

Submission
No 17

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

Organisation: Community and Public Sector Union
Name: Ms Louise Perse
Date received: 11/01/2012



Ms Rachel Simpson
The Director
Select Committee on the Provisions of the Election
Funding, Expenditure and Disclosures Amendment Bill 2011
Parliament House
Macquarie St
Sydney NSW 2000

Dear Ms Simpson

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

Please find attached the Community and Public Sector Union (PSU Group) submission to the Legislative Council Select Committee Inquiry into the Provisions of the *Election Funding, Expenditure and Disclosures Amendment Bill 2011*.

The CPSU thanks the committee for the opportunity to comment on this Bill. Should you wish to discuss this submission any further the contact person is Elizabeth Hay, CPSU Parliamentary Liaison Officer,

Yours sincerely

Louise Persse
Assistant National Secretary



CPSU (PSU Group) Submission

Select Committee on the Provisions of the Election Funding, Expenditure and Disclosures Amendment Bill 2011

Contact Details

CPSU (PSU Group)
191 Thomas Street
Haymarket NSW 2000
www.cpsu.org.au

National Secretary: Nadine Flood

General number: 1300 137 636

January 2012

Introduction

The CPSU welcomes the opportunity to make a submission to the Select Committee on the Provisions of the *Election Funding, Expenditure and Disclosures Amendment Bill 2011* ("the Bill").

The CPSU shares the broader concerns in the community about the escalating costs of election campaigns and the potential for large and undisclosed sums of money to challenge our core democratic principles of fairness, transparency and free political choice. A fair system of electoral funding and effective disclosure methods are required to protect these principles.

However, rather than protect these core principles the CPSU is concerned that the changes proposed in the Bill will restrict the political freedoms and choices of much of the electorate without curtailing the potential for small and relatively wealthy groups and individuals to exert excessive influence over the electoral processes. The proposed Bill appears to be based on a flawed view of the decision making processes in unions. It does not reflect an understanding of the direct and powerful role members have in the decisions of their unions. Both this and the March 2010 changes also try to separate political from industrial activity in unions for the purposes of expenditure disclosure when the two are inextricably linked.

There is a clear bias in the proposed legislation against allowing groups of voters who are on average incomes or less from forming associations with like minded people to pool their resources to raise concerns or publicly state their support for particular issues and policies.

For these reasons the CPSU does not support any of the changes proposed in the Bill.

The CPSU is also concerned that there are some unintended consequences arising from the 2010 changes to the *Election Funding, Expenditure and Disclosures Act 1981*.

About CPSU – PSU Group

The PSU Group of the Community and Public Sector Union (CPSU) is an active and progressive union with approximately 60,000 members. The CPSU represents workers in the Australian Public Service, the Australian Capital Territory and Northern Territory public service, Commonwealth Scientific and Industrial Research Organisation (CSIRO), the telecommunications sector, call centres, employment services and broadcasting. We are a national union with members in every state and territory. Our members work in the areas of administration, sales, engineering, communications, information technology, legal, technical, scientific research, broadcasting and many other fields.

The CPSU exists to protect and advance the interests of members by winning better pay and conditions and by protecting jobs and quality public services. To secure these advances we organise in the workplace, run public campaigns, build community alliances and engage

directly in the political process. We are proudly part of a national union movement "working for a better life".

As a membership based organisation we work with our members to see the values CPSU represents achieved. These values are articulated by the following statement developed in consultation with our members.

"CPSU Values: By joining our union you help make our workplaces and communities fairer. We believe every worker deserves dignity and respect, a safe workplace, decent pay and conditions, rights at work and a balanced working life. Together we provide a voice for all workers; support and promote a strong, independent public sector; and make a difference."

Our members working in the public sector are fierce in their defence of an apolitical public service. They see a clear separation between the undertaking of their work as public servants and the exercise of their rights as citizens and workers to freedom of political and industrial association.

The CPSU campaigns to influence the government of the day on decisions and policy matters that reflect the views and interests of our members, regardless of which political party holds office.

The CPSU is affiliated to the Australian Labor Party in all states and territories with the exception of Tasmania and Western Australia. We are an associated entity for the purposes of the *Commonwealth Electoral Act 1918*. This means that the CPSU, as a national union must follow the reporting requirements as set out in the *Commonwealth Electoral Act*, in addition the differing reporting requirements set out in each state and territory jurisdiction.

Because of the nature of our membership, CPSU industrial and political campaigning is focussed primarily on Federal and Territory jurisdictions. However, our head office is based in New South Wales and it is our largest branch. The decisions and actions of the New South Wales parliament impact on the lives of our members and their families and influences other jurisdictions. We are also involved in New South Wales focused campaigns run through our local Labour Council and peak body, Unions NSW.

Comment: Terms of Reference

The CPSU is concerned that the Bill effectively bans organisations, with a particular focus on trade unions, from participating in politics through affiliation to a political party. The Bill interferes not only with the day to day operations of trade unions and the decisions of its members, but also undermines freedom of association.

Restriction on decisions of membership based organisations

The proposed changes restrict the right of membership based organisations to engage in public debate and campaigns by regulating the choices and decisions members in those membership based organisations can make.

