necessary. It is not in the public interest and it can throw an unfair spotlight on particular suppliers and unfairly 'tag' them with a political supporter when it is simply a commercial transaction.
- The time delays in the payment of public funding are far too great.
- The Act should reflect the audit requirements of the Commonwealth Electoral Act. The EFA does not rely on the audit, which is required under the Act, and instead

conducts a separate review despite the fact an audit has already been completed. This audit is an expense incurred by the Party in complying with the Act. The Australian Electoral Commission does not require an audit rather they conduct an audit themselves on an ad hoc basis.

- The review conducted by the EFA should be based on generally accepted audit principles where consideration of a sample size takes into account the systems in place by the Party. The current practice of the EFA to test every single transaction is extreme and a waste of taxpayers' money.
- As part of their review, the EFA should also consider materiality. For example, requesting back up documentation for an invoice of \$30 is immaterial when it is part of a multi-million dollar campaign.
- Consideration should also be given with regard the value that taxpayer's money is getting with respect to the cost of compliance enforced by the Election Funding Authority. What is the cost of this Authority compared to amount of public funding that they administer?
- Correspondence from the Election Funding Authority to donors threatening legal action if they do not disclose donations even before the disclosure is due has been far too aggressive. We have received multiple complaints from donors advising that they are being treated like criminals simply because they have made a political donation even though they have not been in breach of the law. This sort of aggressive action by the Election Funding Authority further exacerbates the confusion in the political donation market place and contributes to the reduced rate of political donations being made.

(c) The operation and effectiveness of recent campaign finance reforms including the *Election Funding Amendment (Political Donations and Expenditure) Act 2008*, the *Election Funding and Disclosures Amendment (Property Developers Prohibition) Act 2009*, and the *Election Funding and Disclosures Amendment Act 2010*.

- The impacts of campaign finance reforms have had a dramatic effect on the overall fundraising abilities of the Party. The changes in the Act have led to confusion in the whole political fundraising market with the process negatively impacting on the image of making political donations. Even though these changes don't apply to Federal campaign fundraising they have had a significantly negative impact on this area through donor befuddlement.
- The public funding provided for both administrative purposes and campaign purposes is inadequate:
  - Consideration should be given to increasing the amount of administrative public funding from the current indexed cap of \$2 million to \$3 million. It is not just for the minor parties that the level of public administrative funding is inadequate. \$3 million is a more appropriate level for a political party the size of the Liberal Party of Australia, NSW Division, particularly given the

increased costs of compliance as a result of the multiple changes made to the Act.

- Administrative public funding should be paid in advance or partly in advance.
- Consideration needs to be given to extending the expenditure which is eligible for public funding to include all items of state electoral expenditure not just electoral communication expenditure. This could necessitate a revision of expenditure caps to accommodate this.
- Division 4 and Division 4A of the Act currently prohibits close associates of property developers, for profit gambling and liquor businesses, and tobacco businesses from making political donations. Given that only individuals on the electoral roll can make donations and that there is a cap on donations for state campaign purposes, the bans on certain classes of individual donors are now irrelevant and impedes on their constitutional rights to contribute to the political process.

(d) The recommendations made by the Committee following its 2010 inquiry into the public funding of local government election campaigns.

- Local government campaigns
  - Consideration should be given to capping expenditure on local government election campaigns. We recommend that a copy of detailed invoices is all that is required to vouch for expenditure.
  - We are of the opinion that no public funding should be allowed for local government election campaigns.

Thank you for your consideration of the issues we raise.

Yours sincerely

Mark Neeham  
State Director