

**Submission  
No 78**

## **INQUIRY INTO ELECTORAL AND POLITICAL PARTY FUNDING**

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**SUBMISSION TO THE NSW PARLIAMENTARY ELECTORAL FUNDING  
ENQUIRY 2008**

From Geoff Wall

**Background:** I am an independent researcher with an interest in the principles of a free and fair society. I have a medical background, having worked as an anaesthetist for several decades. Whilst not currently a member of a political party, I have connections and sympathy for Federal ALP and the Greens, for both of whom I helped out in the recent Federal election. As a volunteer, I have assisted with the Greens website [www.democracy4sale.org](http://www.democracy4sale.org) which monitors NSW and Federal political donations.

I wish the committee well in its task, and hope it will prove productive and beneficial for citizens of NSW.

Many thanks

GW

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## **INTRODUCTION:**

This submission takes a problem-orientated approach to the issues surrounding electoral funding. I will attempt to deal with each problem area individually, making points and providing evidence as to why they constitute problems, and then suggest solutions.

There currently exists a unique opportunity in Australia for cooperation between Federal, State and Territory governments, and a strong move to rationalise areas of Federal-State duplication. Never since federation has there been nationwide ALP governments, coupled with a strong community sense of new direction, following the demise of the Federal Coalition government. Although this is a state enquiry, the principles apply to all states, territories and federally, and there is a strong case for simplifying and standardising electoral funding laws Australia-wide, whilst retaining State and Territory autonomy.

At the heart of electoral funding issues, federally and at state level, is the relationship between democratic government and money. In recent years, this has been changing in response to new pressures and the escalating costs of the electoral process. Governments are spending ever increasing sums on PR, marketing, new media and public funding of government 'information' campaigns. Advertising and media strategy replace objective information and debate, to the increasing benefit of incumbent governments. Does NSW, and in fact all governments in Australia, wish to continue down the ever more expensive 'American' approach to electioneering, or will we legislate to preserve appropriately funded democracy.

In 1981, NSW Labor was first to introduce legislation on donation disclosure to Australia, and currently has one of the better systems, though far from perfect. Time and time again however, around Australia and in comparable overseas democracies, electoral laws are treated like tax laws: with ingenuity and dishonesty to bend the letter and break the spirit as loopholes are sought and exploited.

Loss of transparency, public cynicism and suspected or proven corruption, are often characteristics of long established governments, such as Howard's Coalition, the Bjelke-Peterson era in Queensland and, unfortunately, the current NSW ALP. The evidence against Iemma's government, that donations buy access and influence policy, is now irrefutable, causing dismay for many traditional ALP supporters.

Lastly it is informative to briefly look at electoral funding policies in comparable overseas democracies in particular Canada but also New Zealand.

## **CURRENT ELECTORAL FUNDING & EXPENDITURE PROBLEM AREAS**

Five problem areas will be considered:

### **1) The perception and/or reality of corruption**

–There is a perception that the current NSW government is influenced in its decision making by large donors. Some donors have admitted this.

### **2) The misuse of public money for advertising/information campaigns**

–Incumbent governments are using public funds for what amounts to electoral advertising rather than information dissemination.

### **3) The duplication, complexity and unnecessary expense of the electoral funding regulation process.**

–Donation and electoral data are collected and stored in archaic hand-written or typed files, making data virtually inaccessible. When posted online, data are equally badly presented in pdf document format.

–Differing Federal, State and Territory laws may require duplication of disclosures, doubling the paperwork. There needs to be standardisation and simplification throughout all legislatures, whilst retaining the autonomy of each one.

–NSW donation disclosure period may be as long as 4 years, by which stage laws may have long changed and the major players moved on.

#### 4) **Finding the balance between public and private funding.**

–Adequate public electoral funding is a very worthwhile investment in democracy, yet public funding at its current level is inadequate to meet party electoral budgets.

–Private funding, if allowed, requires strong enforceable legislation to permit full auditing and transparency of donation sources.

—For the 2007 NSW election, state ALP coffers were full, primarily from private donations. There is an unhealthy interdependence between big donors with political agendas, and NSW Labor who feel they need the money.

–There is a decline in grassroots involvement in politics, the general public is cynical and disconnected and political party membership is falling.

