

**Submission
No 127**

INQUIRY INTO ELECTORAL AND POLITICAL PARTY FUNDING

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Submission on
Electoral and Political Party Funding
to the
Select Committee on Electoral and Political Party Funding

Parliament House
Macquarie Street, Sydney NSW 2000

From
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II)

TERMS OF REFERENCE and PRELIMINARY COMMENTS

Terms of Reference.

That the Select Committee was set up -

“to enquire into and report on the funding of and disclosure of donations to, political parties and candidates in state and local government elections and in particular:

- a) all matters associated with electoral funding and disclosure;
- b) the advantages and disadvantages of banning all donations from corporations, unions and organizations to parties and candidates;
- c) the advantages and disadvantages of introducing limits on expenditure in election campaigns;
- d) the impact of political donations on the democratic process; and
- e) any related matters.

Qualifying Comments.

Under any other related matters I would like to refer to some aspects of the present funding system for state elections, make some comments about its operation and suggest some change. Following that there will be some comment about the other items outlined in the Terms of Reference.

I do not intend to cover every aspect of the reference or for that matter pretend that this submission is comprehensive or complete. I am conscious that I do not know enough about all aspects of the inquiry to make a full contribution. As well I do not have the necessary statistics and information to model some proposals put forward.

III)

EXECUTIVE SUMMARY.

The paper opens with something of the development of Public Funding in New South Wales, the declining membership in the major parties and their need to raise funds from various sources and the public unease over certain donations made to them.

It is then followed by a description of the experience of completing some aspects of the “Declaration of Political Contributions Received and Electoral Expenditure Incurred” return particularly in the Audit requirements and the accounting of “anonymous” donations under \$200 areas.

Some changes are then suggested to the current scheme by increasing the thresholds and adding to the criteria for eligibility for public funding by means of an “effort” test. Also suggested is a change to the public funding formula which should be on a \$ amount per primary vote based upon a “basket case” situation. A suggestion is made about Anonymous donations for an “open plate” type situation. As well a Shareholder/Member consent certification procedure is suggested for Corporation and Union donations.

For donations there should be no limit placed upon what people can donate however full disclosure on a timely, comprehensive and effective manner should be made on a rolling basis every quarter so that the public and the media can ascertain who is making donations. This is to ally the public mind.

It is then suggested that the Committee study the New Zealand arrangements for the question of political campaign expenditure. As well a suggestion is made for a pamphlet to be produced and distributed by the Electoral Authority to all householders setting out the candidates/parties policies for an election.

The paper closes with the principle that public funding payments should go to the candidates and that public funding should be extended to Local Government.

IV)

RECOMMENDATIONS.

Existing system.

- * That for a Return for a Candidate that is eligible for funding and has receipts and payments under \$10000 in both cases on their financial statements that the requirement for a Registered Company Auditor be amended to allow a normal CPA (or equivalent) Accountant to do the Audit.
- * That the information supplied for completion of the return include a “what to do” for “these types of cases” for the statement wording requirements for Auditors.
- * That if the \$200 criteria is maintained that a simple declaration by the candidate saying that so many people gave \$X with no person giving over \$200 individually should be all that is required for “Open plate” type donations for the purpose of the return.

Some change to the Present System.

- * That disclosure threshold amounts for Parties, Groups and Candidates be increased to :
 - \$1500 (Name only);
 - \$1501 - \$3000 (Name and Address only); and
 - \$3001 – (Name, Address and Declaration.)

Aggregation would apply for donations and gifts over a twelve month period.

- * That the 4% primary vote eligibility criteria for public funding is to be supplemented by an “Effort” test for those candidates that receive less than 4%.
- * That the public funding payment amount should be a \$ amount per primary vote based upon a formula that constrains costs.
- * That full disclosure of Anonymous donations (except for a single or cumulative donation of up to \$1500 where a name is supplied) is required. Where a Trust or like bodies (Third Parties) apply the Trust is to be required to disclose the parties behind it.
- * That all donations from Companies and Unions to political parties/candidates should be accompanied by certification that their shareholders/members have been polled every three years or prior to an election to confirm that such action is allowed.

