

**Submission  
No 26a**

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

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# **Select Committee on the provisions of the Election Funding, Expenditure and Disclosures Amendment Bill 2011**

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**Supplementary submission by NSW Labor**

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## Executive Summary

NSW Labor seeks to make a supplementary submission to the Select Committee on the provisions of the Election Funding, Expenditure and Disclosures Amendment Bill 2011 ('the Select Committee') regarding union affiliation to political parties.

In its original submission, NSW Labor argued that organisations should be permitted to financially affiliate with a political party.

This supplementary submission provides the following additional information to assist the Select Committee in its deliberations:

1. Rebuttal of two arguments that have been made against permitting organisations to financially affiliate with a political party;
2. Purpose of affiliation fees; and
3. Information on the existing level of affiliation fees paid to NSW Labor.

It remains NSW Labor's belief that the Election Funding, Expenditure and Disclosures Amendment Bill 2011 (NSW) ('the Bill') as it stands would place unreasonable restrictions on political participation.

## **1. Rebuttal of two arguments against permitting organisations to financially affiliate with a political party**

The existing campaign finance legislation in NSW prohibits affiliation fees from being used for campaigning by the operation of sections 96 (3), 96 (4) and 96 (6)(a) of the *Election Funding, Expenditure and Disclosures Amendment Act 1981* (NSW) ('the Act').

Section 96 (4) of the Act requires political parties to maintain a separate state campaign account. Section 96 (3) makes it unlawful for a political party to make payments for electoral expenditure from any account other than its separate state campaign account. Section 96 (6)(a) prohibits a political party from paying affiliation fees into its separate state campaign account. In this way, the Act prohibits affiliation fees from being used to incur electoral expenditure.

Under section 96I of the Act, using affiliation fees to incur electoral expenditure carries a maximum penalty of 200 penalty units in the case of a party. This is the same as the maximum penalty for breaching a donation or expenditure cap under the Act.

Although the Act prohibits affiliation fees from being used to incur electoral expenditure, it has been argued that this may inadvertently occur in practice ('the 'leakage' argument'). However, the Act contains compliance and enforcement mechanisms to prevent this from occurring. Under sections 110 and 110A of the Act, the NSW Election Funding Authority is empowered to inspect records and require provision of documents and information for the purpose of ascertaining whether the Act has been contravened and enforcing the Act. This is the same as the process for monitoring compliance with the donation and expenditure caps under the Act. The 'leakage' argument therefore does not justify prohibiting organisations from financially affiliating with a political party.

It has also been argued that NSW Labor derives an unfair advantage in financing election campaigns because using affiliation fees to pay for administrative expenses frees up other funds to pay for electoral expenditure ('the 'substitution' argument'). This argument could be made with reference to any revenue source. For example, it could be argued that public funding frees up other funds to pay for electoral expenditure. The 'substitution' argument does not justify removing public funding, which helps to improve public confidence in the integrity of political decision-making by reducing reliance on private donations. Similarly, the 'substitution' argument does not justify prohibiting organisations from financially affiliating with a political party, as they should have the right to participate in the political process by financially affiliating with a political party if they so choose.

## **2. Purpose of affiliation fees**

Political parties usually charge a membership fee for an individual to join and renew in order to meet the administrative costs associated with that individual being a member. In the same way, NSW Labor charges an affiliation fee for a union to affiliate in order to meet the administrative costs associated with that organisation being an affiliate. Both individual members and union affiliates participate in NSW Labor conferences and meetings, receive publications, emails and text messages, use the party's website, and seek support from paid staff employed by the party. Membership fees for individuals and affiliation fees for unions are required to pay for these expenses.

## **3. Information on the existing level of affiliation fees paid to NSW Labor**

NSW Labor always discloses information on affiliation fees paid to it in accordance with campaign finance legislation at a state and federal level.

In the 2011-12 financial year, for which disclosures are due in September 2012 in NSW under the Act and associated Regulations:

- Affiliation fees paid to NSW Labor were calculated at \$3.76 per member of the affiliate;
- The highest affiliation fee paid to NSW Labor by an affiliate was \$208,680.00; and
- The average affiliation fee paid to NSW Labor by affiliates was just over \$50,000.00.

The dollar amount per member used to calculate affiliation fees is indexed annually to the Sydney Consumer Price Index.