

**Submission
No 106**

INQUIRY INTO ELECTORAL AND POLITICAL PARTY FUNDING

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Rev the Hon Fred Nile MLC
Chair
Select Committee on
Electoral and Political Party Funding
Parliament House
Macquarie Street
SYDNEY NSW 2000

15 February 2008

Dear Rev Nile

In response to your letter of 26 November 2007 I have prepared a submission to the Inquiry into Electoral and Political Party Funding.

I would like to point out that the comments made in this submission are made by me in my capacity as Chair of the Electoral Funding Authority (EFA) and they are limited to operational issues and how these could be improved.

I have been advised that I am to appear before the Committee on Monday, 3 March 2008 and am happy to expand on the information contained in the submission and answer any questions the Committee may have. I will be accompanied by Mr Trevor Follett, Secretary of the EFA.

Yours sincerely

A handwritten signature in cursive script that reads "Colin Barry".

Colin Barry
Electoral Commissioner

Introduction

The Election Funding Authority (EFA) and associated funding and disclosure system remain substantially the same as they were when introduced in 1981 – over a quarter of a century ago – despite many features of the political landscape having changed. For example, smaller parties and independent candidates now play a greater role than they did at the time the original legislation was introduced or when the Political Education Fund was created in 1993.

The system provided for in the *Election Funding Act 1981* (the Act) is very much paper-based and has not been updated to reflect the changes now possible with modern information technology. For example, returns by registered political parties, groups, candidates or donors could be made on-line.

As stated in the *EFA Annual Report 2006-2007*, the environment is becoming more complex with some people and organisations attempting to operate outside the provisions of the legislation. This may be as they are unaware or uncertain of their obligations to disclose donations.

The EFA is aware of the need for a broader community education campaign to raise the general awareness of the obligation to disclose donations where such exceed certain limits. Taking first steps towards increasing awareness, the EFA included information on its new website and provided information to candidates regarding their obligation to advise donors that they may be required to disclose such donations to the EFA. Manuals for stakeholders and redesigned forms to make it simpler and clearer for those who are required to lodge returns have been included on the website.

The development of the EFA website is work in progress. The first priority was to make it a one stop point for information on all EFA matters. The next step is to make the website interactive for candidates and parties to assist them in complying with their legislative requirements.

Areas for reform

Disclosure returns

An area for improvement would be to require political parties, groups, candidates and donors to submit **annual returns** detailing political contributions received and electoral expenditure incurred instead of on a four year basis as currently required by sections 83, 84, 85 and 85A of the Act. The disclosure information should be on a financial year basis which would be in line with record keeping requirements of other agencies such as the Australian Tax Office and the Australian Securities and Investments Commission.

Under the existing legislation the disclosure periods for State and Local Government elections overlap creating additional obligations and complexities. At the time the EFA was created the Electoral Commissioner was not responsible for the conduct of local government elections. This situation changed in 1987, creating the need for parties, groups and candidates contesting local government elections (and donors to their cause) to provide disclosure returns. The system designed for one purpose (State elections) was now being applied to another (local government elections) that was not originally contemplated.

Another aspect which was not present when the original scheme was created is the fixed four year term for State Parliament and the holding of the election on the fourth Saturday in March from 2004. The Act specifies timeframes in such a way as to be manageable when the date of the State election was unknown. Regrettably these overlapping timeframes for State and Local Government elections make it very complex for parties, candidates and donors.

The current complicated system would be much improved if one return was required in place of numerous returns, and if the return was linked to time (a financial year) rather than an event (State election or local government election). In my view providing details over a one year period would lead to greater accuracy and a higher level of compliance and minimise apparent anomalies. It would also mean that more up to date information would be available to the public.

The Act also needs to be clarified in relation to how GST amounts are to be treated as the approach taken currently by parties, groups, candidates and donors is inconsistent.

Improved identification of donors

Given that transparency is an underlying principle of the disclosure requirements it is important that the EFA can correctly identify those who are making donations. This is not always possible at present as details are provided by parties, groups and candidates in varying ways.

For example, listing a donor on one occasion with a street address and on another with a PO Box means that the EFA cannot tell that it is one and the same person. Similarly providing abbreviated company names can also lead to confusion with other records where a company's full name has been provided. Identifying who is the actual donor when a single donation is made in the name of more than one person eg a cheque on behalf of a husband and wife.

To improve identification of donors it is suggested that in the case of a company an ABN be supplied, and for an individual, details for that person as they appear on the New South Wales electoral roll.