V)

Some aspects on donations.

* No limitation should be placed upon how much an organization or individual can donate to a political party for campaign purposes within Australia. However : -

- 1) full disclosure in a timely, comprehensive and effective manner should be made on a rolling basis every quarter so that the public and the general media can ascertain who is making donations to political parties on a quarterly basis. The system should be transparent where all of the donations can be tracked;
- 2) rather than find out after an election such information should be available on a year round rolling basis;
- 3) all items in the report are to be clearly identified in appropriate and easily understood categories;
- 4) all third party donations are to clearly show who they are and from what interests they come;
- 5) all donations from Companies and Unions should have the consent of shareholders and members;
- 6) donations and gifts from overseas should be banned except for individuals who are eligible to vote in Australian elections;
- 7) full details of the proceeds of loans to candidates or political parties are to be fully disclosed; and
- 8) failure to disclose full details would lead to a loss of public funding amount for those who qualify or legal action as appropriate.

Some aspects on Expenditure.

* That the Committee study the New Zealand system, which has limits on expenditure, to see if it would be appropriate to introduce it in New South Wales.

*That expenditure on Postal Votes work by the major parties has no credit in any public funding claim.

VI)

An “In kind” type public funding aspect.

*That the idea of a pamphlet showing all candidates/parties policy be produced by the electoral authority and distributed to all households to be investigated. Some trade-off would have to be made in the public funding area.

Sundry.

*That the present practice of payment on submission of a return basis notwithstanding quarterly reporting of donations and gifts etc be retained.

*That no claim payment can exceed the expenditure incurred by the candidate/political party.

*That the Public Funding provisions be extended to Local Government Elections.

1)

1) THE SITUATION IN REGARDS TO THE COST OF RUNNING ELECTION CAMPAIGNS.

Opening comment.

Public funding for elections came about in the early 1980's with New South Wales leading the States and the Commonwealth in its introduction.

One of the main arguments in its favour was that it would allow ordinary people to become more actively involved in the democratic process. With the criteria for public funding being set at 4% of the first preference formal vote it effectively worked against individuals to stand as independents or minor political parties or interests to stand because of the cost they would have to incur personally or collectively if they did not obtain the 4%.

With declining membership the major parties had to seek other areas to raise funds for their campaigns. As such public funding became a major source of their funding requirements. With no limits on expenditure and donations and the constant need for parties to obtain an advantage over their opponents in political campaigns the costs of election campaigns has continually increased.

The major parties (and other parties for that matter) have sought and received donations or received unsolicited donations from various bodies that have brought unease in the public mind. Whether it is true or not, there is a perception that if certain donations are made one can expect a favorable response. For myself I think there is an expectation that people expect a "guaranteed" place in the consideration of an issue rather than any other aspect.

2)

2) EXPERIENCE WITH THE COMPLETION OF THE “DECLARATION OF POLITICAL CONTRIBUTIONS RECEIVED AND ELECTORAL EXPENDITURE INCURRED” RETURN ITSELF.

As the Campaign Manager for Dr. Stephen Chavura, the Christian Democratic Party candidate in the state seat of East Hills for the 24 March 2007 election, I completed the above return on his behalf. I would like to make some comment on the requirements, the return and the audit standards.

A) BY WAY OF BACKGROUND Dr. Chavura received 6.58% (2724/41385 formal votes and came third after the Labor Party and the Liberal candidates in a field of six candidates.

For the statutory disclosure period 8 March 2006 to 23 April 2007 we had receipts of \$9209 and payments of \$8385.

As such he was eligible for public funding and the appropriate return was submitted.

B) Electoral Funding Authority. (EFA)

I wish to pay tribute to the staff of the EHA, but particularly to Linda Scolah, who extended to me the utmost courtesy, cooperation and help in the explanation of what was required and the completion of the return form itself.

To be honest I found completion of the form to be a somewhat frustrating experience in having the auditing requirements completed AND especially in having to account for the number of people who had donated amounts less than \$200 that were classified as anonymous donations.. I appreciate that the EFA staff had to adhere to the rules however I feel that there should be some leeway in some minor aspects. Listed below are some of them.

