

**Submission
No 153a**

INQUIRY INTO ELECTORAL AND POLITICAL PARTY FUNDING

Organisation:

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Response to the Premier's Submission

1. INCREASING THE AMOUNT OF INFORMATION TO BE DISCLOSED

Increasing the frequency of disclosure and reporting

The desirable objective of increased transparency and accountability for campaign donations needs to be balanced with the cost and administrative impact of an improved disclosure regime. Getting this balance right will determine the most effective and practical way to increase disclosure and reporting while preserving diverse participation in elections.

The Premier proposes introducing "biannual disclosure" with full reports for the six months to June and December in each calendar year. While this may be more frequent than other jurisdictions, it would mean information about political donations would not become public in a timely fashion during election campaigns.

In his appearance before the Select Committee on Electoral and Political Party Funding, Mr Trevor Follett of the Election Funding Authority acknowledged that real time disclosure would be possible if donation returns were submitted electronically¹. He stated:

If we were to employ an electronic means of collecting the data, it would be a very fast turnaround. Most of the lag at the moment is set by the legislation allowing a considerable period before the paperwork is filed with the authority—in fact, it is five months after the election. The focus could change to continuous disclosure to the authority and then closing off a period before the election and making that information available before the election.²

Mr Follett acknowledged that the Authority was not currently funded to introduce the necessary technology to provide for online reporting and disclosure.

Under the current framework, significantly increased reporting would be unachievable for most independent candidates and even smaller parties. As an Independent, my fundraising and accounting is undertaken by volunteers who could not provide for the full-time or routine involvement presupposed by real time disclosure. The problem is significantly compounded during the hectic campaign period. A change in the system must not result in a systemic bias favouring major parties with centralised resources.

I support the principle of increased reporting and disclosure through the Election Funding Authority. It is likely that the most appropriate balance between increased disclosure and administrative burden will fall between the Premier's proposal and real time disclosure. It is unlikely that the outcome can be achieved equitably for all candidates without the Electoral Funding Authority providing a simple process for electronic, online declaration and disclosure.

I therefore recommend that the Committee consider:

1. ***Changes to the Election Funding Act 1981 to provide for the electronic declaration and online disclosure of political donations; and***

¹ Report of Proceedings before Select Committee on Electoral and Political Party Funding Inquiry into Electoral and Political Party Funding, Monday 3 March 2008 ("Proceedings 3 March 2008"), p5.

² *Ibid* p4.

2. ***The resources needed by the Election Funding Authority to introduce technology for:***
- ***electronic declaration of political donations in a low cost and timely manner eg through the completion of a simple online form using a home computer;***
 - ***public disclosure of political donations online as soon as practicable after the donation is declared;***
 - ***members of the public to electronically search all declared donations; and***
 - ***training to be provided in the use of the system for all parties and candidates who require it.***

Lowering the Disclosure Threshold

I strongly support the proposals to lower the disclosure limits for political donations.

Improving the Quality of Disclosure

I strongly oppose the Premier's proposals relating to the management of political donations, which provide for:

- political party central offices to receive and administer all donations to the party and its candidates; and
- the Election Funding Authority or another independent body to receive and manage donations to independent candidates.

The Premier is proposing a two tiered system in which political parties are favoured and Independents are disadvantaged. It assumes that political parties can be trusted to manage the donations they receive but independent candidates cannot.

The proposal is based on a flawed premise. It assumes that community concern about political donations relates to individual politicians soliciting and accepting donations and ignores real concern about donors using political donations to gain access to and wield influence with decision makers.

Anti-graft and corruption laws should be able to deal with individual politicians who improperly solicit and accept political donations. If they are currently inadequate to do this, they should be strengthened.

More frequent disclosure of political donations will also influence politicians involved in seeking donations to do so in a transparent and accountable manner, and capping donations would reduce the influence of individual donors.

Impact of the proposed changes on Independents – Resource issues

The Premier's submission suggests that the proposal relating to independent candidate donations will apply to both state and local government elections.

Past NSW elections have attracted a large number of independent candidates for the NSW Legislative Assembly. For example, 70 independent candidates contested the 2007 election; 104 independent candidates contested the 2003 election and 83 independent candidates contested the 1999 election. Since 1988, 15 independent MPs have been elected to the NSW Legislative Assembly.

