

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

**Organisation:** AMWU NSW Branch

**Name:** Mr Tim Ayres

**Date received:** 11/01/2012

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January 11, 2012

Hon. Dr John Kaye, MLC  
Parliament House  
Macquarie Street  
SYDNEY NSW 2000

Dear Hon. Dr Kaye,

Please find attached the AMWU submission to the Provisions of the Election Funding, Expenditure and Disclosures Amendment Bill 2011 Inquiry.

The AMWU is opposed to the draft legislation in its current form because rather than increasing accountability and transparency in electoral funding, the Bill in fact significantly restricts the ability of unions, union members and other community organisations to participate effectively in the NSW electoral system. The AMWU is concerned that the Bill is fundamentally anti-democratic and urges the Committee to recommend that the Bill not proceed.

It is also our view that the Committee should hold consultations with a wide variety of individuals and organisations before reaching a conclusion about the draft legislation. In particular, holding sessions of the Committee only during the holiday season invites people to reach the conclusion that the Committee process is a sham, designed to create the illusion that the approach set out in the draft legislation has been the subject of real consultation.

I urge you and the Committee members to schedule more hearing dates through the New Year to fully consult with the community and stakeholders on these matters so fundamental to our future democratic practice.

Yours sincerely

A handwritten signature in black ink, appearing to be 'TA' followed by a long, sweeping horizontal line.

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**AMWU NSW Branch Submission to the NSW Parliamentary Inquiry into the  
Provisions of the *Electoral Funding, Expenditure and Disclosures Bill* 2011**

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## **1. Executive Summary**

1. The AMWU is strongly opposed to the changes proposed in the Election Funding, Expenditure and Disclosures Amendment Bill 2011. The Union believes that, rather than increasing accountability and transparency in electoral funding, the Bill in fact significantly restricts the ability of unions, union members and other community organisations to participate effectively in the NSW electoral system. The AMWU is concerned that the Bill represents a fundamentally anti-democratic attempt by the government to interfere in the internal operation of opposition parties.
2. This submission addresses the specific concerns of the AMWU, with regard to the Terms of Reference.

### **a. The Impact of 'Third Party Campaigner' Regulation and the Constraints Imposed by the Bill**

3. The AMWU believes that the regulation of political activity by 'third party campaigners' will have the practical effect of reducing political activity by unions and other community organisations, and the ability of organisations and their members to engage in the electoral system. This is due in large part to the difficulties attached in defining 'electoral communication' in relation to the day-to-day activities of unions and community organisations. There will be no net benefit in terms of transparency.

### **b. The Impact of the Restriction of Political Donations by Corporations and Other Organisations**

4. The AMWU takes the view that prohibiting unions and other community organizations from donating to political parties and candidates serves to prevent ordinary working people from effectively promoting their interests through the political process. The restriction on donations prevents working people from pooling resources to provide much-needed financial assistance to candidates that promote their industrial and social interests, privileging high-wealth individuals who will be able to disproportionately influence electoral outcomes.

### **c. The Impact of the Aggregation of Electoral Spending by Political Parties and Affiliated Organisations**

5. The AMWU holds that restricting the money a union or community organization can spend in an election is a fundamentally anti-democratic restriction that interferes in the manner and extent to which union and community members can

participate in the electoral process. The AMWU is also concerned about the practical issues this restriction arises, including the complexities in determining what is 'electoral spending', questions around negative campaigning and the potential for exploitation by opposition candidates.

**d. The Impact of Proscribing the Payment of Political Affiliation Fees**

6. The AMWU maintains that the prohibition of payment of affiliation fees to political parties is an attempt to interfere with the internal workings of a democratic political party. The AMWU notes that union affiliation is a highly transparent and accountable process, and does not see any public benefit to this proposed restriction. This proposal would disproportionately affect the ALP and the ability of unions to politically organize.

**e. The Constitutional Implications**

7. The AMWU believes that the proposed Bill, by restricting electoral communication, would breach the implied freedom of political communication established in *Lange*. The AMWU believes the restrictions are sufficiently significant to expose the proposed legislation to a constitutional challenge.
8. The AMWU supports the recommendations set out in the Unions NSW submission. These recommendations are included in Attachment 1 to this document.

