

INQUIRY INTO ELECTORAL AND POLITICAL PARTY FUNDING

Organisation: Liberal Party
Name: Mr Barry O'Farrell
Position: Leader of the Opposition
Telephone: 02 9230 2270
Date received: 19/02/2008



BARRY O'FARRELL MP

NEW SOUTH WALES LIBERAL LEADER

February 15, 2008

Rev. Hon. Fred Nile MLC
Chair, Select Committee on
Electoral and Political Party Funding
Parliament House
SYDNEY NSW 2000

Dear Rev Nile,

LIBERAL PARTY SUBMISSION

I have pleasure in forwarding the attached submission for the Committee's consideration.

In summary, the key recommendations are:

1. *That the New South Wales Government seek certain national reforms relating to political donations to allow donations to be restricted to individual Australian citizens.*
2. *That the New South Wales Government immediately legislates to impose limits on the campaign expenditure of political parties, candidates and third parties in State elections.*
3. *That the New South Wales Government immediately legislate to authorise the Auditor-General to review and approve government advertising.*
4. *That the New South Wales Government ensure the Parliamentary Remuneration Tribunal ensures the Electorate Mailout Account conforms with the new campaign expenditure arrangements.*
5. *That the New South Wales Government legislate to increase the uniformity between the reporting requirements of the Commonwealth and New South Wales in relation to the disclosure of donations.*

If the Committee requires any further information or assistance, please do not hesitate to contact me.

Yours faithfully,

BARRY O'FARRELL MP
Leader of the Opposition

LIBERAL PARTY SUBMISSION

The Impact of Political Donations on the Democratic Process

Perceptions of undue influence

There is growing community concern that vested interests are using money, given as donations, to buy influence in New South Wales. It is one of the factors that have undermined public confidence in government and public administration in this State. Too many people believe that the public interest has suffered when decisions are being made on a range of issues, such as property and gaming.

NSW Labor has made an art form of fundraising from those sections of the business community whose profitability is most affected by State Government regulation. There are allegations that businesses seeking access to State Government Ministers are frustrated when they have not donated to NSW Labor.

This inquiry is a timely opportunity to probe this issue and consider what changes need to be made to deal with the perception of undue influence.

Campaign Expenditure escalation

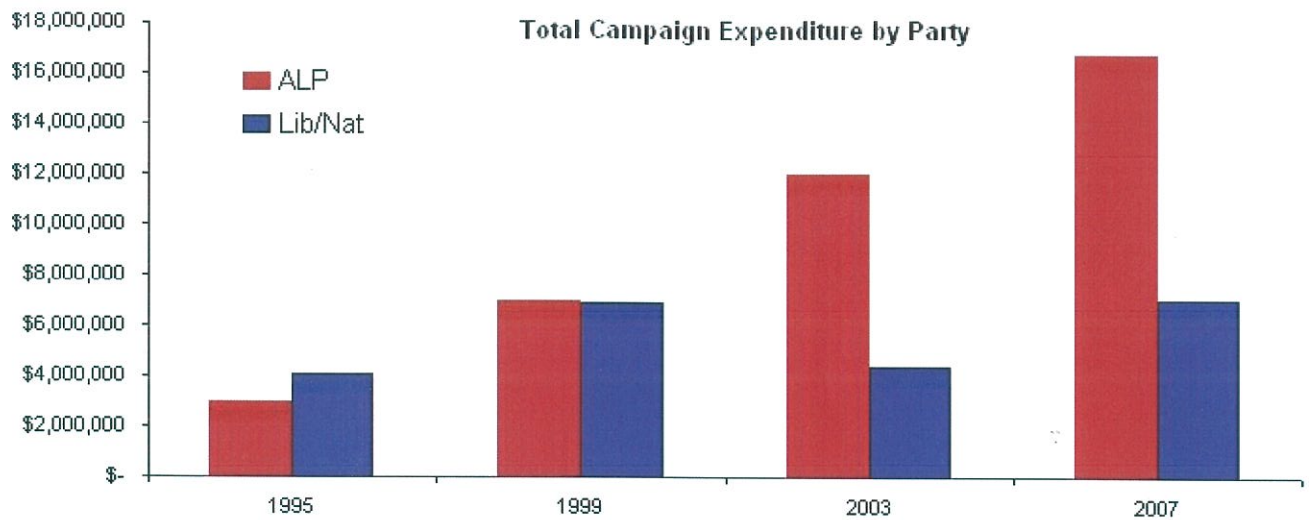
The clearest sign of the link between money and politics has been evidence of how NSW Labor has been able to increase its campaign expenditure at each subsequent general election since the Carr Government's election in 1995. Increasing campaign expenditure, based on extracting money from the business sectors regulated by State Government, has helped bolster Labor's electoral position as its popularity has waned.

