

**Submission
No 32**

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

Organisation: Cancer Council NSW

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Cancer Council NSW

Submission to the Select Committee

**On the Provisions of the Election Funding, Expenditure and
Disclosures Amendment Bill 2011**

**Submission by Cancer Council NSW
18 January 2012**

1. Introduction

Cancer Council NSW welcomes the opportunity to make a submission to the Inquiry into the Provisions of the Election Funding, Expenditure and Disclosures Bill 2011 (“the Inquiry”).

Cancer Council is the largest cancer charity in NSW with the mission to defeat cancer through engaging the community. We focus on world-leading research, prevention, advocacy and support. Our vision will be realised when lives are not cut short nor the quality of life diminished by cancer. We strive to connect people and organisations to the cancer cause and to make a positive difference to the lives of cancer patients and carers, scientific knowledge, community understanding, behaviours, society, policy and practice. We are the trusted independent voice on all cancers for all people, investing funds to find answers, dispel myths and guide communities on what they can do to prevent, treat and manage cancer.

Cancer Council strongly engages the community in all that we do. Cancer Council has a presence in most communities through its 10 regional offices across the state. As at June 2011, Cancer Council had 160,000 supporters and 37,153 volunteers. Cancer Council is almost entirely community funded, with 96% of our income derived directly from the community and investments – this is critical to preserving our independence, including for speaking out on issues that affect cancer patients.

One of our strategic priorities is to “give the NSW community a voice on issues and entitlements around cancer.” Our advocacy for better public policy and programs is critical to achieving our mission of defeating cancer. Over the years, this has included campaigning on issues such as smoke-free laws, better financial assistance for country patients needing to travel for treatment, increased radiotherapy services, and better provisions for car parking in hospitals.

2. Rationale for Cancer Council Submission

The funding of political parties and election campaigns has been closely scrutinised in recent years at both the state and federal levels. In 2010 the Election Funding and Disclosures Act (NSW) was amended to introduce new caps on electoral communication expenditure and political donations. In September 2011 Premier O’Farrell introduced the Election Funding, Expenditure and Disclosures Amendment Bill 2011. Its key purposes are to:

- a) aggregate campaign expenditure of any affiliated organisation of a political party with the political party it is affiliated with; and
- b) to prohibit political donations from corporations and other entities.

Although these aims do not appear to target not-for-profit organisations, Cancer Council is concerned the changes may indirectly impose limitations on our ability to conduct advocacy campaigns and to affiliate with peak bodies or other alliances. This submission has been prepared for consideration in the Inquiry and has been written with particular focus on the Select Committee’s Terms of Reference. In particular 1(a) requires the committee to inquire

and report on “the constraints imposed by the bill on community and not-for-profit organisations, including unions, community groups, clubs and environment and social justice organisations and their ability to engage in the political process”. 1(b) and 1(c) of the terms of reference are also given particular attention in this submission. These require the Committee to consider the impact on community organisations, whose members are voters registered to vote” (1(b)) and “community organisations, whose members are voters registered to vote” (1(c)).

3. Cancer Councils position on electoral funding reforms

Cancer Council NSW strongly supports reforms to electoral funding and disclosure laws, and regulation of lobbyists, that are designed to improve the integrity, fairness and transparency of our democracy.

For this reason, Cancer Council welcomed recent reforms that banned political donations from developers and the alcohol, tobacco and gambling-for-profit industries, and tighter regulation of third party lobbyists acting on behalf of corporations and private interests.

Cancer Council strongly supports the proposed prohibition on political donations from corporations and other entities under section 96D because of the history of vested interests using this to their advantage in the political process. This move is particularly welcomed as it will preclude donations from organisations such as Clubs NSW, which regularly oppose measures that are in the public interest such as gambling reform and smoke-free legislation.

Advocacy campaigning is key to a democratic system, particularly advocacy and campaigning by groups representing the public interest and the issues affecting community members as citizens and individuals. Decision makers should have contact with the people they represent and whose interests are affected by their decisions. This means there is a need for mechanisms for dialogue and representation.

There is a specific role for issue-based campaigning by non-government organisations who represent those constituencies who are in need of ‘public good’. Charitable enterprises are serving the interests of a general constituency and not the economic self-interest of specific individuals.

We believe there is a fundamentally important role for civil society organisations in actively engaging in issues-based campaigning:

1. to achieve the social change most civil society organisations seek, there is a need to address systemic issues to which only the government can give effect (legal and regulatory, public funding)
2. to provide a source of advice and recommendations that are independent of any vested interest other than the public good objectives of the organisation
3. to provide a counterweight to lobbying by vested commercial interests
4. to act for those without organised capacity and in the interests of generalised public interest

Cancer Council submits that legislation designed to regulate electoral funding and expenditure should not constrain the issues-based campaigning undertaken by non-

government organisations. There is a clear difference between campaigning activity designed to influence votes in a political election, and campaigning on issues during an election period that are designed to influence the public policy stance of Parliamentarians.

