

**Submission
No 24**

INQUIRY INTO PUBLIC FUNDING OF ELECTION CAMPAIGNS

Organisation: Unions NSW

Date Received: 27/01/2010



Unions NSW submission to the inquiry into public funding of election campaigns

Joint standing Committee on Electoral Matters

25 January 2010

Submission by:
Unions NSW
Trades Hall Building
Level 3, 4 Goulburn Street
Sydney NSW 2000
T: 02 9881 5999
F: 02 9261 3505

1. Introduction

Unions NSW welcomes the opportunity to make a submission to the *Inquiry into Public Funding of Election Campaigns*.

Unions NSW is the peak body for unions in NSW. It has 64 affiliated unions, 10 affiliated regional trades and labour councils and represents approximately 600 000 union members. It is governed by an elected executive who are assisted in the day-to-day operations of the organisation by a small team of officers and support staff.

Our union affiliates cover the spectrum of the workforce, stretching from workers in finance to footwear and construction to communications, and we are the largest member based organisation for workers in NSW.

Some of our affiliates are also affiliated to the Australian Labor Party, however the large majority of Unions NSW affiliates are not.

2. General comments

Unions NSW welcomes the progressing of the debate around political party and election campaign funding in the interests of a healthier democracy and in encouraging greater public confidence in our system of government, at all levels of government.

We already have a system of publicly funded elections. Unions NSW supports increased public funding of election campaigns to a level closer towards that which would meet the cost of modern campaigning, which would reduce the real and perceived influence of donors on parties in government. Unions NSW also supports the introduction of further full disclosure requirements on donations to political parties. We particularly support measures which would stop individuals or organisations from making anonymous donations to political parties and their campaigns via front organisations established for that purpose. However we remain of the view that within a regime of full disclosure, organisations have a legitimate role in participating in the political process by making donations to political parties.

In relation to another of the terms of reference to the Inquiry, Unions NSW supports a tightening of restrictions on Government using taxpayer dollars to fund partisan political advertising.

Legislation should ban inappropriate government political advertising (eg promoting the point of view of the government on a policy issue) while allowing genuine community service information (eg driver safety or bushfire awareness).

Governments now easily out-spend corporate advertisers like McDonalds or Coca Cola. While regulation of this area remains lax it is only bound to increase as a problem as each government feels compelled to promote its achievements as least to the prominence of their predecessors. Apart from an unfair advantage on incumbent governments and the distortion of the political process, the main concern of Unions NSW is the tremendous amounts of taxpayers' money which has been wasted on political advertising by incumbent governments both the federal and state level, which could be better spent on services and infrastructure in the communities where our members live and work.

Over the period 2005-2007 the then Federal Government spent an estimated \$121 million promoting its new industrial relations laws¹, in what was a most blatant and costly example. However there are numerous examples at both state and federal government level, and any independent means of assessing government advertising for biased political content would be an improvement on the absence of regulation which allowed the disgraceful waste which was the *WorkChoices* advertising campaign.

3. “Third Party” campaigns

We limit our more substantial comments in this brief submission to address the following aspect of the terms of reference:

- (i) *whether there should be any regulation of expenditure by third parties on political advertising or communication*

As the voice of working people in NSW, Unions NSW regularly seeks to put forward views on issues important to union members in NSW to influence the public debate in the interests of working people and their families. In this sense, Unions NSW is an active “third party” campaigner, alongside many other community groups and advocacy organisations that promote social change, as well as business and corporate lobby groups.

It is becoming increasingly the case that unions and other organisations will aim to influence the public debate and in turn politicians of all persuasions by campaigning on issues both in

¹ Gillard, J. (2008), “Not a Squeak from Liberals about 100,000 Work Choices Mousemats”, Media Release, 19 February, viewed at http://www.deewr.gov.au/Ministers/Gillard/Media/Releases/Pages/Article_081017_145620.aspx on 22/01/10.

and out of election time. Some campaigns may intensify around elections but election day itself or its outcome is far from being the focus of the campaign.

Unions NSW regards expenditure on such campaigns as completely legitimate and an integral part of the core work we perform on behalf of our affiliates, and in turn our affiliates on behalf of their members, in advancing their interests.

Unions NSW contends that regulation of spending for organisations other than political parties and their associated entities is unnecessary, undesirable and in any case, unworkable.

Regulation of genuine third party campaigning unnecessary

More generally on the issue of third party campaigns, firstly, Unions NSW does not believe that third party campaigns, whether coinciding with an election period or not, and whether they are run by community groups, business groups, unions or other advocacy groups, are a “problem” that requires a regime of monitoring, policing, enforcement and sanction by the state. To the contrary, different views being expressed publicly and with the comparable prominence as those run by candidates or parties seeking office are a positive contribution to pluralist political discourse.

Advocates of a new regulatory regime for third party campaigns may cite the example of the the United States, where quite separately from the issue of the huge funds (and corresponding large donations) required by the major parties to run their campaigns, is the influence wielded by the corporate sector through their funding of campaigns where it is not clear who is providing the funding², often under the banner of a bogus, made-up advocacy group. For this reason, advertisements must make the source of funding clear. This is not a reason to restrict the ability of organisations to put their view forward in the public arena.