Union members expect their unions to advocate on decisions made by governments that affect their working lives. Working people want their union to campaign for their interests where legislative change is proposed, for example, in relation to health and safety standards in their workplace, or the operation of a workers' compensation system. If as their employer Government is making decisions on pay or conditions, they will similarly require their union to be campaigning for their interests.

Whether Government is enacting legislation or making direct employment decisions about its workforce, and regardless of the political persuasion of the government concerned, Australian workers should have a lawful entitlement to campaign collectively on decisions and actions that affect their working lives. The changes in the Bill would severely curtail the rights of our members by restricting their ability to campaign collectively through their union about government decisions that impact upon them.

Distinguishing unions' industrial campaigning from political campaigning is also extremely difficult. It is possible that the construct of the Bill may make nearly all union advocacy subject to the restraints on expenditure and campaigning. This has the potential impact of providing very little opportunity for working people to engage in public campaigns to secure improved arrangements or to protect conditions and entitlements they think may be at threat.

Unions also campaign collectively from time to time through their peak body, the Australian Council of Trade Unions, and their state and territory based entities such as the Unions NSW. The proposed limitations on third party campaigners would only allow these activities to be funded by individual donations rather than the affiliation fees unions pay to their peak bodies. The capacity for individuals on relatively low incomes to make separate donations beyond their payment of union dues will be extremely limited in most cases.

Political affiliation and union decision making processes

The Bill appears to be based on the premise that union members have no say in the decisions taken by their union on matters of political affiliation and political campaigning.

The CPSU, along with all other unions, is required to comply with a registered set of rules¹. As stated in the preamble, our rules seek to ensure:

- the democratic control of the Union by its members;
- the effective operation of the Union;
- the protection of Union members' lawful right to organise collectively.

Decisions of the CPSU are made through a number of democratic processes. Members directly elect the seven member Executive Committee that has responsibility for the day to day operations of the union, and any financial member of the union is able to seek election to any of these positions, including that of National Secretary.

¹ PSU Group Rules: http://www.fwa.gov.au/documents/organisations/current_rulebooks/090v-psu.doc

The Governing Council is the supreme decision making body of the CPSU. It is constituted by directly elected honorary officials from workplace based electorates, in addition to the Executive Committee members. The Governing Council determines the strategic direction and objectives of the union. Union members elect the Governing Council from amongst their work colleagues to make these major and important decisions about the direction and policies of the CPSU.

Only the CPSU Governing Council may approve the affiliation of the PSU Group or any grouping of its members with any organisation or body [Rule 5.7]. The decision of our union to affiliate to the Australian Labor Party was made by our Governing Council after the issue was widely canvassed amongst our membership. When the decision to affiliate in a particular state or territory was taken each member received a letter about the decision and how it would be implemented. All new members to the CPSU receive a letter informing them of our affiliation to the ALP as a part of their general membership pack. We report regularly through various forums, on our website, and in member communications on our participation in political activities and campaigns. The nature of our affiliation and how we engage in politics is a regular feature of the discussions and decisions of our various membership forums.

These are general principles of operation that apply to all aspects of CPSU activity, not just our political activities. Our work is based on the views of our members. Like any democratic process, there is rarely a unanimous position on any issue and we run campaigns and make decisions based on the balance of the majority views of our members. The CPSU has direct and constant engagement with members through multiple channels, including polls, meetings, surveys and our Member Service Centre.

Potential members considering joining the CPSU make a judgement about the union's activities, including its political activities. Should potential members feel that the CPSU's activities are not appropriate and do not represent their interests, they do not join.

Our engagement with our members is direct and ongoing. We have approximately 60,000 members and 220 staff. In 2011 we conducted up to 3000 workplace meetings a month, and made up to 3500 phone calls to members in a week and over 30,000 union members voted in at least one online poll. Members often raise political issues in these processes and have a direct capacity to influence union decisions in this regard.

We consider the democratic engagement our members have is much more direct and responsive than most other systems of membership engagement.

In addition to the processes already outlined, members have two very direct means to express their view on the union's political or other activity. Firstly, they can withdraw or threaten to withdraw their membership. Secondly, CPSU members decide who will lead their union and represent them in decision making forums, by exercising their vote in union elections, and indeed by seeking election to these decision making roles themselves.

In November and December of 2011 the triennial election for all CPSU positions was held. The main contested issue in that election was the CPSU affiliation to the ALP. The candidate

who ran for National Secretary on a platform that included maintaining our ALP political affiliation was elected with 81.5% of the vote. Our members voted overwhelmingly for a leadership group that had campaigned to continue our current political and campaigning arrangements.

Union members elect their decision makers in a direct and connected way and it should be up to members to make these decisions. The proposed Bill will make a choice that has been open to union members in Australia for over 100 years – whether their union affiliates or contributes financially to a political party - unlawful.

We argue in the strongest possible terms that this should be a decision of union members and not one determined by government.