3)

1) The requirement that the financial statements had to be audited by a Registered Company Auditor.

i.) Auditing.

I was informed that the State requirements are the same as the Commonwealth. However when I made enquiries of the Australian Electoral Commission by telephone for the completion of a return for the November 2007 Federal election I was informed that this was not so. However I do not wish to contest the EFA position as it was quite clearly stated that it was their requirement in their publications.

There needs to be a change in this regard for candidates who have relatively small campaign income and expenditure –

In our case our financial statements consisted of –

- a) receipts, 45 entries (one A4 page of entries); and
- b) payments, 27 entries (of which 10 were bank fee entries).

For an audit of statements setting out receipts of \$9029 and payments of \$8385 **WE HAD TO PAY \$495** to the Company Auditor. Fortunately, we had \$644 left in our campaign account to pay it and we were also able to claim the amount on the return. I had provided in detail all records, bank statement etc so that there was no requisitions made on the work.

However I feel that for the small audit job involved and the statement amount involved the requirement and the fee was unreasonable!

4)

Accordingly I recommend that for returns for candidates that:-

1) are eligible for funding; and

2) have receipts and payments under \$10000 in each case on their financial statements;

that the requirement for a Registered Company Auditor be amended to having the audit done by a normal CPA (or equivalent) Accountant Auditor.

ii) The wording of the Auditor's Statement itself

Notwithstanding that I provided the Auditor with the wordings for the statement he did not understand it. Indeed he provided an inadequate statement that was rejected by the EFA and had to be redone.

The information that I provided were copies of relevant parts of the "Election Funding Guide for Candidates and Groups for State Election" listed below, published 28 March 2007. This was an excellent publication but the confusion on the wording for the auditor seemed to me to come down to the need for a clearer explanation and categorization of the difference between the Claim and the Declaration aspects of the return for the candidate. (If my understanding is correct!)

Section 16. Auditing a claim for payment. Page 32.

Section 24. 24.1. The Audit Certificate. Page 47.

(Incidentally, the reference to the Australian Securities and Investments Commission website on page 32 I found of no help in seeking to locate a Registered Company Auditor. I assure you they are few and far between when you are looking for one!)

Their needs to be a "what you do" for these "types of cases" approach here so that ordinary laypeople and Registered Company Auditors are able to understand fully the wording requirements for the certificates.

5)

I note that in the end common paragraphs from the two sets of wordings was accepted by the EFA. If I have had to go back to the auditor a third time re the certificate I would have been most upset!

Recommendation.

That the information supplied for the return include a “what you do” for “these types of cases” for the statement wording requirements for Auditors.

C) ACCOUNTING FOR DONATIONS UNDER \$200.

Whilst I appreciate the situation regarding anonymous donations the need to provide names in these circumstances goes too far.

By way of illustration we had received \$481 - 20 at East Hills branch meetings over 2006 for our candidates campaign “by passing around the hat” to the 105 people attending. The donations were anonymous but we would not know who gave what or for that matter if a person gave over \$200 individually! To administer such a situation is impossible as one cannot watch who gave what into the container.

The way we substantiated the item for the return was to supply photocopies of our attendance list for the meetings which showed the attendees name. We blanked out their addresses. I have some “privacy concerns” in having to do this as it stands to reason that some of the 105 people who attended the meetings did not make a donation. Yet their name had to be supplied to substantiate the item on the return. Again, what if we did not have attendance sheets? We would have not been able to account for the amount.

6)

While it might require a political party to advise people that their name have to be given if they donate over \$200 in such “open plate” circumstances a simple declaration should cover such circumstances for the purposes of the return. After all, if people are interested in “tax deductibility” they will ask for a receipt.

(In the above I have left aside our parties reporting of the transactions for the year.)

Recommendation.

That if the \$200 criteria is maintained that a simple declaration by the candidate saying that so many people gave in all \$X with no person giving over \$200 individually should be all that is required for “Open plate “ type donations for the purpose of the return.

