

**Submission
No 108**

INQUIRY INTO ELECTORAL AND POLITICAL PARTY FUNDING

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The Director

Select Committee on Electoral and Political Party Funding

Legislative Council

Parliament House

Macquarie Street

SYDNEY NSW 2000

Director,

Please find below the Australian Centre for Democracy and Justice's (ACDJ) submission to the Select Committee on Electoral and Political Party Funding. It has been approved by ACDJ's Board of Directors. We have no concerns with regards to the confidentiality of this report and seek your permission to be able to make it publicly available in order to contribute to the broader debate within the community.

The Australian Centre for Democracy and Justice would like to thank the Select Committee on Electoral and Political Party Funding for undertaking this review. We feel it is an extremely important issue that requires considerable improvement and this process is an important first step. We hope that our submission to the enquiry is useful.

Restricting electoral and political party funding is a very difficult and contentious element of our parliamentary democracy that requires a difficult balancing act with few obvious answers as to the most democratic path. Often measures which seem undemocratic have the most democratic outcomes.

We have done our best to achieve this balance in our comments below.

Should you have any further enquires regarding our submission please do not hesitate to contact ACDJ's president Hammy Goonan on 0402 072 653, hammyg@democracyandjustice.org or at the address below.

Kind regards,

Hammy Goonan

Director

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Submission to the Select Committee on Electoral and Political Party Funding

*The secret of life is honesty and fair dealing... if you can fake that,
you've got it made.~ Groucho Marx*

Submitted by: Australian Centre for Democracy and Justice

Approved by: Board of Directors

The funding of elections and political parties will, and always should be, a topic of heated debate. For a parliamentary democracy to work it is vital that it is open and transparent with legal restrictions on any number of activities which leave political parties, and therefore government, exposed to the possibility of corruption.

This needs to be done in a manner that enables, or even facilitates, debate, engagement with the community and leaves open the potential for citizens to influence governments.

The very fact that this Select Committee is investigating the funding of elections and political parties implies that this influence of governments is too often insidious. So the challenge remains: how do we ensure that the community is engaged with government, voicing its concerns and being heard when forming legislation and policy without undue influence from certain parties? In other words, how do we ensure a level playing field in these negotiations? How do we ensure those with less resources, but with an equally valid position are able to garner the same amount of influence as the more heavily resourced parties in our society?

Election Funding Authority

At this stage we remain relatively content with the Election Funding Authority. To our knowledge, this remains an uncontentious area.

We have minor concerns about the resources available to the Election Funding Authority as we are adamant that the monitoring of electoral and political party funding is thorough, vigilant and transparent. More resources would also enable a higher responsiveness to disclosure requirements.

ACDJ is also concerned that by having a member of the Authority nominated by the Premier and another by the leader of the Opposition you enshrine a two party system. This excluded the possibility of more political parties becoming involved. While a two party system may be the present reality we feel it is important to have other options available.

Public Funding of Elections

We believe that elections should be publicly funded based on the number of primary votes gained at the previous election by that party or candidate. This funding should be in conjunction with funding being provided by members fees to the parties and affiliated fees for unions within reason.

Our biggest concern with regards to the public funding of elections is the exclusion of minor parties which often provide a voice for interests not represented by the major parties. Accordingly we feel that the requirement of 4% of the eligible primary vote is reasonable. In an electorate such as Sydney with nearly 50,000 enrolled voters this would require receiving 2,000 primary votes which we are satisfied establishes the legitimacy of the political party.

To ensure a degree of equity between candidates however we believe that a public fee should only be provided to the candidate for between 35% and 40% of the primary vote. Under this situation if a candidate received 50% of the primary vote they would only receive funding for 35% to 40% of those votes. This

ensures that the gap between the funding of major parties and minor parties is not as sparse as it currently is.

Political Education Fund

ACDJ consider the Political Education Fund to be unnecessary. However we consider political education to be vital. ACDJ would recommend abandoning the fund and distributing these monies to the NSW Electoral Commission who could then use these funds for education that is not party-specific.

Party Membership and Union Affiliation

In order to ensure that members of the public are able to be involved in the political processes of their Country, State and Local Government we are satisfied that there are no problems with political parties being funded by membership fees. We encourage the use of membership fees to supplement the funding gained through the public funding of elections.