Cancer Council is concerned that the proposed new section 96D(1) could adversely affect its ability to participate in the political process. Cancer Council is concerned this section may hamper its coordinated campaigns with peak bodies such as The Council of Social Service New South Wales (NCOSS) and The Sydney Alliance, or with other non-government organisations.

Cancer Council recommends that any changes to the Election Funding, Expenditure and Disclosures legislation clearly distinguish between campaigning that focuses on issues and campaigning focused on candidates and political parties, and does so in a way that protects the ability of non-government organisations to campaign on issues.

4. The role of not-for-profit organisations in the political process

Lobbying and advocacy are key to Australia's democratic system. Not-for-profit organisations have a specific role to play, generally working to improve the welfare of specific groups in need by engaging extensively in the political process. It is vital that the campaigning activities of these organisations are not inadvertently restrained as a result of this bill.

5. Scope and nature of Cancer Council lobbying

5.1 Cancer Council engages in a broad range of lobbying and advocacy, including long and short term campaigns focusing on local and state-wide issues. These activities are always issue-based rather than promoting or opposing particular parties or candidates. Some examples of the types of campaigns undertaken by Cancer Council are summarised below. Cancer Council submits these types of activities should not be confused with electoral campaigning.

5.2 Go Smoke-Free

5.2.1 Many years worth of evidence firmly established that second-hand smoke is dangerous. The NSW government recognised this when it introduced the *Smoke-Free Environment Act 2000* which banned smoking in most indoor public places. However, the Act specifically exempted pubs and clubs, despite there being no scientific support for this approach.

5.2.2 In the years following, health groups including Cancer Council lobbied for the exemption to be removed. This was done through direct representation and by presenting scientific evidence in support of the need for smoking bans in pubs and clubs. At the same time our community surveys indicated strong public support for smoke free pubs and clubs, although powerful industry voices (Australian Hotels Association NSW and Clubs NSW) dominated

media commentary and political lobbying, opposing the extension of the *Smoke-Free Environment Act 2000* to pubs and clubs.

5.2.3 Our public advocacy campaign focused on changing the latent community support (as evidenced in community surveys) into active community support via a postcard campaign. Members of the public were invited to sign postcards calling on the government to ban smoking in pubs and clubs.

5.2.4 The grassroots action was supported by media advocacy and Cancer Council funded strategic research to estimate the mortality impact on bar and club workers as a result of workplace exposure to second-hand smoke.

5.2.5 This campaign was conducted as an alliance between Cancer Council NSW, Australian Medical Association NSW, Heart Foundation and other non-government health organisations under the banner of the Go Smoke Free coalition, led by Cancer Council. This is an example of an affiliated advocacy campaign, a practice which is not uncommon amongst non-government organisations with common interests.

5.3 Saving life: why wouldn't you? An agenda for cancer control – 2011 and beyond

5.3.1 This campaign was launched by Cancer Council in the lead up to the March 2011 State election, designed to influence the policy positions of the major parties and to inform candidates about the opportunities for the State Government to address cancer through public policy.

5.3.2 The Saving Life campaign focused on key issues in relation to cancer including radiotherapy services, transport and accommodation for cancer patients, optimal cancer care, smoke-free dining and drinking, and stronger safeguards on selling tobacco.

5.3.3 Although the campaign was undertaken during an electoral period, its aim was not to influence votes or to promote particular parties or candidates. Campaign tactics included encouraging community members to send an email or postcard to their local MP; share their story about how the issues have affected them; or host a Community Conversation to talk about the issues with friends. Additionally, tactics included direct representation to MPs, media advocacy, and releasing new research on the issues covered by the campaign.

5.4 Less Distance for Assistance

5.4.1 Country patients who need to travel long distances to access specialist medical care are able to apply for financial assistance through the Isolated Patients Travel and Accommodation Scheme (IPTAAS). However, intelligence from Cancer Council Helpline calls and Cancer Council staff based outside of Sydney highlighted numerous problems with the scheme including the low rate of reimbursement and the restrictive eligibility criteria.

- 5.4.2 As this issue affected groups other than cancer patients, we established an alliance with other non-government organisations whose constituents were disadvantaged by the poor level of financial support for travel to treatment. The members of the alliance included other health groups (eg Leukemia Foundation, Hepatitis Council of NSW, Muscular Dystrophy Association), those representing rural interests (eg NSW Farmers Association and Country Women's Association of NSW) as well as those representing people on low incomes (NSW Council of Social Services).
- 5.4.3 Aspects of the campaign included policy research to compare the NSW scheme with similar schemes in other states, grassroots mobilisation via postcards signed by members of the public to the relevant Minister, and media advocacy.

6. Concern about potential implications for Cancer Council

6.1 Potential limitations for peak organisations and alliances

Section 96D(1) of the Bill states that "it is unlawful for a political donation to a party, elected member, group, candidate or third-party campaigner to be accepted unless the donor is an individual who is enrolled on the roll of electors for State elections, the roll of electors for federal elections or the roll of electors for local government elections."

"Political donation" is defined in section 85 of the Act and the concern here is that funds given to peak organisations could potentially (depending on the exact nature of the particular campaign) be considered a political donation under section 85(1)(d)(i) or 85(1)(d)(ii). Cancer Council is concerned that this could potentially make its financial contributions to peak bodies unlawful.

