

**Submission  
No 9**

## **INQUIRY INTO PUBLIC FUNDING OF ELECTION CAMPAIGNS**

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**Date Received:** 22/01/2010

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**Submission on**

**Inquiry into Public Funding of Election Campaigns**

**to the**

**Joint Standing Committee on Electoral Matters**

**New South Wales Parliament  
Macquarie Street, Sydney.**

**which covers some of the Terms of Reference**

**from**

**Eric Jones**

**22 January 2010**

**i)**  
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ii)

**Thanks.**

Thank you for the opportunity of being able to make this submission.

**Qualification. Personal comment.**

As I do not feel competent to be able to submit a comprehensive submission to cover all of the 18 Terms of Reference points I have decided to only comment on some of them. As well I do not have the time to do it. I regret any errors made.

**Comments regarding the Inquiry.**

For such an important inquiry, which will cover the State and the Local Government areas and the funding of political parties, it seems to me that the time frame to report by the 12 March 2010 is ambitious.

Also bearing upon the situation are the Federal Governments Green Papers and their inquiries and determinations in these areas. We need, broadly, a common system throughout the whole of Australia in the Federal, State, Territory and Local Government areas where this is appropriate. Coordination and cooperation from all stake holders is needed for that to occur.

Presumably there will need to be a complete rewrite of the Electoral Act to cover all of the appropriate existing areas and the new items being incorporated. The question arises whether or not the principle act would be set out in broad principles supported by detailed ancillary legislation setting out the detail.

Whatever happens, an exposure bill should be issued for the general public to be able to comment upon the bill.

Relating to this I have tried to set out some Principles followed by some action items in the areas I have chosen to comment about. I have found this approach valuable in the Australian Government's Green Papers on Electoral Reform.

Working against the overall position seems to me to be constitutional issues and likely public opposition to the full or partial funding of political parties if this is to occur.

**Acknowledgement.** Some quotes and references are used from the Australian Government's Electoral Reform Green Paper "Donations, Funding and Expenditure" The Australian Government's Electoral Reform Green Paper, entitled "Donations, Funding and Expenditure", of December 2008 copyright Commonwealth of Australia reproduced by permission.

You will need a copy to refer to the relevant parts as I have not reproduced the points in some of this submission.

iii)

**SUMMARY.**

This submission commences with thanks for the opportunity of making a submission, qualifications and personal comments and some comments regarding the inquiry. An acknowledgement in this is made to sources quoted in the submission.

The general introduction concludes with the comment that overall it could be said that in democracy political fairness should apply. The integrity of the electoral system depends upon transparency which in turn enhances accountability.

Next ten principles are set out for reference to the Terms of Reference areas. Comment is made on some of the Terms of Reference. At the end it concludes with the point that at times some of these principles conflict.

This submission comments on only some of the Terms of Reference. These are :-

(A) Reference is made to eligibility for funding and an effort test to allow for fairness and participation and access.

(D) Public funding payments for the election payment should be paid to the candidates and for administration and electoral education to political parties. Accountability, transparency and administration and viability could apply here.

(F) Public funding expenditure restrictions should be on television advertising and political parties promoting postal voting for fairness and integrity purposes.

(G) Expenditure by political parties should be capped upon a “model” expenditure base for an election campaign along the lines of the UK and NZ models. Electorate and overall country/state expenditure should apply. Fiscal responsibility, integrity, fairness and accountability apply here. Some comment is made capping paid television advertising and supplementing it with free government bought time as well as using a pamphlet and the internet. Constitutional issues and the need for cooperative government action are noted. Monitoring is to be by surveillance of campaign period by NSW Electoral Commission temporary employees and for other periods by full-time Compliance and Investigative staff.

(I) The issue of how third parties should be regulated presents particular challenges. However the Commonwealth Electoral Acts provisions should apply together with any further up-date in that area. Accountability, integrity and transparency apply here.

**iv)**

(L) Annual financial statements from registered political parties should be supplied as well as the disclosure statements. Regulation of the system should be on an administrative and financial penalty basis. Efficiency, effectiveness and accountability are principles here.

(M) For freedom of political expression a generalized argument, in a particular circumstance, would have to be used that whilst a provision was an infringement or have a discriminatory aspect the overall purpose would be to have a level playing field for all of the participants.