However memberships should be capped by the Election Funding Authority and indexed annually to avoid membership structures being exploited for fundraising purposes. In our opinion, a reasonable cap would be somewhere in the order of \$500. While we have no problem with party membership being anonymous. Party memberships should be audited by the Election Funding Authority regularly to ensure that all memberships are legitimate and there is an absence of "branch stacking".

We see Union affiliation with a political party in a similar way. While we are happy for affiliation fees to be charged and for these to be considerably higher than an individual membership fee. These should be capped at reasonable levels by the Election Funding Authority and indexed annually.

Political Donations

ACDJ flatly opposes donations to political parties or election candidates. Elections should be funded through membership fees, union affiliation fees and public funds.

Donations are too open to exploitation and favour those with extensive resources available to them, meaning such bodies are heard more easily by government irrespective of the legal status of political donations so we see no reason why we should facilitate an even larger divide. The obvious reality is that a small community group, who often have a larger democratic mandate than a corporation will not be able to have its interests heard over that of a large corporation.

Political donations erode democracy at its heart and need to be criminalised.

The reality will always be that those that control the most resources will have the loudest voice if donations are allowed to be made to political parties. In Australia, those that control the most resources – other than government - are corporations. Our primary issue with corporations controlling so much influence revolves around a corporation's lack of democratic mandate. They represent the narrow section interests of their share holders at best (including foreign share holders) and their executive at worst. In contrast a local community group has a high democratic mandate and they have a very direct relationship with their members and consumers who will “vote with their feet” if they fail to represent their views in the arenas that they are expected to (State and Local Government included).

Therefore, if a large corporation with little or no democratic mandate has more influence than a local community group with a large democratic mandate there is a vast gap between it and an ethical and democratic system.

However we realise that not all share our opinion and it is unlikely that political donations will be banned in which case limits need to be put in place with a high level of disclosure.

Political Donations - Amounts

The current lack of limits to political donations in Australia is one of its most undemocratic elements. In order to address the imbalance mentioned above it is necessary to place limits on political donations. These should be low enough to ensure that the majority of individuals and organisations are able to participate. We believe it is reasonable to suggest that donations from organisations (including corporations and non-profit organisations) should be limited to a total of approximately \$5,000 a year and donations from individuals should be limited to a total of approximately \$1,500 in order to minimise corrupting influences.

It should also be noted that this is a cap for the entire party. Therefore if an individual were to donate \$1,500 to the national branch of a political party, they should not then be able to donate \$1,500 to the New South Wales and Victorian branches of that party.

One of ACDJ's concerns here is that if a corporation has a board of 10 people the corporation itself could donate \$5,000 and each of the board members could donate \$1,500 giving the political party a total donation of \$20,000. While a medium sized non-profit organisation may be able to come up with \$5,000 in order to influence government it is highly unlikely to be able to come up with \$20,000 leading to a gap in the influence that is able to be exerted by that organisation.

We see no reason why other parties or candidates cannot be limited by the \$5,000 limit placed on organisations.

These limits need to be rigorously enforced through a highly level of scrutiny by the Election Funding Authority and NSW Electoral Authority.

Political Donations – Sources

Aside from a banning of donations from all sources (as mentioned above) we believe it would be wise to place limits on where political donations come from.

We do not believe that corporations should be able to make donations to political parties or candidates due to the issues surround a corporations lack of democratic mandate as outlined above.

For similar reasons we are less concerned about donations to political parties from individuals and non-profit organisations (including unions).

When considering limits on who can donate to a political party it is also vital to take into account conflicts of interest. This means that, above all else, there should be bans on donations from businesses with government contracts, media organisations, foreign citizens and corporations majority owned by foreigners. The ongoing ability for these organisations to donate to political parties borders on corruption in itself.

In-kind donations also need to be regulated. However we are aware that this may unfairly disadvantage minor parties who tend to rely more heavily on in-kind support to run their campaigns. Therefore we feel it would be reasonable to place limits on in-kind donations up to a certain value. This would create further issues with regard to enforcement and a potential loophole which could be exploited by under valuing an in-kind donation and therefore appropriate monitoring of in-kind donations would have to take place.

We firmly believe that the ban on anonymous donations should continue. If you seek to influence government using political donations then this cannot be kept secret. Transparency is vital to a parliamentary democracy.

Political Donations – Disclosure

Transparency is a key element to any democratic process. As such, if political donations are to be allowed then a high level of disclosure is required.