## **2. Introduction**

9. The AMWU welcomes the opportunity to make submissions in response to the Select Committee inquiry into the provisions of the Election Funding, Expenditure and Disclosures Amendment Bill 2011.
10. The AMWU is Australia's oldest trade union. The first union that would become the AMWU was formed in Sydney 160 years ago by tradesmen who had fled political persecution in England for their trade union activity. The modern AMWU represents over 25,000 NSW manufacturing workers across major sectors of the NSW economy. AMWU members are primarily based in the manufacturing industries in particular food and metal manufacturing, but are also present in large numbers in the industries of mining, building and construction, printing and graphic arts, vehicle manufacture, repair and service, aircraft and airline operations, and laboratory and technical services.
11. The AMWU believes that strong, effective and independent unions are a vital part of any functional democracy. The representative function at the workplace, while centrally important, is not the sole element of effective trade union activity. Involvement in the political process is vital to the ability of unions to deliver real outcomes for their members, providing working people and their families with a strong and organized voice in matters that affect them in their work, their communities and the life of the nation.
12. Union political engagement is highly transparent and democratic. The political activity of the AMWU is debated and determined by members at the workplace level, within delegate's forums and at the democratically elected State and National Conferences. All activity is overseen by the member-run management committee. This includes the affiliation of the AMWU to the ALP, which in NSW is reviewed every three years by the 150 democratically elected delegates to the AMWU's State Conference. The AMWU's affiliation is central to the Union's strategy to improve the lives of our members and their communities.
13. The AMWU supports the submission made by Unions NSW and the recommendations contained within. This submission is intended to supplement the Unions NSW submission and communicate the specific concerns felt by the AMWU in relation to this Bill.

### **3. Response to Terms of Reference**

14. On 12 September 2011 Premier O'Farrell introduced the Election Funding Expenditure and Disclosures Amendment Bill 2011. The Bill, if passed, would have three key effects: to prohibit political donations from corporations, unions and other entities; to include the political campaign spending of affiliated organisations within the cap on political expenditure by political parties; and, to prohibit organisations from paying subscriptions to political parties.
15. It is important to consider this proposed legislation in context. Former NSW Premiers Nathan Rees and Kristina Keneally introduced changes to the political donation and spending limits before the March 2011 state election. Under these amendments, annual donations to parties were capped at \$5,000 and at \$2,000 for individual candidates or members of parliament. Further, tobacco, liquor and gaming companies were banned from making donations. The reforms also capped campaign spending by each candidate at \$100,000. Parties were allowed to spend a further \$50,000 in each electorate they contested. Third party campaigners such as businesses and unions had a spending cap of \$1.5m.
16. The AMWU supported this legislation as a genuine attempt to address community concerns about the lack of transparency around election donations as well as the unhealthy political influence of property developers, tobacco, liquor and gambling companies. However, it must be said that compliance with the legislation caused a high level of difficulty and anxiety for community organisations at the March 2011 election. The O'Farrell amendments have a greater reach and complexity, and the associated uncertainty and fear of incurring penalties may provide a further dampener on community engagement in the political process at the next state election.
17. The O'Farrell amendments go significantly further than the Rees-Keneally legislation. The AMWU is concerned that the Bill will affect its capacity to campaign and organize on political, social and economic issues, impacting on the Union's right of freedom of association and implied freedom of political communication. Further, the legislation has the scope to prevent community organisations from engaging in political matters. These outcomes would be profoundly anti-democratic. These concerns will be discussed in detail in relation to the specific terms of reference.