(N) Freedom of political association and fairness apply here. For the impact upon new entrants reference is made to Terms of Reference (A) for eligibility for public funding criteria, ballot paper position and for local government elections the status and standing of party/association groups.

(O) In relation to recommendations previously made comments is made about 1) the need for public funding to cover electoral education, 2) the NSW Electoral Commission being funded for Technical, Compliance and Investigative staff, and 3) Audit Certificates accompanying declarations of donations and spending should be able to be certified by an auditor other than a Registered Company Auditor.

(P) In relation to other matters comment is made about -1) a level playing field being had at polling booths in relation to the six meter rule and the declaration of the polling booth being the perimeter of the property and, 2) Nomination of multiple candidates.

1)

**General introduction.**

In the mid 1980s public funding was introduced so that it would:-

- 1) allow different parties to be able to have an equal opportunity to present their policies to the electorate;
- 2) prevent corruption and undue influence; and
- 3) provide transparency in the finances of participants in elections.

Another reason advanced was that it would enhance democratic participation.

Since then the cost of elections has increased.

For myself I agree with the view that public funding has not made established political parties any less dependent on private funding. Public funding has simply been factored into the ever increasing campaign budget. The situation for new and small parties has simply been made more difficult for them as they tend to be swamped by the saturation advertising, particularly on television, by the major parties. To that extent public funding has made it more difficult.

However given developments in our community, e.g. the Wollongong Council Affair, and the outcome of the Legislative Council Select Committee on Electoral and Political Party Funding enquiry and the Governments announcement of its support for the introduction of a comprehensive public funding model I would like to make some limited comments on some of the 16 Terms of Reference points.

**Overall it could be said that in democracy political fairness should apply. The integrity of the electoral system depends upon transparency which in turn enhances accountability.**

2)

### **Principles.**

The Australian Government's Electoral Reform Green Paper, entitled "Donations, Funding and Expenditure", of December 2008, Chapter 2, Page 17, sets out Principles, which relate broadly but not completely, to this enquiry as follows : -

- 1) Integrity – establishing conditions that minimize the risk or perception of undue influence or corruption in the system;
- 2) Fairness – establishing, as far as possible, fairness in access to resources for participation in an election;
- 3) Transparency – providing enough information to citizens about financial transactions of identified participants in the electoral process, including political parties and candidates, to inform their choice of representatives;
- 4) Privacy – balancing citizen's interests in obtaining information with respect for individuals' right to privacy;
- 5) Viability – ensuring that political parties and candidates have sufficient financial support to enable them to provide the electorate with a suitable choice of representatives;
- 6) Participation – encouraging citizens to participate in the political process through a variety of different means;
- 7) Freedom of political association and freedom of expression – avoiding unnecessary burdens or restrictions on these freedoms;
- 8) Accountability and enforceability – ensuring participants in the electoral process are accountable for relevant financial information;
- 9) Fiscal responsibility – ensuring the public costs involved in democratic processes, including election costs and public funding costs, are not unreasonable; and
- 10) Efficiency and effectiveness – ensuring that regulation balances these principles against the costs of compliance and administration.

It is obvious that at times elements of these conflict. Some examples - adequate funding in relation to the need to keep costs of a scheme reasonable. The public has a right to know as opposed to privacy considerations. As such a balance, at times, has to be struck.

**I do claim to have necessarily applied all of the Principles to the Terms of Reference areas.**

3)

## **TERMS OF REFERENCE ITEM (A).**

### **Principles. Fairness and Participation. Access.**

#### **Public funding.**

##### **A) Eligibility for funding.**

There is a perception that the 4% threshold excludes candidates as it is sometimes spoken of it being used to exclude “nuisance” candidates. The aim, unspoken though, could well be to discourage them through the financial cost to them of their campaigns if they are not elected.

There is a case for a mechanism for some means of excluding genuine “nuisance candidates” that appear on, for example, Senate ballot papers. The 4% threshold is used for this purpose.

However, this threshold can be unfair to newer new entrants and smaller political parties.

There needs to be a mechanism that rewards genuine effort for public funding, for those who receive less than 4%, as it simply recognizes their right to participate in the electoral process along with all of the other political interests.