6.1.1 Cancer Council has in the past undertaken lobbying as part of an alliance or coalition of groups with similar objectives. Cancer Council is well-placed to bring together science and community concern and act as the 'organiser' to help bring voice to issues where there might otherwise not be an active constituency. This has seen Cancer Council pool resources with other organisations for broad campaigns such as 'Go Smoke Free' and 'Less Distance for Assistance'.

6.1.2 Cancer Council is concerned that the proposed limitation on donations to "third party campaigners" to individuals on the electoral role may prevent non-profit organisations from pooling their finances and placing issues of concern to their members on the public agenda. In particular, Cancer Council was particularly concerned by the following statement made by the Select Committee's Chairman, Dr John Kaye, during its establishment:

"Any statement made during a State election campaign that in any way seeks to influence the vote of a voter...or asks people to be mindful of an issue, or that says that a number of parties have been better on one issue than on

other issues would become illegal if the money that was used to express those opinions came from membership-based organisations and was aggregated together.”

6.2 Potential constraints on collaborations between non-government organisations under Section 96D(1)

- 6.2.1 It is not uncommon for non-government organisations to formally collaborate where there are issues of common interest. Cancer Council strongly supports collaboration as an effective and efficient approach to achieving social change.
- 6.2.2 Cancer Council is a financial member of bodies such as the Council of Social Service of New South Wales (NCOSS) and The Sydney Alliance. The structure of peak bodies and formal alliances provide a way to build a strong and coherent sector and civil society, and from time to time may involve collective campaigning on issues of mutual interest.
- 6.2.3 Cancer Council is particularly concerned that these groups may no longer be able to use Cancer Council’s financial membership contributions for collective campaigns. Under the proposed 96D(1) it would become unlawful for a political donation to be accepted by a third-party campaigner unless the donor is an individual who is enrolled on the roll of electors. Cancer Council is concerned that this could make these contributions unlawful and therefore impinge on the ability of these organisations to aggregate money from Cancer Council and other members. It is essential Cancer Council remains free to contribute to important public interest campaigns led by these or other groups and that such groups are able to retain a base of financial members.

7. Support for limiting political donations to individuals under Section 96D

- 7.1 CCNSW strongly supports the prohibition on political donations from corporations and other entities because of the history of vested interests using this to their advantage in the political process. This move is particularly welcome as it will preclude donations from organisations such as Clubs NSW. Although the new 96GAA of the Election Funding, Expenditure and Disclosures Act introduced in 2010 included property developers, tobacco industry business entities and liquor or gambling business entities in the definition of “prohibited donors”, Clubs NSW has been able to continue political donations by virtue of its not-for-profit structure. During 2007-2008 it donated \$203,000 to NSW Labor¹ and last year gave \$165,000 to the Liberals and \$58,400 to the Nationals and \$20,000 to NSW Labor. Before the elections, the Coalition reached a memorandum of understanding with Clubs NSW

¹ Matthew Knott, “NSW Liberals: clubs, developers are our friends” 16 February 2011.
<http://www.crikey.com.au/2011/02/16/nsw-liberals-clubs-developers-are-our-friends/>

under which registered clubs were given \$300 million in tax breaks on their poker machine profits. Cancer Council strongly supports the move to expand on the 2010 reforms and remove the loophole which allowed bodies such as Clubs NSW to continue donating to political parties.

7.2 Provisions in the bill designed to prevent corporate donations from being passed through other entities are also strongly welcomed by Cancer Council. In particular, Cancer Council is pleased to see Section 96D(2) which makes it unlawful for an individual to make a political donation to a party, elected member, group, candidate, or third party campaigner on behalf of a corporation or other entity. Section 96D(3) is also encouraged as it makes it unlawful for a corporation or other entity to make a gift to an individual for the purpose of the individual making a political donation to a party, elected member, group, candidate or third-party campaigner. This move will further protect and enhance the integrity of the NSW political process.

8. Concerns about the risk of a constitutional challenge

8.1 Cancer Council understands that there is a risk of a constitutional challenge to the Election Funding, Expenditure and Disclosures Act 1981 if the Bill is passed unamended. Such a challenge would jeopardise the earlier reforms that we strongly support, particularly the ban on political donations from the tobacco and other industries.

9. Conclusion

9.1 Lobbying and active participation in the NSW political process are key elements of Cancer Council's work to defeat all cancers. Although it appears that the key objects of the Election Funding, Expenditure and Disclosures Amendment Bill 2011 are not intended to affect not-for-profit organisations, CCNSW is concerned the changes may inadvertently limit the ability of community groups to undertake advocacy campaigns.

9.2 Cancer Council is concerned that it is not sufficiently clear under the current drafting whether some of its campaigning activities or financial collaborations with groups such as NCOSS or Sydney Alliance would be adversely affected by the Bill. We urge amendments to the Bill to ensure that it does not inadvertently constrain the important lobbying work undertaken by community and not-for-profit groups such as Cancer Council.