Impact of donation caps

Replacing the current system with a \$2000 limit on donations from individuals, only advantages high income individuals and households who are able to exercise significant influence in limited numbers. For average working people, including the majority of our members on or below Average Weekly Earnings, this avenue is not available to them. They choose to voluntarily join an organisation to protect their interests, including political decisions affecting their working lives, and are able to do so for a small cost in an efficient way.

The changes proposed in the Bill will significantly limit the capacity of working people to exercise their collective political voice through the key means that are currently available to them.

Aggregating expenditure

The proposed changes assume that all union campaigns are partisan. They do not reflect any acknowledgement that unions will campaign against any political party, including one to which they are affiliated, if it is their view that a political party is not making decisions or advocating policies that are in the best interests of their members. These changes would have the effect of making union campaigns against ALP decisions and policies a part of the expenditure limits on the ALP.

This would impose on the ALP in particular, an unrealistic and most likely legally impossible set of arrangements whereby they would need to be able to control the activities and decisions of affiliated unions in an election campaign, rather than the union and its members making those decisions.

The CPSU is a separate legal entity and is not bound by the decisions of the ALP or any other organisation to which it affiliates. The ALP has no legal ability to control decisions made under union rules through democratic processes. It is essential that we retain the ability to campaign in our own right in our members' interest regardless of the stance of organisations to which we are affiliated. The many and substantial disagreements between the CPSU and the ALP over public service reform are a case in point. Given the potential for

differences in view between unions and the ALP, and the high likelihood that from time to time there will be disagreement, it is extremely unreasonable and inaccurate to equate union campaign expenditure with that of the ALP for the purposes of assessing expenditure against a single cap.

Impact on citizen's rights

The Australian Government states in advice to those who may be seeking Australian citizenship that all Australians are entitled to freedom of speech, association, assembly, religion, and movement².

The CPSU believes that if successful this Bill will place unreasonable restrictions on the implied freedom of political communication mandated by the Commonwealth Constitution. These constitutional issues were also identified in the NSW Legislative Review Committee report in October 2011³ on this Bill. The NSW Legislative Review Committee also expressed that following concerns regarding freedom of political communication:

"The Committee reiterates the concerns it has previously made that laws which restrict campaign expenditure may affect the freedom of political communication.

The Committee notes that this Bill may further impact on freedom of political communication in New South Wales."⁴

CPSU comments in this area are on the general impact on the rights and freedoms impinged upon by the changes proposed rather than a legal analysis of the prospects of a constitutional challenge.

Restrictions on the capacity of working people to campaign both industrially and politically through their union not only offend any notion of free political choice, but also impinge on their freedom of association.

The *Fair Work Act 2009* (the Act) includes as one of its central objects recognising the right to freedom of association. Employees should have the right to freely associate to advance their industrial interests, through whatever means they determine. By restricting the capacity of citizens to financially contribute to the campaign of their choice, or campaign in a collective manner, this Bill undermines the principle of freedom of association and is at odds with the rights and principles provided for in other legislation.

² <http://www.immi.gov.au/living-in-australia/choose-australia/about-australia/five-freedoms.htm>

³ New South Wales Parliament, Legislative Review Committee, Legislation Review Digest No. 5 of 2011–11 October 2011, page 10-11.

[http://www.parliament.nsw.gov.au/prod/parliament/committee.nsf/0/0b58a95400c19ff9ca257926001c91f1/\\$FILE/Digest%205.pdf](http://www.parliament.nsw.gov.au/prod/parliament/committee.nsf/0/0b58a95400c19ff9ca257926001c91f1/$FILE/Digest%205.pdf)

⁴ Page 11. New South Wales Parliament, Legislative Review Committee, Legislation Review Digest No. 5 of 2011–11 October 2011.

Comment: current legislation

As a union that is affiliated with the Australian Labor Party in New South Wales, the current NSW legislation requires that all payments paid to the NSW Branch of the Labor party be listed as donations, with no ability to identify or differentiate between a donation, payment of affiliation fees, or payment for delegates to attend the ALP state conference. This has the effect of overstating the actual level of contribution that the CPSU is making to ALP political campaigns.

Final Comment

The CPSU is of the view that the inherent bias in this Bill against those on middle to low incomes, community organisations and trade unions is so strong that this Bill should be withdrawn.

The CPSU supports the principles proposed by the NSW Electoral Commission and endorsed in the March 2010 report of Joint Standing Committee on Electoral Matters as the basis for a system for regulating election funding, expenditure and disclosures. These were stated as:

1. Protecting the integrity of representative government;
2. Promoting fairness in politics;
3. Supporting parties to perform their functions;
4. Respect for political freedoms.

The CPSU believes that a fair system of reporting and disclosure should:

- ensure the community can determine the source of funds for political campaign activities and advocacy on particular issues in a timely and accessible manner;
- prevent against undue influence by extremely wealthy groups or individuals, whilst not preventing those who want to take part in political campaigning from doing so;
- support a greater involvement from the broader community in political processes; and
- be administratively reasonable and not unnecessarily duplicate other reporting requirements.

If it is the genuine intent of the New South Wales parliament to protect core democratic freedoms and limit the capacity of small groups to exert undue influence in political debate and campaigning, the changes proposed in the Bill fail that test.