Further, 5,078 candidates contested local government elections in NSW in 2004, up from 4,950 in 1999. Statistics published by the Department of Local Government³ show that the number of candidates has increased at every local government election since 1991. A further increase is therefore likely at the local government elections in 2008. The overwhelming majority of these candidates will either be Independents, or Independents who have grouped together as a local government political party.

The Premier proposes that an independent authority would manage political donations on behalf of these candidates. This authority's responsibilities would necessarily include:

- receiving and banking all donations;
- providing a receipt to the donor for each donation received;
- recording each donation according to the intended candidate;
- providing each candidate with timely information on each donation received and running totals of all donations received;
- receiving and recording invoices for goods and services provided to candidates as part of their campaigns;
- paying invoices to candidates' suppliers;
- informing candidates when invoices are paid;
- providing candidates with timely reports on campaign expenditure and campaign account balances; and
- providing candidates with all necessary information to complete their funding returns as required by legislation.

Under this proposal, the authority would effectively become responsible not just for managing campaign donations, but for the complete financial management of independent election campaigns.

Any authority required to provide this level of financial management for a large number of independent candidates (in the case of local government elections, possibly exceeding 4,000) would have to be extremely well resourced in both staff and technology.

In evidence to the Parliamentary Inquiry, the Chair of the Election Funding Authority of NSW (EFA), Colin Barry, revealed that the EFA was currently staffed by a Secretary and two clerical officers.⁴ The Secretary, Mr Trevor Follett, revealed that the information technology used by the EFA comprises a "back office database" which "currently collects data from physical forms by manual keying in by perhaps 12 temporary staff during an election period".⁵ Mr Barry subsequently spoke of the "considerable challenges" in getting registered political parties to comply with the existing requirements of the Election Funding Act, particularly regarding Local Government elections.⁶

It is clear from this evidence that the EFA, as currently resourced, does not have the staff or technology to provide the financial management for a large number of independent election campaigns. The cost of providing the necessary resources to the EFA or some new body to do this cannot be justified.

³ NSW Department of Local Government, *Candidates and Councillors: Report of the Survey of Local Government Elected Members and Candidates for Elections held between March 2004 and December 2004*, p8

⁴ Proceedings 3 March op. cit. p 2.

⁵ Ibid p 6.

⁶ Ibid p16.

Impact of the proposals on Independents – Individual campaigns

The proposed system would also create difficulties for individual independent campaigns.

My campaigns rely on a large number of small donations. Apart from direct donations, funds are raised through events such as film nights and dinners organised by a fundraising team. Direct donations and income from fundraising events are recorded and banked by a campaign volunteer. My fundraising team and campaign volunteer are informed of my personal ban on donations from developers and return such donations. When I have subsequently learned that a donation is from a developer I have returned it.

This system also enables the efficient management of campaign funds, including the payment of suppliers. My campaign team is fully informed of the funds available for my campaign, with information being easily updated by a phone call or email. If necessary this information can be provided after hours and on weekends.

This information is used to prepare budgets, identify whether additional fundraising is needed and decide whether additional expenditure could be considered.

I seriously doubt whether an independent authority could provide the responsive financial management necessary for my campaigns, particularly when it is attempting to simultaneously provide similar management for upwards of 70 state election candidates, or 4,000 or more local government candidates. For example, would the authority be able to provide information outside usual business hours?

The Premier's proposal could make it more difficult for independent candidates to raise funds, or to engage suppliers.

For example, it would introduce an additional layer of bureaucracy into making donations which many of my supporters could find difficult to negotiate. As a result this may deter some people from making donations. Using events to raise funds would also be problematic, particularly as many people may wish to make a donation at the event. Will the proposed authority provide an officer to receive these donations at fundraising events?

Furthermore many independent campaigns rely on small local suppliers who need to be paid in a timely manner. Both candidates and suppliers would be concerned about this responsibility being handed to a government agency.

The need to liaise with the authority would impose an additional burden on independent campaigns, particularly during an election campaign. For example valuable time and resources may be consumed to obtain basic information about donations or campaign finances.

Independent campaigns would be totally reliant upon the efficiency of the authority, particularly in the tense and busy period of an election campaign. Any failure by the authority to carry out its responsibilities efficiently could prove costly for independent candidates.

Party candidates would not have these burdens. Any failures by the party could be dealt with internally. Independents would not have the same recourse with an external authority.

It is clear that the Premier's proposal, as it relates to Independents, is ill conceived and would result in a bureaucratic nightmare for both the Government and individual independent campaigns with no public benefit. An Independent who is susceptible to influence by political donors will still be susceptible regardless of whether the donation is paid directly, or indirectly to a third party.