What I mean here is that a candidate, group or party perform certain activity in the election campaign and still do not reach the 4% they should still be eligible. What about the candidate who receives 3.99% and misses out by a few votes public funding. It does happen – witness at the last federal election a candidate in Reid in New South Wales, Dr. Alex Sharah, received 3170 out of 79438 formal first preference votes. If he had received 8 more votes he would have been eligible for public funding at \$, or whatever, per vote. Similarly Jo Sammut, a candidate for Lakemba at the last New South Wales state election missed out by some 12 votes to receive public funding at the state level. No doubt other candidates can recite such circumstances.

Where is the justice in these situations?

##### **B) Effort Test.**

For those candidates that receive 4% or less they should still be eligible if they have put a demonstrated effort into their campaigns. The effort should be measured by such criteria as : -

#### 4)

- 1) Did they man the physical Prepoll centre with staff and How – to – Votes;
- 2) Did they produce a leaflet and was it distributed in a reasonable area of their electorate;
- 3) Did they man most of the polling booths for at least half the time on Election Day; and
- 4) Did they have, at least, one advertisement in a local paper?

This effort criterion is still a high threshold but it would show that they were not “nuisance” candidates.

If a candidate has completed most of the above and still did not receive the 4% mark he/she should still be granted eligibility for Public Funding.

Such a change should enhance democratic participation as this was one of the reasons advanced for public funding in the first place.

**If you feel the administrative arrangements to implement this is too high then consider reducing the % threshold to 2 or 3%.**

#### **Some points for.**

Fairer and more equitable to all genuine participants.  
A sense of justice would be recognized. An injustice addressed.  
Effort is recognized and is an incentive to do a good job and compete more effectively.  
More equal opportunity.

#### **Some points against.**

More administration.  
More cost but I suspect not by a substantial amount.

**I guess this area would generally refer also to Terms of Reference point N.**

#### **TERMS OF REFERENCE ITEM (D).**

#### **Accountability. Transparency. Administration and Viability.**

#### **Public payments paid to candidates or political parties.**

Payment of public funding funds should be made to the candidate for the election campaign. After all a candidate is being elected not a political party as such! This would also accommodate independents at the state and local government level. There should be a provision that a candidate can assign payment to their party and this normally would be the case.

Payment for administration and electoral education should be paid to the political party.

5)

**TERMS OF REFERENCE (F). Expenditure of public funding.  
Integrity. Fairness.**

Refer comments in Terms of Reference “G” on Television and Postal voting printing. Restrictions need to be clearly set out. Monitoring could be done by the checking of administrative returns. Surveillance could be done by full-time Compliance and Investigative staff checking on avoidance issues.

**TERMS OF REFERENCE ITEM (G). Expenditure by political parties.**

**Fiscal responsibility. Integrity. Fairness. Accountability. Viability.**

**Should be capped upon a “model” expenditure base for an election campaign along the lines of the UK and NZ models. Electorate and overall country/state expenditure should apply.**

Refer generally Green Paper pages 64 to 66 for UK scheme particularly. I do not want to reproduce all of the points here. Follow up UK white paper mentioned in 8.23 should be made to see if the system can be improved here in Australia.

Television (TV) advertising should be capped and supplemented by free government bought TV broadcasts which must cover all candidates and parties contesting the elections. I can't address the time allocation question but could be modeled on overseas experience. Again there would probably be constitutional issues here. It would require the commonwealth government's consent and cooperation to implement it.

As an incentive to reduce expenditure maybe public funding should only be available up to a certain level for:-

1) TV advertising; and 2) Postal voting printing or party/candidate administration.

For perception purposes as regards the integrity of the service, postal voting should be run by the NSW Electoral Commission in cooperation with the Australian Electoral Commission and funded accordingly. Equity would then apply to all parties/candidates.

**Pamphlet.**

If it was considered appropriate to cut back expenditure on other advertising areas perhaps the following idea could be considered to compensate.

\* A general pamphlet provided outlining at the electorate level the policies of the candidates in for example ten areas. Seven common wider interest policy areas and three for their local area or whatever combination you would suggest; or

\* A state wide pamphlet for distribution.

The production would have to be coordinated and set up by an independent body other than the Electoral authorities.