7)

3) SOME CHANGE TO THE PRESENT SYSTEM.

1) Increasing the disclosure threshold amounts for donations.

I am not aware whether or not the \$200 (name only), \$201 - \$1500 (name and address) and \$1501 (name, address and declaration) disclosure figures were the original figures established when the public funding system was set up in New South Wales in 1981. However it seems to me that given present day values these figures are out of date. The present Commonwealth "tax deductibility" for donations to political parties is \$1500 with disclosure only for gifts over \$10000 (plus a CPI increase amount).

I would suggest that the disclosure amounts be increased as follows to standardize them for Parties, Groups and Candidates : -

- 1) \$200 name only up to \$1500 (Name only)
- 2) \$201 to \$1500 up from \$1501 to \$3000 (Name and address only)
- 3) \$1501 and over up to \$3001 and above. (Name, address and Declaration.)

It would provide for easier administration. However aggregation would apply for donations and gifts over any twelve month period.

I appreciate that the onus would be on the political party or candidate to ensure multiple gifts in any one period of time would be accounted for, for declaration purposes

Overall this would limit compliance costs.

8)

Recommendation.

The disclosure threshold amounts for Parties, Groups and Candidates are to be increased to : -

*** \$1500 (Name only);**

*** \$1501 – \$3000 (Name and address only); and**

*** \$3001 - (Name, address and Declaration.)**

Aggregation would apply for donations and gifts over a twelve month period.

2) Change the criteria for eligibility for public funding by granting an “effort” test.

4% of the formal first preference vote was set, for various reasons, for eligibility for public funding. One was for the need to discourage “nuisance” candidates. There is still a need for this though it has worked against people and small parties who have mounted candidates over the years.

While I have thought over the years that there needs to be a reduction in the threshold level I now think that if the 4% is retained it should be accompanied by a new “effort” test.

9)

What I mean here is that a candidate, group or party perform certain activity in the election campaign and still do not reach the 4% they should still be eligible. What about the candidate who receives 3.99% and misses out by a few votes public funding. It does happen – witness at the last federal election the Christian Democratic Party (CDP) candidate for Reid, Dr. Alex Sharah, who received 3170 out of 79438 formal first preference votes. If he had received 8 more votes he would have been eligible for public funding at \$2-10 per vote. Similarly Jo Sammut, the CDP candidate for Lakemba at the last state election missed out by some 12 votes to receive public funding at the state level. No doubt other parties and candidates can recite such circumstances.

Where is the justice in these situations?

Effort Test.

For those candidates that receive 4% or less they should still be eligible if they have put a demonstrated effort into their campaigns. The effort should be measured by such criteria as : -

- 1) Did they man the physical Prepoll centre with staff and How – to – Votes;
- 2) Did they produce a leaflet and was it distributed in a reasonable area of their electorate;
- 3) Did they man most of the polling booths on Election Day; and
- 4) Did they have, at least, one advertisement in a local paper?

If a candidate has completed most of the above and still did not receive the 4% mark he/she should still be granted eligibility for Public Funding.

Such a change should enhance democratic participation as this was one of the reasons advanced for public funding in the first place.

10)

Recommendation.

The 4% of primary vote eligibility criteria for public funding is supplemented by an “Effort” test for those candidates that receive less than 4%.

3) Change to the public funding payment amount formula.

For simplicity of operation the formula should be a \$ amount per primary vote based upon a formula that constrains costs.

I appreciate that this could lead to an increase in the overall cost of the public funding scheme. To counter this some limitation would have to be placed on the various expenditure items for the purposes of the formula. This would be in what constitutes the \$ figure components.

By way of illustration a model should be developed that establishes the cost of a basic campaign that most people might reasonably be expected to mount if they are running candidates for the whole of the state and dividing it on a per capita basis..

As a measure to reduce the overall cost I would suggest that only one-tenth of the expenditure amount of radio, television and cinema advertising costs is included in the formula. No provision should be provided for postal vote work by political parties. This should be the province of the NSW Electoral Commission and should be funded to provide such a service.