#### 5) **Transparency of third party donations.**

–Simplified disclosure laws should enforce the spirit of the law, with a broad definition of third parties.

–Standardisation between the State, Territory and Federal legislatures would close many loopholes.

–Overseas donations are not adequately auditable and it is inappropriate for non-Australian citizens to influence our democratic process.

**I will now deal with each area separately, though much overlap exists, and hopefully provide evidence, examples and background information about each problem:**

## **1. CORRUPTION: BOTH REAL AND PERCEIVED**

When special interest groups donate large sums to political parties and governments pass legislation favourable to those interests, the public becomes rightly suspicious. It is not possible that donations up to millions of dollars over many years are made to politicians or parties without expecting and receiving benefits in return.

Concrete evidence of corruption is often hard to get, but even public perception of corruption is not a satisfactory situation. As NSW Opposition leader, Barry O'Farrell said: *'In politics perception is everything....something is crook under this (NSW ALP) government ...the perception is there is a link between political donations and decision making'*

This is currently the single most important electoral funding problem in NSW. Some donors have openly admitted, sometimes unwittingly, that money buys influence and effects political decisions, constituting a form of institutionalised corruption.

Some evidence:

- From SMH 23 Feb 2008: *"Labor delivers for its Big Donors"* by Alexandra Smith and Andrew Clennell, who make the following points:



Multiple big donors to NSW ALP, including Manildra, Star City Casino, the Hotel Industry, plus developers, Walker Corporation, Meriton, Johnson Property Group, Hunter Land and Jacfin all benefited from timely, seemingly favourable NSW ALP decisions.

Genia McCaffery, Mayor of North Sydney: said *‘How can the community have any confidence that the government is making decisions on merit, when you have property developers buying up the Government?’*

Barry O’Farrell said that for the last decade *‘the Government had increasingly been influenced by donors’*. O’Farrell is currently advocating donations reform.

The recurring nature of apparent favouritism, often the timing of donations to the decisions, and the sheer volume of cases arousing suspicion, make it inconceivable that these allegations don’t have substance.

- From 28/1/2008 SMH, *“Anger over Iemma’s lopsided election campaign war chest”* by State Political Editor, Andrew Clennell:

*A source whose organisation has donated to Labor said senator-elect Mark Arbib, the former general secretary of NSW Labor, had made an art form of exacting donations from businesses which wanted to deal with government.*

*"You don't get the meeting with the minister or the premier until you have made the donation," the source said. "The ALP has essentially made it ... that you can't even get a foot in the door without first being a significant and regular donor to the party.*

This is essentially bribery, with serious implications for those honest businessmen in NSW who *"have got zero chance of getting (to see them)"*

- In 2004 and again in 2006, Hotelier John Thorpe infamously said *'who said democracy was cheap, it's not cheap'*. On Stateline in Dec 2007, AHA spokesman David Elliott, whilst attempting to defend Thorpe and being challenged by Quentin Dempster as to whether the AHA gives donations to 'get access' to politicians, made no denial and then, on the contrary, went on to say *'so does the Union movement, so does the National Farmers Federation, so does the AMA, so does every business association in the state...we need access to government...that's just the way a democratic Westminster system works'*.

Can millions of dollars change hands over many years without expectations by donor or obligation on the recipient? The only sensible conclusion is that the AHA buys influence, which is not available to the less wealthy, and it considers the money well spent. AHA spokesman David Elliott's own words indicate that buying political influence is the prevailing business ethos in NSW, as if everybody doing it makes it acceptable. With this sort of evidence on the public record, other companies could well feel at a competitive disadvantage if they didn't make political donations.

- (*Stateline* ABC Television 17/3/07) NSW clubs and hotels, threatened by the imminent anti-smoking legislation, donated heavily to both ALP and the Liberals prior to the redefining of ‘outdoor’ areas. In a rare show of unity, all the minor parties and independents combined in their opposition, but could not defeat the Labor and Liberal backed legislation in what NSW CDP member Fred Nile describe as ‘a betrayal of the people of this state, particularly the workers’. Once again money trumped community welfare. Statistics prove a number of hotel workers will die from passive smoking as a direct consequence of this law amendment.