**a. The Impact of 'Third Party Campaign' Regulation and the Constraints Imposed by the Bill**

18. The AMWU is strongly committed to transparency in the political funding system. As such, the Union has supported previous legislation regulating the election funding regime in NSW and federally. However, the Union is concerned that rather than increasing accountability for political funding, the Bill instead sharply restricts the ability of 'third party campaigners' such as unions and other community groups to engage in the political process, potentially preventing any kind of participation. The implications for the long-term health of NSW's democratic institutions are severe.
19. One cause of great concern for both unions and community groups has been around the definition of 'electoral communication expenditure'. While this is a straight-forward matter for political parties, unions and community groups for the most part engage in 'small-p political' rather than 'party political' activity, communicating a broad political position promoting the interests of their membership. These broad positions will at different times naturally support or oppose various political parties and candidates. For example, unions affiliated to the ALP campaigned vigorously and publicly against the Iemma Government's plans to privatise electricity. It is therefore difficult for those groups to distinguish what is 'business-as-usual' and what is 'electoral communication expenditure' for the purposes of the Act, requiring detailed recording, accounting and formal declaration. Notwithstanding our support, compliance with the current Rees-Keneally legislation has been complex, time consuming and expensive for unions and community groups. It has delivered very little public benefit.
20. The Bill has been expressly designed to tighten the Rees-Keneally provisions, particularly in relation to restricting the political activities of politically affiliated third parties, notably Labor-affiliated unions. However the practical effect is that the legislation also captures not-for-profit community based organisations. These groups often pool their financial and other resources in the period before and during an election campaign in order to communicate on a particular issue of concern to them.
21. The content, form and funding of this communication may be considered to be reportable electoral communication expenditure for the purposes of the Act, which



would attract penalties for non-compliance. The apprehension of these penalties - in addition to the complexities associated with the current legislation - is more than sufficient to discourage community groups and some unions from participating actively in the political process as they have done previously to communicate their messages. This is profoundly anti-democratic and would have the practical impact of restricting the ability of ordinary people to engage in the political process in relation to issues of concern to them.

22. The AMWU believes that the Bill is overzealous in its regulation of third-party campaigners. Transparency of funding is necessary to prevent 'astro-turf' organisations wielding disproportionate influence in favour of undisclosed corporate interests under the guise of community organizing. However, the Bill's complex compliance requirements, broad scope and harsh penalties go far beyond transparency and effectively act as a bar to political engagement and a threat to the integrity of NSW's democracy.

**b. The Impact of the Restriction of Political Donations by  
Corporations and Other Organisations**

23. The Bill permits individuals on the electoral roll to make donations to political parties. However, corporations, unions, industry groups, community organisations and other entities will be prohibited from donating to political parties. Under the proposed amendments, it will also be unlawful for individuals to make donations on behalf of corporations or other entities. Similarly, it will be unlawful for a corporation or other entity to make a gift to an individual for the purpose of the individual making a political donation.
24. The AMWU believes that these laws will affect its capacity to campaign and organise on political, social and economic issues and will impact on the Union's rights of freedom of association and implied freedom of political communication. The AMWU currently donates to candidates and political parties whose legislative agendas are in accordance with the interests of the union's members, as part of the union's ongoing campaign to improve working and living standards. This is a cost-efficient and effective means of interacting with electoral politics. By restricting donations to individuals, the Bill removes the ability for low and middle-income working people to pool resources to support candidates for electoral office that best reflect their needs and wishes, while continuing to privilege high-wealth individuals. This is a significant threat to the integrity of NSW's democratic institutions, giving wealthy people a greater say than ordinary workers.
25. Further, the legislation will have consequences for community organisations which accept donations from unions, corporations or other organisations. There is a real danger of creating a prohibition on community organisations from 'speaking up' in relation to political matters. Restricting the activities of community groups serves no public benefit, and in fact would substantially undermine the quality of NSW's democracy. It is clear that prohibiting unions, organisations and other groups from making political donations is too wide-reaching a reform, with significant negative consequences.