There has been an incredible 467 percent increase in Labor's campaign expenditure between their last election in Opposition in March 1995 and their most recent election in March 2007.

The Coalition has tried to match Labor's expenditure to maintain its electoral competitiveness, but has only been able to increase it by 72 percent since its last election in Government in March 1995.

The public is entitled to ask whether the escalating expenditure of both major parties is in the public interest. After all, between March 1995 and March 2007, the Consumer Price Index rose by only 36.7 percent.

The table on the following page illustrates the trends.



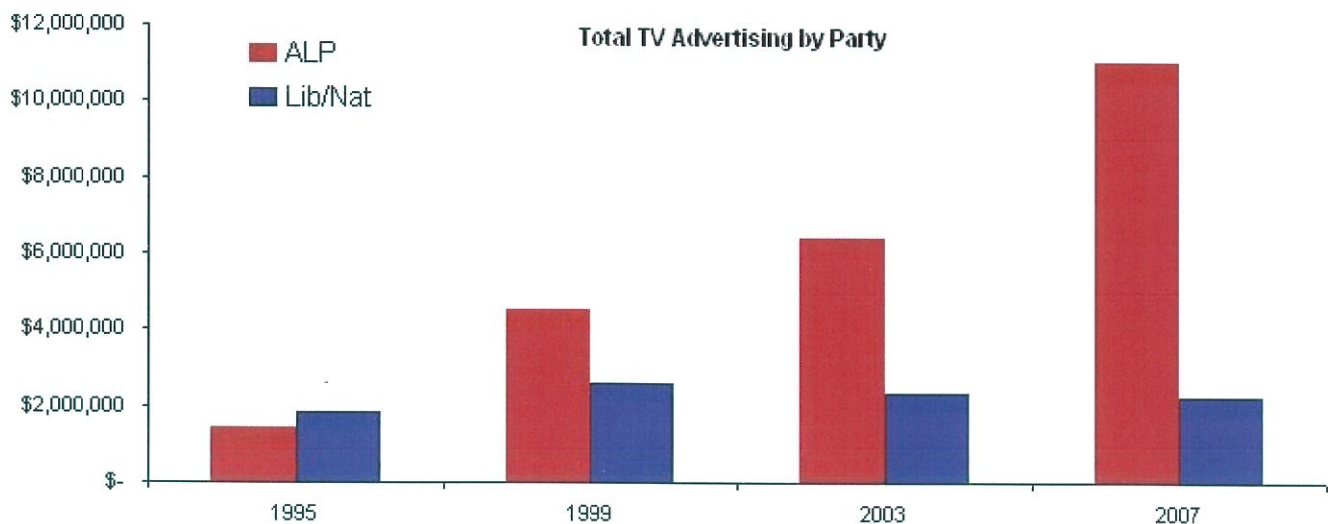
Source: EFA, Election Funding Reports 1995-2007

Television Advertising: Political Parties and Governments

It is interesting to note where Labor's escalated expenditure has been targeted.

Election campaigns have increasingly become all about the "media buy". We have been following American trends where the amount of printed campaign literature has been declining and the amount of negative political advertising on television has been increasing. This is exemplified by changes in the mix of Labor's campaign expenditure.

NSW Labor has increased the amount it spends on television advertising by an even larger percentage. The total spending on television has risen by 746 percent from March 1995 to March 2007. NSW Labor has also been increasing the proportion of its overall campaign budget devoted to television advertising, rising from 48 percent in March 1995 to 72 percent in March 2007.



Source: EFA, Election Funding Reports 1995-2007

NSW Labor's belief in the political effectiveness of television advertising was reflected in a vast increase in the Iemma Government's own taxpayer-funded advertising during the financial year 2006-07, spent almost exclusively prior to the

March 2007 election. In these advertisements, political achievements and policies were promoted under the guise of community messages and information campaigns.

In the last financial year Government agencies spent \$111.7 million on advertising, an increase of 21 percent on the previous year. While slightly more than a quarter of this expenditure was on routine advertising for job vacancies and tenders, \$81.5 million was spent on specific advertising campaigns such as the State Plan advertisements, which alone cost \$4.4 million.