The way to combat the possibility of such influence is not by creating a new bureaucracy, but through permitting only individuals to make donations, limiting the size of donations and providing for increased disclosure of donations.

Political party donations

Giving political party central offices the responsibility for managing all donations will not increase transparency or accountability or address community concern about political donations.

The overwhelming majority of large political donations are currently paid directly to political party central offices and not individual candidates. Much of the community concern about political donations arises from a perception that these donations influence government decision making. Community concern has been intensified by public statements by some political donors that they have sought to advance their interests by dealing with party officials or that they would withdraw future funding if they don't get preferential outcomes.

Handing control of all donations to party central offices will not only increase public concern, but it will also further centralise power within political parties at the expense of rank and file membership. There will be less incentive for local party branches to raise funds and will make party candidates more dependent on the central office. This in turn risks increasing the power and influence of unelected party bureaucrats and apparatchiks over elected Members of Parliament.

This proposal will further tip the balance towards political parties and reduce choice for voters, by discouraging Independents from contesting elections.

Other proposals

I have no objection to the Premier's proposal to require disclosure of loans and other credit facilities for campaign purposes.

3. PREVENTING THE USE OF DONATIONS FOR PERSONAL GAIN

I have no objection to further legislation to prevent campaign donations being used for personal gain.

4. REDUCING THE RISK OF UNDUE INFLUENCE AND CORRUPTION

I am seriously concerned about the Premier's proposal for banning "in kind" donations. Independent campaigns, such as my own, manage on modest campaign budgets by relying on the efforts of a large number of volunteer supporters.

By relying on the efforts of a large number of volunteer supporters. Apart from donating their time, many supporters also provide the use of their telephones, home computers and cars to the campaign, the value of which many would not be able to afford to donate. Some supporters also provide their professional skills, such as design, writing, administrative, legal and accountancy skills. Under the Premier's proposal, these contributions would be classified as "in kind" donations and would be banned.

In such circumstances, supporters who wished to provide these services would have to invoice the campaign for them, and provide a cash donation to cover the cost of the invoice. Under another of the Premier's proposals, both the donation and the invoice would have to be provided to the EFA or other authority set up for this purpose.

Apart from increasing the workload of what will no doubt prove to be an overburdened agency, such a system would be an administrative nightmare for both the campaign and its supporters.

Such a system would also have tax implications for some supporters. For example, an accountant supporter may audit the financial returns on a voluntary basis. Such a service could prove expensive for many independent candidates if they had to pay for it. The supporter could make a cash donation to the campaign equal to the value of the invoice. The supporter would however be taxed on the income received from the payment of that invoice.

Rather than banning "in kind" donations, it would be preferable to introduce a more rigorous system of disclosure of "in kind" donations and potentially an objective process for determining the financial value of "in kind" donations. Such a system would need to recognise the donations of time and personal resources of campaign volunteers.

Such a system would require the disclosure of all goods and services provided by the campaign, and whether the good or service was paid for in cash or provided in kind. Such a system would also require that campaign income (derived from donations and fundraising) would have to be readily reconciled with campaign expenditure.

Given the enormous difficulties in documenting "in kind" donations, and objectively estimating their value, it would be appropriate for an approach comparable to my recommendations for monetary donations: limiting "in kind" donations to those received from individuals, with a cap on the estimated value of "in kind" donations.

5. SPECIFIC MEASURES TO PROMOTE INTEGRITY IN THE NSW PLANNING AND APPROVAL PROCESS

These proposals in the Premier's submission are inadequate and will not address community concern about developers gaining access and influence through donations.

The central problem relates to the perception and reality of inappropriate influence or corruption where donations have been made to candidates and political parties who determine development decisions or who exercise significant influence over such decisions. The problem is compounded where authority to make determinations is centralised in a single individual, with transparency, accountability and consultation limited.

The community's concerns will only be addressed by banning developer donations. Such a ban could be achieved by banning donations from persons and entities whose business in whole or part relies upon the determinations of consent authorities. These prohibitions would extend to directors, major shareholders and senior staff of these entities.

6. CONCLUSION

The Premier's proposals will not achieve their stated goal of maintaining a fair and transparent electoral system. Instead the proposals will place additional burdens on independent candidates and further centralise party control, while still allowing sectional interests to gain access and wield influence through the payment of political donations.