

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

## SUPPLEMENTARY QUESTIONS ON NOTICE

Notice given on 23 January 2012

### Supplementary questions from the Hon Steve Whan MLC –

1. What section of the Amendment Bill provides for the provision to ban political campaigning by third parties?

#### Answer

The Bill will not prevent third-party campaigners from incurring electoral expenditure to run political campaigns. It will, however, prevent third-party campaigners from receiving political donations from corporations to incur such expenditure (see proposed section 96D).

2. Would you agree that preventing issues campaigns run by peak organisations funded through constituent bodies was not the intention of this legislation and therefore the legislation needs to be amended?

#### Answer

The Bill will not prevent peak bodies from undertaking issue-based campaigns (ie, those which do not promote or oppose a party or candidate or seek to influence the voting at an election) funded by constituent bodies, just as they do under the current legislation. Such campaigns do not constitute “electoral expenditure” which is already defined in the current legislation. The Government’s Bill does not change the existing definition of “electoral expenditure”

3. If this legislation was in place and an affiliated organisation to one party had run a campaign on a political issue in an electorate costing say \$40,000, that party's candidate in that electorate would then be restricted to a spending cap of \$60,000 - 40% less than his or her opponent. If the campaign is not part or possibly even opposed to that of the party campaign do you think that reduction is a fair and democratic outcome?

#### Answer

The aggregation provisions of the Bill are designed to create a level playing field between all participants in the electoral process, and to ensure that campaigning undertaken by affiliated entities of political parties does not undermine the purpose of existing caps on electoral expenditure. It is a matter for political parties to ensure that expenditure incurred by their affiliated organisations does not result in a breach of the caps that apply to them.

Again, the aggregation provisions only apply to “electoral communication expenditure”, which is a subset of “electoral expenditure”. Genuine issue-based campaigns which do not promote or oppose a particular party or candidate and which are not undertaken for the purpose of influencing the voting at an election are not limited in any way either by the current legislation or by the Government’s Bill.

4. Existing caps per electorate - in the current legislation a party is allowed to spend a maximum of \$50,000 from the state office on a particular electorate’s campaign, this is in addition to the \$100,000 cap for expenditure within the electorate. It has become apparent in the current returns though that there is no requirement in the State return for a political party to actually account for expenditure by electorate - so there is no way of knowing for example exactly how much of the state television advertising or production bill relates to a particular electorate and therefore whether the cap has been breached. Would you agree that this is a problem and that the legislation should be amended to ensure transparency?

**Answer**

The provisions to which this question relates are contained in the existing legislation that was introduced by the former Government.

The Government believes that the public disclosure of political donations and electoral expenditure is important in the interests of transparency. Existing disclosure obligations will no doubt be considered by the Joint Standing Committee on Electoral Matters during its upcoming review of the *Election Funding, Expenditure and Disclosures Act 1981* (the “Act”).

5. In the Liberal party submissions to previous electoral enquiries your party office has called for electoral disclosure power to be referred to the Commonwealth to ensure consistency - have you ever agreed with this position? If yes why haven’t you pursued that? If no, how is it your party office was saying one thing and you as leader were advocating another?

**Answer**

While the Government’s bill does not amend the current disclosure provisions, to which the question refers, I have consistently argued for NSW campaign finance law reform. It is clear the Federal Government has no intention to legislate in this area, which is another reason this Government’s legislation should be passed.

6. During evidence that you provided to the Inquiry on the 20 January 2012, you were asked how many fundraisers you had attended since introducing this legislation to parliament, and you stated “less than one hand”.
  - a. How many exactly did you attend?
  - b. How much money was raised at these events?
  - c. Who hosted these events?

### **Answer**

From memory, I have attended 2 fundraisers in the period in question and I am advised they complied with the *Election Funding, Expenditure and Disclosures Act 1981*.

7. Considering that British Tobacco Australia donated \$41,910 to the Nationals, \$297,681.62 to the Liberal Party and \$2780.00 to Gladys Berejiklian over the last 4 years, do you personally agree with the ban on donations from tobacco companies?

