

**Submission
No 107**

INQUIRY INTO ELECTORAL AND POLITICAL PARTY FUNDING

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Submission:

Proposals on Electoral and Political Party Funding Reform

Prepared in response to the NSW Legislative Council, Select
Committee on Electoral and Political Party Funding Discussion
Paper, November 2007

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INTRODUCTION

The Select Committee on Electoral and Political Party Funding Discussion Paper, November 2007, addresses a broad range of issues. While recognising the importance of reform in a range of areas, this submission focuses on reforms related to funding sources and disclosure obligations.

Political Funding and disclosure reform may address the **supply-side** or **demand-side** (or both) of campaign financing:

- **Supply-side measures** are intended to control donations and can include donation caps, restrictions on who or what type of organisation can donate, disclosure thresholds, and the extent of public funding.
- **Demand-side measures** are intended to control how much money is spent and can include expenditure limits, television airtime quotas, and restrictions on forms of advertising.

This submission recommends significant reform on the supply-side, involving strong regulation of private funding to political parties and increased disclosure requirements.

On the demand-side, after examining the issue of caps on election expenditure we conclude that spending caps are not enforceable and have not been effective in any jurisdiction around the world.

This submission recognises two significant factors in electoral and political party funding reform:

1. Reforms must be Federal and State

Reforms must be introduced at the State and Federal level, otherwise they will not address the current problem where people can get around having a donation declared by giving to the National Branch where the disclosure rules are more lenient.

In the US, this problem is evident in the gaps between State and Federal funding rules that enables 'soft money' spending on Presidential campaigns.

2. Impossible to have a perfect system, but that is no excuse for not reforming

It is impossible to create a perfect system of political funding that contains no loopholes and prevents any misuse. The main goal of reform should be to maximise incentives to follow the rules and minimise the benefit to be gained in breaking them.¹

¹ Clift, Ben & Justin Fisher "Comparative Party Finance Reform: The Cases of Britain and France" *Party Politics*. 10:6. 2004. pp.677-699. Nassmacher, Karl-Heinz "Introduction: Political Parties, Funding and Democracy" in R. Austin and M. Tjernstrom *Funding of Political Parties and Election Campaigns*, IDEA Handbook series. 2003.

RECOMMENDATIONS

1. National Funding and Disclosure Approach

Funding and disclosure reform must be introduced at a Federal and State level simultaneously, otherwise it will not address the current problem where companies or individuals can manipulate differences in the laws in the States or Federally in order to disclose at a later time to avoid scrutiny, or to avoid disclosure altogether.

In the US, this problem is evident in the gaps between State and Federal funding rules that enable 'soft money' spending on Presidential campaigns.

Existing Provisions are Inconsistent

- Not all States and Territories have Funding and Disclosure (FAD) provisions, and there is no consistency in existing FAD provisions where they exist.
- Funding:
 - The Commonwealth uses an entitlement system, based on an amount per vote not on what the party/candidate spent.
 - NSW uses a reimbursement system, based on an amount per vote but limited to actual expenditure by the party/candidate.
 - The dollar value available to parties and candidates is not consistent.
 - NSW has an annual entitlement scheme for parties called the 'Political Education Fund', but no other State or the Commonwealth has such a scheme.
- Disclosure:
 - Where disclosure provisions are in place, limits are different. For the Commonwealth only donations over \$10,300 need to be disclosed, whereas for NSW the threshold is \$1,500.
 - The Commonwealth requires parties to file an annual return of receipts, whereas NSW has a very complex 4 year return following each election. This creates duplication and enables parties and candidates to delay disclosure.
 - There is no requirement for individual donors to establish their identity by providing a verified enrolment address or ABN. This provides for potential bogus donations.

Why a National Solution?

- As the main parties operate at the Commonwealth level and at the State/Territory level, there needs to be a system that will capture Funding and Disclosure activity at both levels.

- A national solution will establish a simple and across the board process so that parties, candidates and donors understand their obligations and responsibilities, and need only comply with a single system, thereby improving efficiency.
- A national solution will enable the body administering the provisions to recruit appropriately skilled staff.
- A national solution will enable the body to undertake election based advertising and education campaigns to educate and inform parties, candidates and donors of their obligations and responsibilities. Presently, this is impossible considering the diversified and inconsistent provisions.
- There is precedent internationally for a national body to administer this important part of the democratic system to enhance public confidence in the transparency of disclosure.

2. Disclosure Provisions

- A common threshold for donations should be set at no more than \$1,500. This would be simple to understand and easy to administer.
- Individual donors could be required to put their enrolled address on a record so that the party/ candidate can verify the elector.
- Other entities could be required to provide their ABN so that the entity can be verified and cross matched between party/ candidate return and donor returns.
- Candidates not endorsed by a party should be required to lodge a return within a prescribed period.
- To simplify administration, compliance and auditing, each State Branch will have one account for donations. Each Federal and State Electorate Council for each Party will have a sub-account of the State Branch account and all candidate donations must be deposited into this account. This will make it easy and transparent for the Federal body responsible for disclosure to audit all donations and contributions.

3. Changes to public funding to reduce the reliance on corporate donations

Improved public funding models both at an election and between elections could assist in reducing reliance on corporate donations.

Public Funding of Parties and Candidates at an election

- A simple and consistent system for public funding should be introduced across the country.
- There should be the same dollar value for a funded vote whether at Commonwealth or State Elections.
- Where candidates are endorsed by a registered party only the party should be entitled to apply for funding.

Public Funding of Parties between elections for non-campaign operations

- There is an argument that if a party candidate is elected to parliament, then the party should receive some annual public funding to keep the party going. In NSW, this could replace the 'Political Education Fund'. This recognises that if a party has secured sufficient support to have candidates elected to Parliament, then it should be supported in between elections whilst it has members in the Parliament.
- A scheme where a party receives a dollar amount for an MP could be worked out, that would provide for the annual salary of a number of party staff. This could be calculated on the basis of the number of members the party elects or the level of primary vote support.

4. Registration of Parties

- The Commonwealth should register parties who want to stand candidates for a Federal Election. Any party registered by the Commonwealth should automatically be registered in all States and Territories for State and Local Government Elections.
- In addition, the States and Territories should administer a regime for registering parties who want to stand candidates for State and Local Government elections. This information should be provided to the Commonwealth so that they can administer the FAD provisions.
- There should be consistent criteria to register a Party. The only variation may be in the number of enrolled electors that are required to establish the Party and the fee involved.
- There could be an annual continued registration requirement especially if the party is in receipt of annual public funding.

5. Spending caps are not enforceable and should not be adopted

International and domestic experience shows that limits on spending are not enforceable. Victoria once imposed an expenditure limit of \$1,500 per candidate, but this was later abolished because it was not enforceable.

Even if you were able to monitor spending by candidates and parties, it would not be possible to police spending by third parties and lobby groups in favour or against a candidate or party.

If a candidate's friend, neighbour or relative was to print pamphlets at their own expense and advocate a vote for the candidate how would this be enforced?

How would third parties be policed? Are third parties allowed to advertise? Do they have expenditure limits? Allowing third party advertising to be unregulated or minimally regulated would likely result in US-style 'issue advocacy' and 'soft money'/PAC problems.

Any restriction on third party spending would infringe upon people's democratic right to support or advocate for the candidate of their choice.

The fact that spending caps have proven to be unenforceable, and would likely lead to an increase in third party advocacy that is more difficult to regulate, means that spending caps should not be adopted in NSW.
