

DPC11/03743 – LB

Dr John Kaye MLC
Chair
Select Committee on the provisions
of the Election Funding, Expenditure
and Disclosures Amendment Bill 2011
Parliament House
Macquarie Street
SYDNEY NSW 2000

Dear Dr Kaye

John,

I refer to the Committee's letter of 23 January 2011 enclosing a transcript of my evidence, including questions on notice taken by me during examination, and a list of supplementary questions on notice from the Hon Steve Whan MLC.

My answers to the questions asked by the Committee members are enclosed.

I look forward to the Committee's report on the Election Funding, Expenditure and Disclosures Amendment Bill 2011.

Yours sincerely



Barry O'Farrell MP
Premier

INQUIRY INTO THE PROVISIONS OF THE ELECTION FUNDING, EXPENDITURE AND DISCLOSURES AMENDMENT BILL 2011

QUESTIONS ON NOTICE

Notice given on 20 January 2012

Question from the Hon Peter Primose MLC –

What is the status of the church under your proposed Bill?

Answer

Under proposed section 96D(1) of the Government's Bill, political donations to parties, groups, elected members, candidates and third-party campaigners will only be lawful if they are made by individuals on the electoral roll. This means that corporations and other entities, including religious organisations, will be prohibited from making political donations.

It also means that an individual, corporation or other entity, including a religious organisation, which wishes to incur "electoral expenditure" will not be able to accept political donations from corporations and other entities for that purpose. They will continue to be able to accept donations, including from corporations and other entities, for any of their other purposes.

It is important to note that the ban only applies to "political donations" as defined in section 85 of the *Election Funding, Expenditure and Disclosures Act 1981* (the "Act"). The Bill does not prevent charitable donations to or from religious or other organisations that are not used or intended to be used to enable the making of a "political donation" or to fund "electoral expenditure".

Of course, the Bill also does not prevent individuals who may be members of a church from making a political donation in their individual capacity.

Question from Dr Kaye MLC –

I want you to consider two quick scenarios. Suppose we take a group of very wealthy individuals, each of whom has a position within the Liberal Party and, as they would be entitled under your legislation, they form a third party. They spend \$1.05 million advocating for the return of the O'Farrell Government. Under your legislation that would be absolutely fine. At the same time the Finance Sector Union decides it wants to spend \$1 million, for example, on alerting voters to the importance of gun control to their members. That would be illegal under your legislation. Do you think that that is incredibly discriminatory against unions?

Answer

The Bill will not prevent third-party campaigners, whether individuals or entities, from incurring electoral expenditure. The existing Act contains provisions which

cap electoral communication expenditure during the period immediately prior to an election.

The Bill does not change these caps but provides (at proposed subsection 95G(6)) that the electoral communication expenditure of a party and its affiliated organisations is to be aggregated for the purposes of applying the relevant cap. This is reasonable given that, at present, organisations intimately involved in the governance of a political party can campaign on that party's behalf, without affecting the party's own ability to spend. This is an unfair loophole that undermines the purpose of caps on expenditure.

In any case, in the scenario described in the question, an issue-based campaign conducted by the Finance Sector Union merely alerting the public to the importance of gun control would not constitute "electoral expenditure" if it did not promote or oppose a party or candidate or seek to influence the voting at an election. Accordingly, the premise of the question (ie, that such a campaign would be "illegal") is incorrect.

Any entity, including unions and peak bodies, will have, and under the Government's Bill will continue to have, the freedom to undertake issue-based campaigns (ie, those which do not promote or oppose a party or candidate or seek to influence the voting at an election).

A review of the *Register of Third-Party Campaigners* maintained by the NSW Electoral Commissioner for the last election (see <http://efa.nsw.gov.au/registers>) indicates that the distinction between issue-based campaigning and "electoral expenditure" is both workable and clear within the community. The fact that organisations such as the RSPCA are absent from the register shows that they do not consider that their campaigns constitute "electoral expenditure" within the meaning of section 87 of the Act (which is not amended by the Government's Bill).