The 2007 Auditor General's report on government advertising noted that the cost of such advertising had steadily increased by a total of 37 percent over the three years since 2003-04. The report commented, "It is common for government advertising campaigns to be seasonal or cyclical however we found a change in the quantum of government campaign advertising prior to the election."

The Auditor-General concluded that "the current guidelines are not adequate to prevent the use of public funds for party political purposes" because they "do not require decision makers to judge if advertising campaigns contain material that is party political."

Political Donations: A level playing field?

It is important to note that Labor's advantage from incumbency in NSW and other States was not balanced by the Coalition's incumbency at a Federal level.

There are several reasons for this. The first relates to the political donations of trade unions.

Trade unions in Australia are in a special category, particularly because of their tax treatment. Under the relevant tax legislation, the Australian Taxation Office is able to treat trade unions differently from corporations and individuals.

Effectively, trade unions give millions of untaxed dollars in political donations sourced from members' subscriptions (which are themselves tax deductible). Donations from corporations and individuals have had tax paid on them (other than the small amount which is now deductible). The tradition of "No ticket, no start" in many industries has also enabled them to compulsorily extract subscriptions.

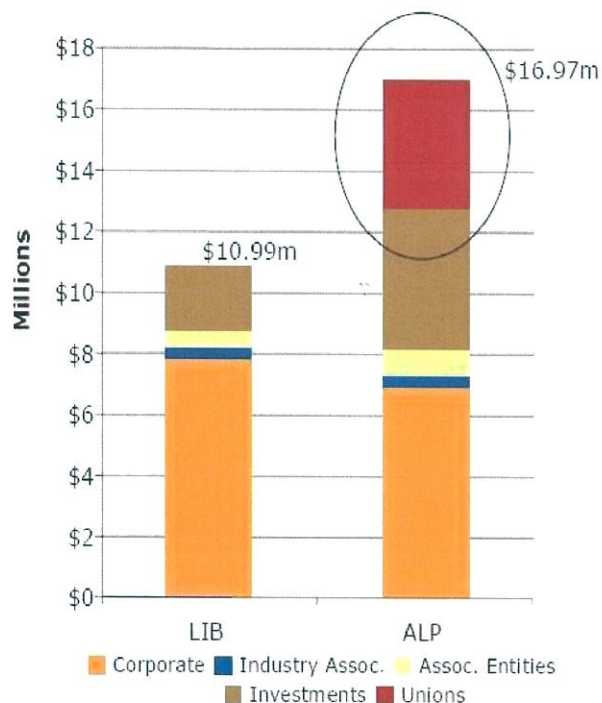
Taxpayer support of trade unions has supplemented their ability to fund Labor. The Institute of Public Affairs has reported that the Hawke and Keating Governments gave \$92 million dollars to the trade unions between 1983 and 1995.

Trade union contributions continue to account for the major difference in the annual fundraising returns of the two major parties lodged with the AEC. Since the 1998/99 financial year, Labor has collected more than \$46 million in trade union contributions. In the last full year for which annual returns are available, Labor is shown collecting around \$4 million from unions (see the table to the right).

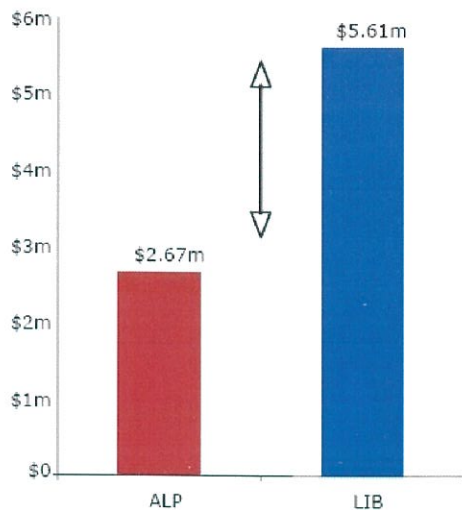
The impact of the trade union movement's exclusive financial contribution to Labor is further emphasised by the accelerating tendency of the corporate community to parity of donations to the two main parties.

As the two tables below indicate, there has been a significant decline in corporate political donations across Australia in the last ten years. Business has become focussed on achieving a balance in the amount they donate to Labor and the Coalition.