### **c. The Impact of the Aggregation of Electoral Spending by Political Parties and Affiliated Organisations**

26. A significant new provision proposed by the Bill is that where donors are affiliated to a political party, any money spent on an election campaign is counted as a part of the cap on the political party. This change in practice would have a particularly significant effect on the practices of Labor-affiliated unions. The AMWU is affiliated to the NSW ALP and would be directly affected by this restriction. The Union believes that this would have the practical affect of limiting the union's freedom to participate in the political process, impeding its ability to pursue the needs of its membership and violating its right to political communication.
27. The AMWU believes that this proposal does not reflect the reality of how affiliated organisations engage in political activity. As unions and community groups often campaign together on issues across the state, or in a particular seat, without consultation with any candidate or political party, this could have very serious ramifications for candidates and parties whose caps are breached without their knowledge. Discovery of these breaches is likely only to become clear when Election Funding Returns are lodged after the election.
28. The difficulties in determining what is and is not electoral spending have been discussed above (at 11). This complexity is particularly problematic in relation to proposals to aggregate spending. The AMWU routinely runs wide-ranging political campaigns advocating for our member's interests which could easily intersect with election periods and create confusion about what proportion of the money spent should be aggregated with the NSW ALP's spend. In practice, this could create accidental breaches of the law and potentially inadvertently expose candidates to fines or by-elections. In other words, the Bill would require any union or community organization exercising normal caution to avoid any campaigning activity during an election period. This is an absurd outcome that, rather than providing any real transparency around electoral funding, would in fact severely curtail the ability of advocacy organisations to pursue their goals and would sharply reduce the amount of scrutiny put on the policy positions of MPs and candidates.

29. The reality of modern political campaigning means that effective advocacy and democratic engagement in the electoral system costs money. The ability of unions to use their funds to further their members' interests by supporting candidates and parties whose legislative agenda is in accord with their members' interests – is central to the protection and promotion of the democratic voice of union members. Aggregating the spending of affiliated organisations with the spending of political parties fundamentally restricts the ability of low and middle-income people to consolidate their resources to effectively engage in the political process. Meanwhile, business interests and wealthy individuals would not be prevented from spending up to the \$1.5 million cap on promoting their agendas. The negative impact this would have on NSW's electoral democracy is obvious.
30. The AMWU is also concerned that the Bill would permit interference with the democratic process. The proposed legislation does not specify that campaign expenditure must be with the express permission of any candidate. There is therefore a very real potential for an individual with means to interfere with the democratic political process by committing sufficient funds to an individual electorate so that a legitimate candidate will exceed the cap without his/her authority, thus breaching the law; at best being fined and at worst, in the case of a marginal seat, risking the need for a new election.
31. The Bill is also silent on the issue of negative campaigning by organisations against the party they are affiliated to. For example in the context of an election unions and other individuals may campaign against the Labor Party or an individual Labor candidate on the issue of privatisation, the ABCC, industrial manslaughter legislation or compensation for Hardies' asbestos victims. It is unclear whether such a campaign would be permissible under the proposed legislation and indeed whether any funds expended would be aggregated with the campaign funds of the ALP candidate or the candidate against whom they are campaigning.

#### **d.The Impact of Proscribing the Payment of Political Affiliation Fees**

32. The Bill prohibits the payment of subscription fees, annual or otherwise, in return for affiliation to a political party. This would fundamentally interfere with the political effectiveness of the ALP by removing its ability to pool resources with trade unions and other supportive community organisations. More concerning, it is also a clear attempt to interfere with the internal arrangements of the ALP in its connections and affiliations with the trade union movement. This is an extremely serious invasion of political freedom which has far-reaching consequences for NSW's democratic future.
33. Union affiliation is central to the history, development and modern operation of the ALP. The decision by unions at the turn of last century to organize Labor Electoral Leagues – forerunners of the modern Labor party – has shaped the history of Australian development and politics. The trajectory of the Labor Party from these early days to its current status as an organisation with affiliations and membership has been a cornerstone of NSW and national politics.
34. The basis of affiliation is the affinity between the aims of the ALP and the social and industrial goals of the union movement. Affiliation with the ALP allows unions to exercise political as well as industrial power, granting a stronger voice for union members on the issues that matter to them. Union affiliation gives the ALP a relationship with millions of working families, with union delegates to the party's governing bodies providing an invaluable touchstone for community needs, concerns and views. Affiliation also grants union members a greater say in the policy direction of the ALP, ensuring that the party remains connected to its founding and fundamental purpose; to improve the lives of working people.
35. On a practical level, affiliation and affiliation fees allow union members and ordinary working people to collectively resource campaigns for a social democratic voice in parliament much more effectively than would be possible for individuals. Restricting the ability of democratic organisations to affiliate to a political party dedicated to achieving the fundamental industrial and social aims of the labour movement is a blatant attack on the freedom of association of unions and union members.
36. The AMWU is affiliated to the ALP in NSW for these reasons. The decision to affiliate is open and transparent, reviewed every three years at the AMWU's state