## **2. THE MISUSE OF PUBLIC FUNDS**

As politicians become more media savvy, governments have increasingly misused public money to run political advertising campaigns under the guise of providing information. Political advertising may not be subject to truth in advertising laws and gives an unfair advantage to the incumbent government holding the purse-strings.

Secondly advertising is a poor means of information dissemination, often negatively exploiting public fears and prejudices. Millions of taxpayer dollars contribute to the party coffers, from which such campaigns are financed.

Some evidence:

- From 8/1/2007 SMH Andrew Clennell “Election ad blitz a disgrace: Debnam

*The Opposition has accused the Government of spending more than \$1 billion on advertising in its 12 years in power, but that figure included job advertisements, community safety campaigns and Lotto ads.*

*The Government says it spends about \$50 million a year More than \$10 million was spent last year on what has been termed political advertising, including the Water for Life ads, State Plan ads, police recruitment, the CityRail campaign and anti-Federal*

*Government ads. In fact, ... the Lemma Government spent more on an advertising campaign for the State Plan - \$2.6 million - than it had on the plan itself.*

Even with the governments more conservative spending estimates, taxpayers are financing huge information/advertising campaigns. While some campaigns may be in the public interest, there is no independent scrutiny of content for objectivity.

- From Christian Kerr, Centre for Policy Development 27/11/07, making reference to both Federal and State advertising writes:

*"There is a widespread perception that government advertising campaigns are employed for party-political and electoral advantage," Clerk of the Senate, Harry Evans has said. "The perception is that the party in government uses taxpayer-funded government advertising campaigns as a supplement to party political advertising to achieve favourable perception of the party in the electorate, and favourable election results."*

*Commonwealth campaigns are at the centre of the debate, but the state governments are just as enthusiastic in their use of taxpayer funded advertising to promote their policies.*

- From Paola Totaro, (11/3/2003 SMH) “Plenty of excess fat in Labor's ad feast”

Referring to ALP election campaign 2003, she writes:

*Most credible sources place Labor's total advertising bill at the \$4.5 million mark, and that is just TV .....To get a sense of Labor's ad juggernaut, (they are amongst) the really big guns*

Comparing 2003 with 2007, advertising budgets are expanding rapidly:

As Andrew Clennell (SMH 28/1/08) writes:

*.... NSW Labor Party raised a record war chest of \$24 million from business and unions in the four years before the state election last year(2007) - and spent \$16.7 million on the campaign alone.*

*The Coalition could only afford \$5.4 million for the campaign, in a graphic illustration of how uneven a contest politics in NSW has become.*

*The figures, published by the electoral commission, show just how much big business has bankrolled Morris Iemma's political prospects.*

At some stage in the future, the escalating advertising budgets must be reigned in.

Elections should not go to the wealthiest party, irrespective of whether it's publicly or privately sourced money.

### **3. INEFFICIENCY, COMPLEXITY AND UNNECESSARY EXPENSE OF ELECTORAL SERVICES**

Donation disclosure and electoral expenditure declarations make up a huge data bank, which is constantly being updated. It would be ideally suited to online, ongoing compilation. Currently NSW data are lodged and stored on hand-written or typed sheets, taking many hours to compile, and rendering this data unable to be collectively analysed. It is just a matter of time before these data are compiled electronically, after which we may well wonder how we ever got by with our current archaic system!

Differing (or absent) disclosure requirements between federal, state and territory legislatures can permit loopholes, delay public disclosure, necessitate duplication of services, all increasing complexity and cost.

Some examples:

- When the EFA released the NSW march 2007 election data, I assisted in reviewing the donation disclosure data for the NSW Liberal party. Three allocations of 3 hour advanced bookings at the EFA office were made, at the first of which a trolley was wheeled out with perhaps a hundred thick, sometimes hand written, files. To find all relevant donations by, say, the AHA to the Liberals, including candidates, the party, fundraisers etc, would take laborious hours of scrutinising uncatalogued, non-indexed data.

If and when the EFA releases this data online (it has not happened as of almost 10 months post election at time of writing), they are in scanned pdf document format, hence there is no capacity for collating or analysing data. The process of data review online, once again, involves starting at the start and wading through to the end.

It is only since the Greens commenced their 6-year project to organise electoral data in spreadsheets, that quick, useful analysis of NSW and Federal electoral funding data became possible. The EFA's Mission Statement to provide '*transparent, efficient ... administration of public funding and disclosure legislation*'. is arguably not currently being fulfilled.