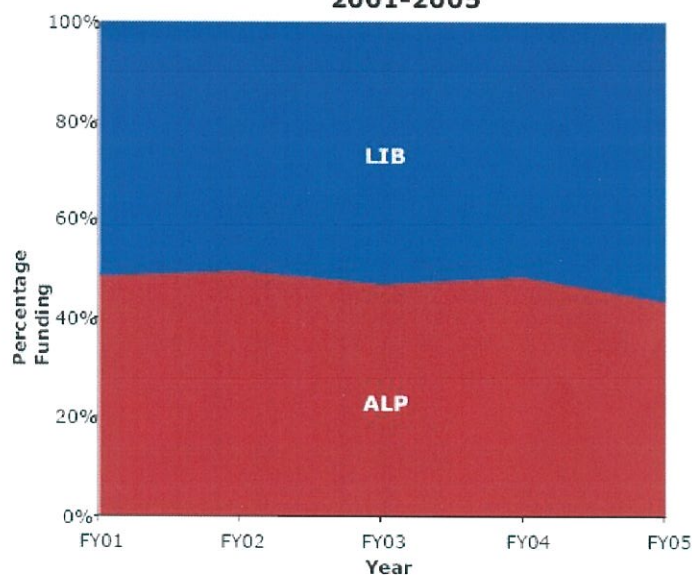
Comparing Party Income By Type FY06



Corporate Contributions 1998



Corporate Contributions 2001-2005



Source: LPA 2007 Annual Report p10-11

Since May 2004 the Australian Shareholders' Association has pressed for corporations to desist from making any political donations on the grounds that they are "inappropriate disbursements of shareholders' funds." In recent years corporations that have adopted self-imposed bans on political donations include Westpac, BHP Billiton, National Australia Bank, AMP, Rio Tinto and Lend Lease. This trend will only magnify the advantage of trade union donations to Labor, especially following the defeat of the Howard Government at the Federal level.

Labor's investment income increases the advantage. For example, the Centenary House scandal, involving a lease of a property owned by Labor to a Federal Government tenant, netted them \$36 million over the first ten years of the lease's life. At that time, the Federal Government tenant was obliged to pay a rental that was almost triple the market rental for equivalent space in Canberra.

Without the advantage the Coalition has traditionally enjoyed from corporate donations to balance contributions to Labor from the trade union movement, we now have a structural imbalance in party income. The fact is that the major political parties play an indispensable role in all democracies, providing a focus and a defined alternative. It is not good for government to have one of the major political parties at a permanent financial disadvantage, constraining its capacity to effectively compete.

Supply-side Regulation

The Inquiry's terms of reference specifically includes an assessment of "the advantages and disadvantages of banning all donations from corporations, unions and organisations to parties and candidates."

There is a strong philosophical argument that, in a democracy, only those who have the right to participate as voting citizens should be able to influence elections with their political donations. Non-citizen residents, organisations, trade unions and corporations do not have votes, so they should not be able to influence the democratic process through donations. Further, by capping donations at a modest level, no individual citizen can exercise undue influence. Tax deductibility broadens the base of potential individual citizens who can afford to donate, this diluting even further the possible influence any citizen(s) can exercise.

While the NSW Liberal Party believes there is a case for moving to an electoral funding regime based on restricting the right to donate to individuals, we note that it is very difficult, if not impossible, for one Australian State to move unilaterally in this direction.

The complicating factor is Australia's federal system of government and the federal complexion of the major political parties. Canada has legislated to ban donations from corporations, unions and organizations to political parties and candidates, and capped donations at \$1,100, as have a number of provinces. In fact, the province of Quebec was the first to do so. However, the party system is very different in Canada. There are separate parties to contest national and provincial elections. For example, in the province of Alberta, conservatives vote for the Conservative Party of Canada at a federal level and the Progressive Conservative Party of Alberta at a provincial level. The two party organisations are entirely separate. Neither spend funds in elections for the other tier of government. Thus, it is possible for Canadian campaign finance legislation to operate in "watertight compartments" in the various provinces and at a federal level.

However, in Australia, the major party organisations are quite different, with the political parties at a State level operating as branches or divisions of national party organisations. The State branches collect and spend money in both federal and state elections. Intra-party transfers of funds occur between state and federal

party organisations and, sometimes, between state organisations. For example, the enormous investment income that Queensland Labor enjoys potentially makes them a factor in funding Labor election campaigns around the country.