6)

However, in this area we have the precedent of having a pamphlet that Andrew Fisher's Commonwealth Labor Government set up for the For and Against positions on Referendum questions.

People could elect to voluntarily receive it in hardcopy or by the internet. Over the years the cost should go down with the ever increasing use of the internet.

I appreciate the difficulties in this suggestion. However I would also point out that at the Local Government election level we do also have the precedent of the candidate's statements that in an embryo form provide a precedent as well

**Some points for.**

Already in operation in the UK and NZ to learn from and adjust to an Australian scheme. Contributes to a reasonable basis for expenditure for an election campaign.

Could hopefully address constitutional concerns - "though the legislation was an infringement of the right to freedom of political expression, the legislation was for the legitimate purpose of establishing a level playing field for electors."

Hopefully lower campaign costs.

Evens out access, to some degree, to the media for independent candidates and minor and new parties.

Require less finance for new parties to contest elections.

Caps on TV advertising could reduce excessive TV advertising.

Assists smaller parties, independents and new entrants to enter the field.

**Some points against.**

Pamphlet, if considered, design, timing and production costs.

Maybe constitutional concerns.

Media interests would be against it as their revenue could suffer on an overall reduction in advertising type situation.

People should be allowed to campaign how they like.

Third parties would be hard to enforce.

Monitoring by surveillance of campaign period by NSW Electoral Commission temporary employees and for other periods by full-time Compliance and Investigative staff.

**Disclosure for expenditure.**

A full and comprehensive definition of expenditure should apply as per the Australian Government Electoral Reform Green Paper "Donations, Funding and Expenditure" issued in December 2008 -Paragraphs 8.18, 8.24 on pages 65 and 66 of the Green Paper plus whatever else is appropriate. See also Paragraph 4.9 on page 34.

7)

**Some points for and against.**

Expenditure disclosure presents a fuller picture and can minimize the abuse or circumvention of the system.

Extra administration and recording work.

**TERMS OF REFERENCE ITEM (I).**

**Accountability. Integrity. Transparency.**

**Third Parties.**

The issue of how third parties should be regulated presents particular challenges.

The Commonwealth Electoral Acts provisions should apply. Paragraph 314AEB(1)(a) – Electoral Reform Green Paper. Donations, Funding and Expenditure, December 2009 together with any up-date in that area.

A briefing watch should be established by the state electoral authority, which should be adequately staffed and funded for this purpose, to establish which groups should comply with the relevant provisions. They would have to be suitably informed of their responsibilities.

For well known advocacy “political” pressure groups or channels, like Greenpeace or Getup they should comply with the regulation rules which, subject to some modification should have the same disclosure rules as the political parties and interests. However, for bodies that have so called “mass membership” donating small amounts the threshold might have to be smaller.

However it could well be that new third parties will only, in the main, enter into the fray at different times for different purposes. They want be there year in and year out!

This area, under the Act, should be under constant review to suggest changes to, hopefully, eliminate abuse.

**Some points for.**

Fuller coverage to catch any attempt to bypass the rules.

Integrity of the overall system guarded.

Consistency for all parties spending.

**Some points against.**

Problem of identifying such third parties and advising them of the requirements under the Act.

Administrative work for them.

8)

**TERMS OF REFERENCE ITEM (L).**

**Efficiency and effectiveness. Accountability.**

**1) Annual Financial Statement from registered Political Parties.**

It could be considered that to “finish of” the various disclosure returns that the supply of an Annual Financial Income and Expenditure and Asset and Liability Return should be supplied. I suppose that this would be useful in an overall check sense for this system.

Add investigative powers and extra staff would be needed for the NSW Electoral Commission.

**2) Regulation of the system** should be enforced on an administrative and financial penalty basis along the Canadian lines. Political parties should be regulated under the Electoral Act with a provision that includes a provision that specifically gives a registered party (and/or a state branch) standing before a Court for prosecution and recovery purposes.

**TERMS OF REFERENCE ITEM (M).**

**Freedom of political expression. Transparency**

As a generalization the argument in a particular circumstance would have to be used that whilst a provision was an infringement or have a discriminatory aspect the overall purpose would be to have a level playing field for all of the participants.