conference and debated by around 150 democratically elected workplace delegates. The AMWU's affiliation and political activity is well known amongst its membership and in the community, and all political activity is reviewed and scrutinised by the elected State Council. The AMWU pursues policies that are in the interest of our membership through our affiliation – fair industrial relations policies, strong industry policy that supports Australian jobs, procurement policies that help local industry grow, decent occupational health and safety laws and an economic approach that serves the interests of working Australians amongst many others.

37. It is worth noting the AMWU campaigns strongly on issues in the interest of its members outside of our affiliation, sometimes against the immediate political interest of the ALP. Affiliation has never held the AMWU back from fighting for its members, whether in the contest over public ownership of NSW infrastructure, the “Build Them Here” campaign for local industry or over occupational health and safety laws. Affiliation is one means by which the union pursues the social, industrial and economic interests of its members. Attempts to characterize union affiliation to the ALP as an undemocratic and unscrutinised process are misguided.
38. It is obvious that banning affiliation fees would disproportionately affect the ALP and the capacity of trade unions to exercise political power. Further, the provisions would not serve any public benefit in terms of increased accountability and transparency, as the affiliation process is already highly transparent. The provisions of the proposed legislation that would ban affiliations should be seen for what they are – a sinister attempt by the ruling party to reshape its political opponent and to limit the capacity of unions to politically organise.

#### **a. The Constitutional Implications**

39. The AMWU is concerned that the Bill may be in contravention of the NSW Constitution. The Bill further restricts the ability of affiliated organisations to incur “electoral communication expenditure”. This may well breach the constitutionally implied freedom of political communication expressed in the Lange Test. These concerns are clearly shared by the committee, given that the Bill’s constitutionality has been expressly identified as a point of inquiry in the terms of reference. Further, the NSW Legislation Review Committee has reiterated its concerns about laws restricting campaign expenditure, noting that ‘this Bill may further impact on the freedom of political communication in NSW.’<sup>1</sup>
40. The NSW Legislation Review Committee’s concerns are based on the reality that the nature of contemporary political campaigns requires candidates to expend significant sums on electoral communication in order to be viable. It naturally follows that in relation to any restriction on campaign expenditure ‘it is fair to assert that candidates or advocates should be free to campaign largely unencumbered, and that a free and fair democracy should not be setting controls that limit the extent to which a candidate or their advocate can campaign.’<sup>2</sup>
41. This issue has also been considered by the High Court in its 1992 decision of *Lange v Australian Broadcasting Corporation*,<sup>3</sup> which considered Commonwealth legislation that similarly sought to limit political advertising during an election period. The High Court found that legislation to be unconstitutional. Significantly, the High Court found that there was an implied right of freedom of communication which was deemed indispensable under the Australian Constitution to our system of government. Arising from this case, the High Court established the so-called Lange Test, under which ‘laws that ban or impose limits upon political donations or election campaign expenditure are likely to be regarded as burdening the constitutionally implied freedom of political communication. This is because they have the effect of limiting the quantity and breadth of communication about political matters. Such laws will only be valid if

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<sup>1</sup> Legislation Review Committee, *Parliament of NSW Digest No 15 of 2010*, p 25

<sup>2</sup> *Ibid.*

<sup>3</sup> *Lange v ABC* (1997) 189 CLR 520

they are reasonably and appropriately adapted to serving a legitimate end in a manner which is compatible with the system of representative and responsible government prescribed by the Commonwealth Government”.<sup>4</sup>

42. The AMWU notes that Premier O’Farrell has recognized these constitutional concerns. In his Agreement Speech on 12/9/11, the Premier stated:

*‘It is inevitable that these laws and, I expect this Bill will trigger discussion and debate about constitutional principles It has always been a great excuse to do nothing and a way to justify the status quo. I believe a ban on donations other than those by individuals does not place unreasonable restrictions on the implied freedom of political communication mandated by the Commonwealth constitution. The measures in this Bill are designed to rid this state of the risk, reality and perception of corruption and undue influence. To this end, they are consistent with the principles endorsed by the High Court in the Lange case. This bill’s symbolic and practical effect should not be underestimated’*

43. The AMWU believes that this statement underestimates the restrictions that the Bill in fact places on the freedom of political communication of unions and union members. The Union anticipates that the legal and constitutional arguments will be explored in more detail by others. The AMWU remains concerned about the the Premier’s point in relation to the symbolic and practical effect of the bill: the AMWU does not underestimate the symbolic or practical implications of such a fundamental rewrite of the legal framework for political activity. The legislation’s practical and symbolic effect as proposed goes far beyond donations reform. This is the fundamental source of the Union’s opposition to the Bill.

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<sup>4</sup> Dr Anne Twomey, *The reform of political donations, expenditure and funding*, Dept of Premier & Cabinet, Nov 2008, p 6



#### 4. Conclusion

44. The AMWU believes that democratic institutions are precious and fragile. It is the responsibility of all participants in the democratic process to protect the rights of the others, even if they vehemently oppose their objectives. It must be tempting to the current Government to enact a legislative framework that will make life very difficult for their opponents, will restrict their critics and strengthen their position, but that temptation should be resisted in the public interest for the long term health of NSW democratic institutions.
45. The conservative Coalition parties currently hold a massive majority in the NSW Parliament. Large majorities in parliaments bring with them responsibilities, including to resist the short term temptation to gerrymander the electoral system and to interfere in the democratic processes of independent organisations. Premier O'Farrell has a responsibility to preserve the democratic integrity of the NSW electoral system. The Bill as proposed goes too far, and rather than providing greater accountability in electoral funding instead has the potential to permanently undermine the electoral system by privileging capital over labour.
46. In his Acceptance Speech, the Premier justified the proposed changes by arguing that:
- “unions, third party interest groups, industrial organisations, corporations, overseas citizens and non residents aren't entitled to vote – our laws don't give them the right to vote and therefore they shouldn't be able to donate.”*
- ‘They don't have a stake in the system, and therefore they shouldn't be able to influence that system.’*
47. The AMWU fundamentally disagrees with this proposition. Firstly, equating unions with ‘overseas citizens and non-residents’ is spurious and purposefully disregards the central role unions play to Australian democracy. Unions are Australian organisations, registered at the Commonwealth and State level, with high levels of democracy and accountability and 2 million members, and have been a feature of the political and industrial landscape since before Federation.
48. Secondly, the Premier is proposing that only individuals, not collective organisations, should participate in politics. This has not been the Australian political practice to date, and it represents a very narrow view of future political practice that would disadvantage the social democratic, progressive and smaller

parties. No individual or organisation that is a part of our democracy should be restricted in their right to the resources needed to express themselves politically.

49. The AMWU notes that the restrictions on who may engage in political communication are not consistently applied. While there are fines and other serious consequences for unions and other groups that pool resources to make a political point, there are no caps or other restrictions affecting either print or electronic media which can continue to make political commentary of any sort at any time, regardless of ownership or vested interests. Without equally stringent scrutiny of the integrity of political reporting and transparency about media ownership and agendas, it is clear that the Bill could in practice result in a lop-sided restriction on who can and cannot make political comment.
50. Wealthy individuals also remain largely unregulated. Gina Reinhart, who is Australia's wealthiest person, is able to buy a television network to promote her own views. Wealthy individuals, who are more likely to support the Coalition Government than the Labor Opposition, unions or other organisations will continue to be able to donate \$5,000 per head to attend fund raising events with the Premier, Deputy Premier or senior Ministers. This kind of participation is not practically accessible for normal working people, highlighting the inequitable nature of the proposed changes. Moreover, the proposed legislation will not prevent high wealth individuals from actually spending up to \$1.5m campaigning on issues, provided they spend the money rather than donating it to anyone else. It is very clear which party will benefit most from this provision.
51. The AMWU does not believe that this Bill will have any practical effect to end corruption or the perception of corruption. The activities restricted by the proposed changes, largely union and other community organization donations and affiliations, are transparently and democratically exercised and monitored. The Bill does nothing to end influence or interference with the political process. It certainly does not create a level playing field – quite the contrary: what it does do is widen and entrench the ability of individuals of means to influence the political process, while narrowing and diminishing the ability of those who do not have sufficient excess individual capital to communicate in their interest.
52. A healthy, fully functioning pluralist democracy requires a plethora of competing free and independent voices. This is an obvious point, and one that is shared across party lines. The AMWU notes the views of Hon Robert Borsak, expressed