For this reason, we believe that the 'supply-side' of the political donations equation, can only be successfully reformed at a federal level. We believe this a matter which should be part of Prime Minister Rudd's Commonwealth/State relations reform agenda and a call for national reform should be a recommendation of the Select Committee.

RECOMMENDATION:

That the New South Wales Government seek certain national reforms relating to political donations to allow donations to be restricted individual Australian citizens.

Demand-side Regulation

The problems constraining State-based 'supply side' regulation do not apply to regulation on the 'demand side'. It is possible for an individual State to legislate for expenditure caps.

We believe that restricting the amount candidates and parties can spend during an election campaign would address community concern about the link between donations and decisions under the Iemma Government. Campaign spending limits would change the landscape because if you can't spend the money, there's no need to raise it.

We advocate the following limits based upon the NZ model:

1. Introduction of an expenditure limit of \$30, 000 for each candidate contesting an electoral district during an election; and
2. Limiting political parties to spending \$1.5 million state-wide, on top of their electoral district allocation.

The period this limit on expenditure would apply is the 12 months preceding the date of the election. The fixed term election arrangements in New South Wales allow such a restriction to be easily implemented at a State level.

Ideally limits should be set – and reviewed – by an independent agency (ie NSW Audit Office) after seeking views from the public and other interested parties.

Third Party expenditure

Independent campaign expenditure by non-party actors must also be limited for a capped campaign expenditure regime to be successful. However, the limits cannot be so low as to limit the 'free speech' of third parties. Advocacy organisations need to be able to raise their concerns in the lead-up to the election. We advocate a spending limit of \$250,000 for third party expenditure in the twelve months preceding an election. There would have to be a registration system for

organisations seeking to participate. The Canadian and British models provide possible approaches.

RECOMMENDATION:

That the New South Wales Government immediately legislate to impose limits on the campaign expenditure of political parties, candidates and third parties in State elections.

Government Advertising

Self-evidently, caps on campaign expenditure by political parties and candidates would be meaningless without complementary legislation to stop the misuse of Government Advertising budgets.

The Leader of the Opposition, Barry O'Farrell MP, introduced the *Government Publicity Control Bill* on May 29, 2007. It was defeated in the Legislative Assembly with Government members voting against on October 18, 2007. The objects of the Bill were:

"To ensure that, as far as possible, public money is not expended on government publicity for a partisan political purpose, and to enable the Auditor-General to scrutinize government publicity that appears to the Auditor-General to have the capacity or to be likely to have the capacity to be used for that purpose".

Under the provisions of the Bill, the Auditor-General had a mandate to review any government publicity that the Auditor-General considers may be government publicity for political purposes, and was obliged to review any government publicity on which a public authority incurs or will incur \$200,000 or more in expenditure, to determine whether the Auditor-General should take any action. The Auditor-General would have the power to conduct a review on his own initiative or on receipt of a complaint.

Other jurisdictions have not been so reticent. Ontario has legislated to give their Auditor General a role in reviewing Government Advertising. Under the current arrangements, all government advertising is submitted to him for voluntary pre-review and/or formal review in final form.

During a voluntary pre-review, the scope and cost of a proposed advertising campaign is considered, including draft scripts. The pre-review is commonly used for radio and television commercials, prior to incurring significant production costs. At the formal review stage, advertisements must be in final form and include documentation that describes campaign objectives, target audiences, key messages and the proposed "media buy". By regulation, advertisements are deemed approved if not rejected by the Auditor General within seven business days after receipt. "Rejected" advertisements can be resubmitted for review after revision.

The Auditor General can delegate his responsibilities to an Advertising Commissioner under the Act. However, he has, instead, appointed a "panel of experts" consisting of a lawyer, an academic and a newspaper editor, to advise on controversial advertising proposals.

The Auditor General reports annually to the Parliament but has the power to issue a special report at any time if the matter should not be deferred until the annual report. This mirrors his audit powers. While no special reports have been issued to date, the mere threat to provides the necessary deterrent.

The incoming Commonwealth Government gave an explicit commitment to legislate to give the Auditor General powers to prevent partisan misuse of government advertising budgets. Their election commitment stated:

Under the Federal Labor plan, all government advertising and information campaigns in excess of \$250,000 will need to be vetted by the Auditor-General. The Auditor-General would independently apply rules which limit public advertising to essential requirements for public information.

This information will need to be based on policy that has been given explicit legislative and regulatory approval. We'll also work with the states to develop the same kind of approach around the country.