**TERMS OF REFERENCE ITEM (N).**

**Freedom of political association. Fairness.**

**1) Generally refer relevant remarks in Terms of Reference “A”.**

9)

**2) Ballot paper position.**

I am not certain about it being mentioned or proposals made that affect the area the question of single independent candidates being able to be placed Above-the-Line on the ballot paper for the Upper House or Local Government ballot papers. This should be allowed whether or not a group is formed.

**3) Local Government Elections and the status and standing of party/association groups.**

At the local government level localized community groups stand as Independents over issues that are located in their local area. E.g. – Planning issues. Maybe a proposal for a local dump in a country area. They do not necessarily have large numbers of people but want to make a point by standing candidates to influence a policy position or seek the numbers to effect a reversal of a position taken by a council.

Is it fair for them to have to form a political party requiring 750 members to gain standing? They should not, necessarily, have to stand one person for their cause with the limitation of that status. Though I understand they can stand as a group on the ballot paper but they cannot have a name thereto.

Perhaps consideration should be given to local community groups for local government elections be given a status that is easier for people to organize. By way of example – Say 50 members for status and accessibility to state funding benefits but at the same time be required to comply with the disclosure requirements.

**TERMS OF REFERENCE ITEM (O).**

Whilst I am not going to list all of the Select Committee's recommendations that I support I would like to mention a few.

**1) Public funding should also cover Electoral Education.**

Recommendation 4 of the Legislative Council Select Committee provided for the above. I would simply like to support it as I feel it is a very useful provision and should be retained and implemented.

## 10)

The public funding provision should also have a component that provides for electoral and voting education. Eligibility and payment would be based upon the primary vote of a political party at both the Legislative Assembly and the Legislative Council for the last election where they have a sitting member. It would be only available for the political interests to engage in genuine non party political education particularly in the area of people being able to understand our democratic system, enrolment, voting systems and casting a valid vote As well such other education that will make our citizens more aware of the democratic system and their responsibilities. It might well be that you would have a separate scheme from the general public funding scheme.

It would not apply to administration, research or to the internal affairs of the political parties. It would simply be a means by which the political parties would demonstrate to the general party a solid commitment to the electorate in this area. It would also be a counter to the negative perception that politicians have, unfortunately, in the wider community.

### **2) Technical Staff. Compliance and Investigative Staff.**

Generally recommendation 47.

Technology and systems should be developed by the NSW Electoral Commission in conjunction with the Australian Electoral Commission so that parties and independents would be able to hook on to it to comply with disclosure requirements, obtain information about procedures and their obligations. Common system packages would be given to the relevant parties but particularly to small parties and independents to minimize administration and reporting costs.

As well compliance and investigative staff with appropriate powers are needed for compliance and investigative purposes.

The Commission should be funded accordingly.

### **3) Audit Certificates.**

Recommendation 24.

Refer submissions to the Select Committee in this regard.

Audit certificates to accompany declarations of donations and spending should be able to be certified by an auditor other than a Registered Company Auditor.

## 11)

### **TERMS OF REFERENCE ITEM (P).**

#### **Fairness. Procedures and Administration.**

##### **1) Level playing field.**

Polling Booth Managers should have to justify a declaration of the polling booth being around a perimeter of a property rather than being six meters away from the polling booth entrance. Whilst it is appropriate at times when there are a lot of voters coming through it is not so when there are very few voters coming through in, for example, the dead afternoon period.

E.g. Bradfield Federal By-election 5 December 2009. St Ives North Polling Booth. The polling booth was declared in the morning as being the whole of the perimeter fence. As such the minor parties and groups were disadvantaged in not being able to man the three entrances. In the quieter periods the six meter from the polling booth entrance should be allowed.

**Recommendation.** Polling Booth Managers should have to justify the declaration of a polling booth on a perimeter basis in quiet periods. Normally the six meter rule should apply.

##### **2) Nomination of multiple candidates.**

A maximum of only two candidates from the same party should be allowed in the lower house electorates. The position in Bradfield of the CDP nominating nine candidates was not appropriate. Where you have more candidates on a ballot paper you have an increase in the informal vote. This is what happened even in this highly educated and literate electorate. Informal vote 2007. 5.1% 2009 9%.

**Recommendation.** A maximum of two candidates should be allowed to be nominated from the same party in lower house electorates.