We believe the current disclosure levels at the federal level are far too lax and strongly recommend against NSW coming into line with the Commonwealth. We would even suggest that the disclosure laws in NSW are set too low. Instead we recommend a flat level of all donations over \$200 being declared. We also believe this should be cumulative so if a donor makes four \$50 donations throughout the financial year this would have to be disclosed.

Fundraising events are an area that is easily exploited by those wishing to influence government. There are countless examples of people buying items from fundraising events at inflated prices to ensure a large and anonymous donation to a political party.

Fundraising events are very difficult to monitor as well which leads us to the position that they should be banned. However, if they are not to be banned then significant obstacles should be put in the way of those who wish to exploit fundraising events. An itemised disclosure report of who bought/donated what and an inability to partake in these events anonymously would go a long way towards addressing this issue.

A more timely disclosure of donations to political parties and candidates would also improve the transparency of this process. We see no reason why donations could not be declared quarterly or even monthly. During election campaigns disclosure should occur fortnightly, if not weekly.

We would also like to see better access to this information. This is largely an issue of technological innovation. For example we would like a copy of the database made available in a '.csv'¹ file to be used for analytical purposes by those who wish to. We believe it is straight forward to provide and should be easily downloadable from the Election Funding Authority's website. We would also like to see an improvement in the internet-based search facility.

Electoral Expenditure – amounts

Perhaps the most effective way of limiting inappropriate political donations is by limiting electoral expenditure. If electoral expenditure is limited (and that limit is not excessively high) it becomes irrelevant how a political party or candidate is funded as they will only need to raise a certain amount.

At the state level, parties should have a limit imposed on them and then at the electorate level candidates should have limits imposed as well. This enables an appropriate level of party campaigning and local electorate campaigning.

The spending would have to be registered according to whether it was intended for the candidate, the party or both.

Electoral Expenditure - disclosure

The disclosure of election expenditure is another potential mine field of loopholes and financial

¹ A .csv file is a Comma Separated Value file. It is a small text file that can hold large amounts of database data.

manipulation. However it is vital that the public is adequately informed with regards to electoral expenditure of candidates.

Any monies spent that have the potential to directly affect the opinions of the electorate over a certain threshold should be declared. This threshold should also be set quite low. We feel that somewhere in the order of \$200 would be appropriate.

Items to be disclosed include advertising, internet-based activities, events, accommodation for candidates, travel and so on.

We believe that during an election campaign these expenses should be disclosed weekly or fortnightly along with political donations. Similarly, expenditure should be disclosed quarterly or monthly outside an election campaign. If real-time disclosures were possible we would view this as a very positive development but are concerned with the practicality of such an arrangement.

Again, along with political donations we feel it is vital that this information is readily available in a timely manner to the public with the same provisions that we have recommended for donations to political parties, including access to a .csv file containing data on the expenditure.

Local Government

The vast majority of our comments above are directed at State Government, not Local Government. However the Australian Centre for Democracy and Justice is deeply concerned at the level of corruption that surrounds local government elections, particularly in regard to planning development.

The level of scrutiny applied to the funding of local government elections and donations to members of local government and candidates for elections needs to increase dramatically. We are aware that this is a costly exercise but we believe it to be a necessary one considering the potential size of the contracts that are at stake.

The Australian Centre for Democracy and Justice has sought to scrutinise Local Government elections for some time but has found the information almost impossible to obtain without a Freedom of Information request or the drips and drabs that come through the media. Consequentially we can only point to anecdotal evidence of the high level of corruption in Local Government because of this limiting factor.

The Revolving Door

Our final concern that may or may not be relevant to this enquiry is that of the “revolving door”. It concerns ACDJ that there are no limits on the activities of Members of Parliament once they resign from office. A classic example of this was former NSW Premier Bob Carr resigning from office and walking straight into a lucrative position with the Macquarie Bank a week later – a corporation that the NSW government under Carr had multi million dollar contracts with and that Carr had personally played a part in negotiating.

It would not be unreasonable to suggest that such practices are easily corruptible as elected officials give favourable contracts to corporations in return for lucrative positions with the company once they leave office.

In accordance with this we feel it is appropriate that there are mandatory “cooling off” periods where former members of parliament are not allowed to work for a corporation that has a government contract for two years after leaving parliament. Former members of parliament should be further restricted from being employed by any corporation for five years if the government contract held by the corporation was the minister's responsibility while in parliament.