- Disclosure data should include sufficient information to determine category of business activity, residential address, contact person and structure of affiliated companies, individuals, groups or third parties of any description. Currently, data contain spelling mistakes, abbreviations, omissions and duplications. Links between, say, companies and associated individuals or entities become obscured, making, for example, aggregation of donations from a common source inaccurate.

For data to be useful it must be collected properly, for example, via a spreadsheet with obligatory drop-down menu options to select, and boxes to be completed.

- Electoral donations and expenditure data must be disclosed in NSW a month after each election. This data is for the period dating right back to a month after the previous election. Hence a donation can be made and not reach the public record for



over 4 years. By that stage a development project may be long finished, a gaming or liquor licensing law up and running, or a suspect politician moved on.

- When a donation is made to, say, either major party, disclosure must be made to both EFA and AEC (provided the amount is above the AEC threshold of \$10,500). Some states have altered their disclosure process to closely resemble the federal system, thereby reducing duplication of paperwork. NSW has not done this, effectively doubling disclosure paperwork for NSW donors.

Currently in NSW a donation generates the following forms:

i) The AEC's "*Income and Expenditure Record*" which is a daunting 12 page accountancy package, for which the ALP electoral agent has thoughtfully compiled a 5 page instruction brochure to assist ALP candidates.

ii) The EFA's "*Declaration of Political Contributions Received and Electoral Expenditure Incurred by a Candidate*" which is slightly more user friendly, though essentially requires the same information to be presented again but in a different format.

In all, it is not surprising that when one major party's electoral disclosure and expenditure returns were lodged for the March 2007 election, a large majority were initially rejected and returned for amendments or corrections. (It requires meticulous record keeping to make the grade first time!)

- Like tax returns, keeping good ongoing records makes declaration far easier when it becomes due. It is not uncommon for poor record keepers to lose data irretrievably, and the current 4 year disclosure period makes any valid recall impossible, contributing to incomplete records.
- Differing donation and expenditure disclosure between state legislatures creates loopholes for exploitation. For example, a businessperson and any number of colleagues could each individually donate \$10,500 to the South Australian ALP division anonymously, as SA has no disclosure law. Each donation is below the federal disclosure threshold, but collectively could free up tens of thousands of dollars of party funds for any purpose, all completely off record.
- There is currently a significant degree of ignorance in the community about the requirements of political donation disclosure. Those invited to any form of revenue raiser often do not know that, for example, a \$200 disclosure threshold exists for all donations to candidates. When declaration is due, it is common for electoral agents to have to pursue organisers of revenue raising events for returns. Clear allocation of responsibility and an education program are lacking.

#### **4. FINDING A BALANCE BETWEEN PUBLIC AND PRIVATE ELECTORAL FUNDING**

Adding private money to the funding mix introduces potential complications, necessitating safeguards. No democratic country has ever satisfactorily solved the problem of the corrupting mix of power and money, except perhaps Canada (see below). Financial scandals are inherent and it defies history to expect Australia to be any different.

For the last state election NSW ALP spent \$16.7 million (of the available \$24 million in the ‘war chest’), compared to Liberals \$5.4 million. Besides unfairly favouring the incumbent ALP to be re-elected, such large sums from private donors create an unhealthy interdependence. Donors themselves are caught in a bind, having to donate just to ‘get a foot in the door’ and politicians feel they need money.

Democracies are healthier with wide grass-roots political involvement. Instead in NSW, there is growing public cynicism, falling political party membership and a sense of political disconnection. This may reflect complacency, feelings of political impotence or irrelevance or just peoples’ increasingly busy lives.

Public money currently funds a smallish minority of the major parties’ electoral expenditure. Attempts to cap expenditure at low levels have been tried and failed,

triggering, for example, with the Tasmanian electoral funding crisis in 1979, and such loopholes as ‘parallel campaigning’ in recent years in New Zealand.

The NSW Political Education Fund, currently given to eligible parties, is no different to public funding on a per vote basis and should be included in the latter for simplicity.