Protecting free speech and enhancing public debate

Secondly, all citizens and groups they may organise into should have the right to have a public say on any issue, and this should not be the sole domain of political parties.

A group of residents should be able, without having to familiarise themselves with complex declaration requirements, to provide via advertising and other means its views on an local

² There is a very large number of examples such as “Hands off our Health Care” campaign” being run by “Patients First” (<http://www.joinpatientsfirst.com/>) which in turn is a project of “Americans for Prosperity”, a foundation funded by other family “foundations” set up by extremely wealthy company executives and directors. The campaign has included media advertising against Democratic Party candidates, with no transparency around the source of funding, and as an example sits alongside many others into which HMOs and large pharmaceutical companies have poured huge amounts of funds.

issue which may include republishing the views of candidates on this issue, giving voters a better opportunity to make an informed decision if it is an issue of importance to them.

Similarly a group of manufacturers, mining companies or primary producers, should be able, through their organisations, to push a particular policy position supportive of their industry, so that the members of the public can be informed of their position, so long as it is clear that the message was funded by companies in those industries.

While the union movement conducted the *Your Rights at Work* campaign, a coalition of business groups presented an alternative view on industrial relations reform prior to the 2007 election³. As the source of funding and on whose behalf the advertisements were run were clear in both examples, there should be no restriction or requirement to declare. This protects free speech around elections, as implied in the Australian Constitution, while protecting the public from being misled. Moreover in the business funded campaign, unlike the former Federal Governments \$121 million *WorkChoices* advertising campaign⁴, business used their own funds to promote an issue in their interests without the unfair assistance from a huge amount of public money.

Impracticability of effective regulation

Finally, Unions NSW believes that (apart from the necessity of distinguishing genuine third party campaigns from party political advertising under a different name) it is impossible to define third party election advertising or campaigning as distinct from general campaigning on bread and butter issues for advocacy groups, unions, or the business lobby.

In Canada, where there exists restrictions on third party expenditure, the complexity and contested nature of what constitutes election spending by third parties (to the point of unenforceability) has been noted:

By far the most controversial court challenges have been in response to restriction on advertising by non-party organisations at election time. These have provoked numerous court challenges referencing the Canadian Charter of Rights and Freedoms⁵

The extreme difficulty of defining and therefore enforcing is well illustrated by the recently introduced expansive declaration requirements (by the Howard Government in 2006) for third parties.

³ Business Council of Australia (2007), "Business Coalition for Workplace Reform", viewed at <http://www.bca.com.au/Content/101143.aspx> on 22/01/10.

⁴ Gillard (2008), *op cit*.

⁵ Sayers, A.M and Young, L. (2004), *Election Campaign and Party Financing In Canada*, Democratic Audit of Australia, Australian National University, Canberra, viewed at http://arts.anu.edu.au/democraticaudit/papers/20040908_sayers_young_elect_finance.pdf on 22/01/10.

Under the current federal arrangements for example “political expenditure” (for which is required a range of reporting requirements) is defined as, amongst other items in a lengthy list:

the public expression of views on an issue in an election by any means⁶.

The Australian Council of Trade Unions contended in their submission⁷ to the Federal Government’s Electoral Reform Green Paper for organisations such as trade unions or community groups, whose central purpose as membership organisations is to advocate in their members’ interests, “It is virtually impossible ... to determine the line between expenditure incurred as a legitimate part of an organisation’s everyday functions and political expenditure”.

Their submission noted numerous difficulties just with this one provision, listing some examples:

- When precisely does a subject become ‘an issue in an election’? During the last election period, one of our affiliates produced material promoting increased public funding of public schools. Was the level of public funding for schools an issue in the last election? At the time, media commentators were widely observing that education was *not* an election issue. So does this mean that this expenditure need not be reported?
- What if the purpose of expenditure is not to express views ‘on an issue in an election’ but a non-partisan attempt to generate public interest and attention around a particular issue of concern: that is, expenditure seeking to make a particular issue an issue in an election? Does this type of expenditure need to be reported?
- What precisely does the phrase ‘in an election’ mean? Is this just expenditure incurred after an election has been called?⁸

From the point of view of unions, the transparency requirements for all registered trade unions, are already extensive, and appropriately so in order for comprehensive information to be provided to union members on the expenditure of their fees.

It is a requirement of registration under the NSW *Industrial Relations Act 1996* that every union present, publishes and makes available to members audited financial statements of income and expenditure, in which those funds devoted to campaigns would be apparent. For unions registered in the Federal system the *Fair Work Act 2009* confers similar obligations.

Especially for unions already subject to these requirements, further regulation of yet another area is unnecessary and unworkable.

⁶ *Commonwealth Electoral Act (1914)*, s314AEB(1): Annual returns relating to political expenditure.

⁷ ACTU (2009), *ACTU Submission on the Electoral Reform Green Paper: Donations, Funding and Expenditure*, ACTU, Melbourne.

⁸ *Ibid.*