before entering parliament as a representative of the Shooters and Fishers Party. In an address to the Joint Standing Committee on Electoral Matters, Mr Borsak acknowledged the difficulties faced by minor parties and interest groups in attracting funds and the highly negative impact restrictions of this nature will have on them. Mr Borsak effectively summarized the AMWU's position in his statement:

*'I think organisations, whether it be a union, a green organisation, a business-related organisation or even a shooting organisation, should be allowed to stand up in the public arena and have their say in relation to things that they think are important democratically. Not always will those organisations and you see this quite often with the Labor Party, voice opinions that are necessarily in the short term in favour of or supporting the Labor Party. I think it would be a real oppression of organisations to be able to say what they think. Those organisations and unions are a good example and industry is an excellent example. They represent a significant interest group in our society that needs to have a democratic voice as well, even though our society only measures each vote per person. The reality is that there are aggregation and sectional interests that are important and need to be looked after. ....If like minded groups are stopped or limited from voicing their opinions, especially in the run-up to an election, I think we hurt democracy.'*<sup>5</sup>

53. This position was also expressed by the Hon Dr John Kaye of the NSW Greens, who described protecting the free speech rights of union members as 'a core principle of democracy' in late 2011.<sup>6</sup> The AMWU encourages Dr Kaye, in his role as Chair of this Select Committee, to place great weight on the concerns raised by the AMWU and other unions on the impact this Bill would have on the ability of union members and their families to effectively participate in NSW politics.
54. The AMWU is a democratic organisation, and strongly supports electoral reform that enhances the robust nature and integrity of our democracy. However, it is the AMWU's view that the proposed reforms do not work to enhance our democratic system. Indeed the Union is extremely concerned that the proposed legislation is

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<sup>5</sup> Joint Standing Committee on Electoral Matters, Parliament of NSW, 1/2/2010.

<sup>6</sup> Sydney Morning Herald, 14/09/11

nothing less than a strategic maneuver by a premier with an overwhelming majority and an overwhelming will to strike a fatal blow against his political opposition.

55. Of even greater concern is the terrible consequence of this political opportunism: the quashing of genuine political activism in the community among small groups that do not have the individual skills or resources to participate in the political process alone. It is for these reasons combined that the AMWU is opposed to the proposed legislation in its current form and supports the recommendations proposed in the submission by Unions NSW.

## **Appendix 1: Recommendations**

56. The AMWU supports the recommendations contained within the submission by Unions NSW. For convenience, these are summarized below:

- 1. That legislation applying to third party campaigners be untangled from that applying to parties and candidates and placed in a separate, stand-alone part of the Act.*
- 2. That the types of expenditure to which regulation of third party campaigns applies be defined to include paid media advertisements, including electronic, print media and paid billboards, as well as material intended to be distributed on the day of an election.*
- 3. Owing to special circumstances of peak councils and organisations which pool their resources to engage in campaigns around issues, that restrictions on donations to “third party campaigners” be removed by deleting the reference to “third party campaigners” in s96D (1).*
- 4. Sections of the bill aggregating campaign expenditure between parties and other organisations that are affiliated to them (proposed sections 95G (6) and (7)) are unreasonable and unjust, are based on a false premise, and should be deleted.*
- 5. Not for profit, membership based organisations should retain the right to affiliate to political parties, and existing political parties should retain their right to adopt or maintain a structure which provides for organisational membership. Section 96D (4) of the Bill, prohibiting these rights, should be deleted.*