## **5. LACK OF TRANSPARENCY OF THIRD PARTY DONATIONS**

The many and varied forms of third parties funding politicians, parties and elections present a challenge for legislatures. Both State and Federal electoral commissions have been hampered by legal challenges over precise definitions of, for example, an ‘associated entity’. Complex structures of often multinational companies, non-corporate institutions, subsidiary companies, trusts and associated entities, plus difficulties in determining their actual functions make watertight laws extremely difficult.

This complexity and diversity also makes tracing the source of a donation at times impossible. One clear example is that of overseas donors where the AEC may have no authority to audit donations at all.

Some evidence and/or relevant points:

- A dispute between the Federal Liberals and the AEC over the function of the Greenfields Foundation, took several years to classify the foundation as an associated entity, much to Liberal annoyance. A similar dispute involving six institutions which collectively gave \$4.2 million to the NSW National Party, resulted in the AEC not classifying them as associated entities, though the AEC commented that the law was murky and proof is sometimes difficult. Some of these institutions had the same address and postal address as the NSW Nationals! Electoral

commissions have enough on their plate without long and costly legal battles over definitions of third parties.

- British peer, Lord Ashcroft (though not currently a British citizen), has donated \$1 million to Federal Liberals from his tax haven residence in Belize. He also donated over £2 million to Conservative candidates in marginal British seats in the last UK election, exerting an inordinate influence on that election for one who evades his own tax and citizenship responsibilities. He is not an appropriate person to have influence on Australian democracy, and how does one guarantee accurate auditing of money sourced from Belize?
- In recent years several prominent law firms and accounting firms have filed political donation returns on behalf of \$2 companies. Searches of the companies register show that the sole shareholder is a member of the professional firm. Inquiries are met with the response that the lawyer or accountant cannot comment on the private affairs of a client.
- Under the current electoral law associated entities are organisations ‘controlled by, or operating to a significant extent for the benefit of’, a registered political party. An organisation which is not actually ‘controlled by’ a political party and has multiple other areas of business might not fit the strict definition of an associated entity, even though its activities do benefit a political party.

- Money trails within complex corporate or institutional structures will always be problematic for electoral commissions. Donations may move, for example, by individuals, family associates, affiliated companies, associated entities or fundraising organisations. Methods such as donation splitting, parallel campaigning, independent but electorally relevant advertising all muddy the waters. Donors are limited only by their creativity and tenacity. Capping donations and thereby reducing their influence is likely to prove the only satisfactory solution.

## **A LOOK AT SOME COMPARATIVE DEMOCRACIES**

There is particular relevance for Australia in Canada's recent pioneering electoral funding law changes. Australia and Canada are both British-origin, similarly sized, geographically spread-out, Westminster style governments, living in the economic and cultural shadow of the USA.

NZ is currently wrestling with the same problems of third party transparency and private donations as NSW and Australia, and in the future it will be informative for Australia to see how they resolve these problems.

### **CANADA**

Canada has changed its electoral funding laws since Jan 2004 to only allow political donations from individuals (up to \$1,100). No other sources are permissible.

Canadian political parties (if they get above a certain threshold number of votes) are funded publicly at \$1.75 per vote **per year**, paid quarterly. This gives a steady, though not huge, ongoing public income, which, spread over, say, a 4 year parliamentary term, adds up to \$6.80 per vote. Parties in NSW and Federally, by contrast, get a one off payment after each election. Canada therefore gives almost 3 times the public money per vote.

Canada's new laws have reduced accusations of buying political influence, as donations are not large enough to significantly corrupt. Canada has also solved the problem of defining the many different third parties, by banning the lot.

Canada's new laws also encourage parties to seek more donors, in the absence of the former large ones, which may increase grassroots political involvement. Grassroots involvement is also encouraged by cheaper political party membership fees in Canada, typically \$5 to \$20 annually.

Elections Canada has an excellent website whose record-keeping was described as 'pretty good' by the Greens. This includes:

- All donations above \$200 go on the public record within 4 months, since donor declarations are made quarterly. (This can take 4 years in NSW).
- Their website even publishes raw election data for research!
- Data are presented in spreadsheets amenable to analysis



All political parties meet the ‘broadcast arbitrator’ yearly and agree on the allocation of broadcasting time. Whilst not free, broadcasters are obliged to sell this time to the parties who wish to use it. Without huge advertising budgets, these broadcasts make up a greater proportion of each party’s total airtime, perhaps improving the quality of information presented.