Registration under the *Election Funding Act 1981*

Political parties applying for registration under the *Parliamentary Electorates and Elections Act 1912* must state whether they wish to be registered for *Election Funding Act* purposes. Under the *Election Funding Act 1981* there is a detailed registration regime depending on whether the candidate belongs to a party, a group or is an independent.

Given that all participants (registered political parties, candidates and donors) at an election, be it State or Local Government, are required to provide returns which disclose contributions received and expenditure incurred, it is not clear why electing to register for *Election Funding Act* purposes is optional. It would be much simpler if a registered political party were automatically registered for *Election Funding Act* purposes. If a registered political party or candidate did not wish to apply for funding there would be no compunction on them to do so.

There is provision in the Act (section 76A) for Legislative Assembly candidates to direct the EFA to make any re-imbusement payment to the registered political party that endorsed

them. It would be simpler if it were automatic that any re-imbusement for endorsed candidates by a registered political party could be made directly to the registered agent. This would do away with the need for candidates to fill out individual forms authorising this to occur.

Electronic filing of information

One of the most useful reforms would be to require online lodgement of declarations by parties, groups, candidates and donors in real time. Currently the volume of data entry to be made is extensive and requires significant resources to be applied to the task in a very short period of time. The fact that the material is 'double handled' as the EFA staff are then required to data enter what is provided by the parties, groups, candidates and donors increases the risk of errors being made. At the last State election there were: 18 parties, 17 groups, 870 candidates and 4,973 donors and the total number of records entered was approximately 180,000.

Electronic filing has a number of benefits:

- it significantly increases the speed with which disclosure filings are processed
- there is no need to verify keying in of data as it is taken from the information submitted by the parties, groups, candidates and donors
- the system could be designed to have warnings built in to prevent erroneous entries and ensure that errors such as people providing information outside the disclosure period cannot occur. One area where this would be of great benefit is the provision of donor details by parties, groups and candidates who frequently omit the person's address or only give the person's first initial. Follow-up work would not be required as the system would alert the data enterer that the information needed to be supplied or their document would not be able to be processed.
- it facilitates cross-matching of information by donors' details;
- it assists parties, groups, candidates and donors comply with their legislative obligations, and
- it allows for rapid distribution of data to the public.

At an international conference on the Regulation of Political Party Financing held in London in September 2006 the former Executive Director of the New York Campaign Finance Board, Ms Nicole Gordon, described the role and operation of that organisation. One aspect that is of interest to the NSWEC is that the Board requires election financial information to be provided electronically via its Candidate Software for Managing and Reporting Transactions (C-Smart). Ms Gordon said:

... the Board provides each campaign with software on which to do the filings with us. The Campaigns fill in the financial information on the software and that is submitted to us in electronic form either over the internet or on a disc, and virtually instantaneously it goes up on the internet. The value of the software, in addition to being a very efficient way for the Board to get information, is that there are all kinds of warnings built in, so that if a candidate,

for example, receives an over-the-limit contribution and records it, the software will flash a sign that says, 'this is an over-the-limit contribution you must return the overage immediately.' ... It may also be that the person entering the date has made a mistake, and this is a side benefit, that the person may be alerted to a mistake.

The electoral legislation requires campaigns to use the Board's software and an exemption must be sought for a paper-based return to be filed.

The Board also has a comprehensive database on its website which allows anyone to search by election or candidate and find information on contributors, amounts etc. Some details that have been provided to the Board are quarantined for its use only, for example, a donor's address, but all other information about contributions, expenditures, transfers, loans, intermediaries and other transactions is available.

The NSWEC has recently requested a demonstration copy of the Board's C-Smart program.

It would appear from the United States' Federal Election Commission (FEC) website that electronic filing is also a feature at the federal level. It states that since 2001 electronic filing has become the preferred method for committees to file reports and statements. In general, a committee must file all reports and statements electronically if their total contributions or expenditures exceed, or expect to exceed, \$50,000 in a calendar year. Committees that are not required to file electronically are strongly encouraged to do so voluntarily.

We note that the Electoral Commission in the United Kingdom has also identified electronic access to information as requiring attention. In a recent report it stated that:

A priority for 2006-07 is to work with the political parties and other regulated organisations and individuals to make the regulatory framework simpler and more effective, and to ensure the maintenance of high levels of transparency in party funding and campaign spending. This work will include an overhaul of the Commission's registers database, and the development of online tools for the electronic submission of statutory returns, financial accounts and registration details.