This is about lifting the standards of government integrity, so taxpayers can have more confidence that their government is working in the public interest, rather than a purely political interest.

This mirrors many of the features of Mr O'Farrell's Government Publicity Control Bill, which NSW Labor voted against in Parliament.

RECOMMENDATION:

That the New South Wales Government immediately legislate to authorise the Auditor-General to review and approve government advertising.

Electorate Mailout Account

Imposition of campaign expenditure limits in the last 12 months of the four-year term would require consequential changes to the Electorate Mailout Account. This entitlement has been approved by the Parliamentary Remuneration Tribunal for preparing and distributing letters/newsletters to each constituent in a Member's electorate. Members are provided with an annual amount based on the cost of issuing two newsletters/letters per enrolled voter per annum. Members may issue additional newsletters/letters subject to available funds in their Electorate Mail-Out Account and the Legislative Assembly's administrative guidelines. The amount currently ranges from \$61,073 to \$64,012 per annum.

While the Parliamentary Remuneration Tribunal has laid down particular conditions for use of this entitlement which explicitly exclude its use for expenditure of a "direct electioneering or a political campaigning nature", the expenditure by an incumbent Member of such a large amount communicating with constituents during a period when campaign expenditure by an opponent was limited would subvert the spirit of capped expenditure arrangements.

There are two options.

The first would be to restrict the entitlement to the first three years of the four year term of Parliament. The second would be to extend the arrangements to Members of the Legislative Council for use during the four year term to communicate with constituents in lower house seats not held by their party in the Legislative Assembly. This would at least balance any advantage provided by use of the EMA by lower house MPs.

RECOMMENDATION:

That the New South Wales Government provide for the Parliamentary Remuneration Tribunal to ensure the Electorate Mailout Account conforms with the new campaign expenditure arrangements.

Funding of Political Parties in Parliament

In the context of capping campaign expenditure, there could be a case for addressing a further area where incumbency provides the party in office with an undue advantage.

A comparison of staff resources provided to the current State Government and the Opposition reported in the *Sydney Morning Herald* on January 29, 2008 outlines the imbalance favouring the Government. The current Commonwealth Government employs 340 ministerial staff and provides 69 positions to the Opposition. By comparison, the Iemma Government employs 252 ministerial staff whilst providing only 17 positions to the State Opposition. The Iemma Government also employs 77 staff in the Ministerial and Parliamentary Services Branch of the Premiers Department, most of who should be categorised as political staff, such as the extensive media monitoring and 'rapid response' units.

There has been a tradition at a federal level of a fixed ratio between Government and Opposition political staff, of approximately 5:1. This should also apply in new South Wales. The Parliamentary Remuneration Tribunal has already addressed the issue of additional resources for minor party and independent Members of Parliament and it should also examine this matter.

Disclosure

There are several amendments that would make the disclosure system more effective and at the same time more administratively simple for Party Agents.

Under current State arrangements, all income received by candidates and parties over a four-year period must be disclosed. However, the Election Funding Act does not distinguish between party income given for state or federal elections. Thus, the returns lodged recently with the Election Funding Authority of New South Wales include political donations specifically given for federal campaign purposes.

Commonwealth legislation features the same problem, but with a different reporting period - 12 months. Political donations for NSW election campaigns must be included in the Party's annual return to the Australian Electoral Commission.

The position is even more complex because there are different definitions of 'political contribution' in Commonwealth and State legislation. At a State level, the \$1500 threshold is cumulative during any period of twelve months (itself not properly defined in the Act). The AEC threshold is transaction-based – not cumulative.

It would better serve the public interest in terms of transparency, plus yield administrative efficiencies for Party agents, if the reporting requirements and periods were, as far as possible, made uniform across Commonwealth and State jurisdictions.

RECOMMENDATION:

That the New South Wales Government legislate to increase the uniformity between the reporting requirements the Commonwealth and New South Wales in relation to the disclosure of donations.

Public Funding

We seek no specific changes to the scope of public funding, based on the reimbursement of actual expenses. Some adjustment of the 'monetary value' (as defined under the Election Funding Act 1981) may be necessary to bring them into line with the campaign expenditure limits we are suggesting. In Canada, parties are reimbursed for 50 percent of their election expenses, provided they achieve two percent of the vote.

Political Education Fund

No changes are sought in relation to the Political Education Fund. This fund is meeting the objectives identified by the parliamentary committee that recommended its establishment.