## **NEW ZEALAND**

From NZ Green MP Metiria Turei and Green Co-leader Russel Norman: In ‘*Protecting free speech and fairer elections*’(internet communication), they identified two major loopholes from the 2005 election namely, parallel campaigning and anonymous donations.

Andrew Geddis March 2007, in ‘*The funding of New Zealand elections: Current problems and prospects for change*’ lists the following problems referring to the 2005 NZ elections:

- Labour exceeded the statutory maximum on electoral expenses, with some funds misused.
- The National Party had failed to account for GST on their election broadcasting, hence had screened more than the allowable limit of advertising.
- Both Nationals and Labour used anonymous donations and trusts to shield the identity of major donors, allowing hundreds of thousands of dollars into coffers from hidden sources.
- Some third party advertising seemed to contravene the rules requiring authorisation and identification of sources.

In summary Geddis states that any one of these problems is serious but together they necessitate an *'urgent overhaul'* of electoral funding. He continues: *'current public disclosure regime for political donations is all but voluntary in application'*

Perhaps the most valuable insight for Australia, from the NZ situation, will come if and when they solve their current problems, since they closely resemble Australia's.

## **SUGGESTED SOLUTIONS**

Several relatively straightforward measures could bring significant improvements.

- 1) **Donation and expenditure disclosure should be online, ongoing and declared within a 3 month time frame.**

The principles of donation and expenditure disclosure are simple, generally less complex than income tax returns, which are now easily done online, to the benefit of all concerned. In a manner similar to completing BAS (Business Activity Statements) tax forms, disclosure could be done 3 monthly. Where public suspicion surrounds money and political decisions, prompt disclosure brings transparency by exposing donations when issues are still topical.

The latest EFA annual report mentions plans to revamp its website in a new interactive format before the municipal elections later in 2008. Vast expense and time could be saved if online recording of disclosure data could be included in this upgrade. Proper online data collection will come, so why delay any longer?

- 2) **All political donations from all private sources should be capped** at an appropriate level, to prevent politicians having to depend on private donors. Multiple donations from a common source should be aggregated over a 12 month period, and

capping indexed to the inflation rate. Suggested caps for company donations could be in the \$2,000-10,000 range and from individuals, perhaps \$500 to \$1,500.

- 3) **Retiring politicians should be prevented from undertaking any business for any form of non-government employer where their prior political office bestows an unfair advantage to either party.** This would further help break the unhealthy interdependence of donor and politician.
  
- 4) **Public funding of politicians and parties is a valuable investment in democracy and should be increased,** to further reduce politicians' dependence on private donors. A system such as Canada's, where each vote attracts \$1.75 per year, paid quarterly, delivers about 3 times the public funding per vote when compared to NSW (where payment is a post-electoral one-off lump sum).
  
- 5) **An allocation of purchasable broadcast time** to parties would further reduce reliance on private donors and may improve genuine dissemination of information to voters.

- 6) **Government advertising/information campaigns should be reviewed by an independent arbitrator such as the Auditor-General to ensure objectivity and hence that the community's best interests are being served.**

The Federal ALP plans to introduce such measures.

(In the SMH 17<sup>th</sup> Jan 2008, David Humphries stated that the new Federal Special Minister of State, John Faulkner, is drafting legislation to require Auditor-General review of all government advertising/information campaigns).

- 7) **Federal, State and Territory legislatures should have standardised, simplified electoral donation and expenditure disclosure laws, whilst still retaining their autonomy.** A nation-wide taskforce could achieve this goal, whilst closing some loopholes in electoral funding laws, and introducing online data recording. If a donor can give to a party in one state and make disclosure, and to the identical party in another state anonymously, this is clearly unsatisfactory.

Retention of state and territory autonomy would prevent a Federal government, with control of both Houses of Parliament, from making sweeping electoral law changes.

I would encourage NSW, in conjunction with Federal ALP to take the lead in standardising electoral funding process, as it has done in the past.

**8) . A broad definition of a ‘third party donor’ should include any person, group or institution, which directly or indirectly contributes to political funding.**

The spirit of such a law would be important, since watertight legislation has proven in the past to be difficult. Electoral commissions need powers to audit fully, and to enforce laws and penalties.

Thank you for considering my submission

Geoff Wall

12/2/2008