### **Answer**

I support restricting donations to individuals on the electoral roll and a ban on all corporate, union and third party political donations. That is what the Government's Bill will do.

8. Under this Amendment Bill peak groups will be unable to run third party campaigns while other groups including big businesses, individual un affiliated (sic) unions and high wealth individuals will be able to run third party campaigns – isn't that unfair? How does this reflect your argument for more transparency and accountability in State politics if peak bodies are not able to effectively campaign on these issues?

### **Answer**

First, the Bill will not impede the ability of any individual or entity, including peak bodies, from undertaking issue-based campaigns (ie, those which do not promote or oppose a party or candidate or seek to influence the voting at an election) just as they do under the current legislation. Such campaigns do not constitute "electoral expenditure" within the meaning of section 87 of the Act.

Second, the expenditure caps which apply to third-party campaigners in respect of their "electoral communication expenditure" are set out in the existing legislation. The Bill does not change these caps.

Third, what the Bill does do is prohibit corporate donations being made to fund electoral expenditure. It is necessary for this prohibition to apply to all third-party campaigners as well as parties and candidates in order for the prohibition to have any real effect.

9. On 4 March, 2011 the Deputy Premier, Andrew Stoner had a fundraising event on the Melbourne (sic) which costed (sic) \$2500 per person for drinks and canapés.
  - a. Do you think that it is appropriate for NSW political candidates to seek donations which NSW electoral laws prohibit in other States?

- b. If not will you ensure that candidates of your own party will limit the donations that they receive to \$1000.00 per individual on in the electoral role (sic) in the relevant State that the fundraiser is held?

**Answer**

While I note the Government's bill does not amend the caps that apply to individuals under the existing Act, as inferred in the question, I expect all Members of Parliament and political parties to comply with the *Election Funding, Expenditure and Disclosures Act 1981*.

10. Are you aware that under the current law affiliation fees are only used for the administration of the party and are not able to be used for campaign purposes? Do you agree that the cost of all personnel working on a campaign should be reflected in the campaign expenditure disclosures?
- a. Have you expressed any concern or made any direction to NSW Liberal Party head office over their failure to disclose this information as both Labor and the Nationals have disclosed.

**Answer**

I expect all political parties to comply with the law.

11. On Wednesday 18 January 2012, Associate Professor Graeme Orr suggested that his preferred approach to this issue overall would be to regulate overall expenditure, accompanied by public funding and only ban large donations - what do you think of that view?

**Answer**

The health of democracy in New South Wales depends upon voters being able to have confidence in the electoral process. The proposed ban on political donations other than those made by individual electors will restore public confidence by removing the perception that corporate donors wield undue influence over decision-making in this State. Accordingly, the Bill provides that only enrolled electors can make political donations to parties, groups, candidates and third-party campaigners. All donations made by corporations and other entities will not be lawful in New South Wales.

12. Do you see any problems in the long term having a cap on expenditure that is higher than the amount reimbursed by public funding, something which continues to require candidates and parties to seek election funding or could you see an appeal in full public funding up to the cap removing the need for any private donations?

**Answer**

The provisions to which this question relates (that is, those which set electoral communication expenditure caps and which set the level of public funding) are

contained in the existing legislation that was introduced by the former Government. The Government's Bill does not amend these provisions.

The Government believes that the right to make political donations should be restricted to individuals on the electoral roll, and this is what the Government's Bill will do.

13. You stated in your 2nd Reading Speech that *"a review into Parliamentary Electorates and Elections Act and the Election Funding and Disclosure Act will be reviewed in this term as requested by the Electoral Commissioner"* and that a Joint Select Committee on Electoral Matters will complete a report of the 2011 election on June 2012. Wouldn't be appropriate to postpone the Amendment Bill until these reviews and report have been completed?

**Answer**

In recent years, the NSW Parliament has extensively examined and debated issues around the funding of election campaigns. The Government believes that such extensive examination and debate on this important issue has been warranted, however, the Parliament is now presented with a unique opportunity to use this work to make further changes to restore honesty and integrity in New South Wales politics. We should not delay these reforms but rather act now so that the changes can be implemented and processes settled before the next State election.