11)

Alternatively the Commonwealth \$ figure could be adopted with the proviso that no candidate or political party/group could receive more than their expenditure. However the disadvantage with this approach is that it is open ended. Again it seems to me that the costs of elections are going to exceed such public funding payments for the major parties. As well some political parties/groups and candidates, potentially, can make a profit from this system. As such I do not support such “an open ended” approach.

I am not capable of working out the \$ figure mentioned above as I do not have access to statistics and other information required. Accordingly I advance it as an “In principle” idea.

Recommendation.

That the public funding payment amount should be a \$ amount per primary vote based upon a formula that constrains costs.

4) Anonymous donations.

Full disclosure of anonymous donations be required except for single (or cumulative figures) of up to \$1500 where a name is supplied or for an “open plate” situation as outlined above.

Trust and such other type donations are to be required to disclose the parties behind them.

Recommendation.

Full disclosure of Anonymous donations (except for a single or cumulative donation of up to \$1500 where a name is supplied) is required. Where a Trust or like bodies (third parties) apply the Trust is be required to disclose the parties behind it.

5) Donations from Companies and Unions.

For more accountability purposes to members/shareholders and openness in the political system all donations to political parties/candidates should be accompanied by certification that their shareholders/members have been polled every three years prior to an election to confirm that such donations are allowed.

Recommendation.

All donations from Companies and Unions to political parties/candidates should be accompanied by certification that their shareholders/members have been polled every three years or prior to an election to confirm that such action is allowed.

4) SOME ASPECTS ON DONATIONS.

Any political funding system must have popular support and have an outworking of greater democratic activity and participation by people. One way to participate is by making a donation to your political interest.

Donations are the lifeblood of political campaigns. The more you raise the more you can spend to gain an advantage over your political rivals! However, as mentioned before (1 above) some donations can bring unease to the public mind. To counteract this a comprehensive, full and timely disclosure regime should be in place.

There should be no ban on donations by organizations and people as, quite simply, it is their right to do so! However –

1) a case could be advanced for a restriction in the amount that an organization or an individual could donate in any one year based upon public perception aspects. (However this would have to be implemented on a Nation wide basis for uniformity sake.); and
2) it is reasonable that full disclosure should be required and made in a manner that is timely and effective for donation/s made.

As well a mechanism should be in place to discipline transgressions.

For myself, I do not believe that a limit should be placed on an organization or individual as to the amount they can donate.

However –

1) full disclosure in a timely, comprehensive and effective manner should be made **on a rolling basis** every quarter so that the public can ascertain who is making donations to political parties on a quarterly basis. The system should be transparent where all of the donations can be tracked;

14)

- 2) rather than find out after an election such information should be available on a year round rolling basis;
- 3) all items in the report are to be clearly identified in appropriate and easily understood categories;
- 4) all third party donations are to clearly show who they are and from what interests they come;
- 5) all donations from Companies and Unions should have the consent of shareholders and members;
- 6) donations and gifts from overseas should be banned except for individuals who are eligible to vote in Australian elections;
- 7) full details of the proceeds of loans to candidates or political parties are to be fully disclosed; and
- 8) failure to disclose full details would lead to a loss of public funding amount for those who qualify or legal action as appropriate.

Recommendations.

No limitation should be placed upon how much an organization or individual can donate to a political party for campaign purposes within Australia.

However

15)

- 1) full disclosure in a timely, comprehensive and effective manner should be made on a rolling basis every quarter so that the public and the general media can ascertain who is making donations to political parties on a quarterly basis. The system should be transparent where all of the donations can be tracked;**
- 2) rather than find out after an election such information should be available on a year round rolling basis;**
- 3) all items in the report are to be clearly identified in appropriate and easily understood categories;**
- 4) all third party donations are to clearly show who they are and from what interests they come;**
- 5) all donations from Companies and Unions should have the consent of shareholders and members;**
- 6) donations and gifts from overseas should be banned except for individuals who are eligible to vote in Australian elections;**
- 7) full details of the proceeds of loans to candidates or political parties are to be fully disclosed; and**
- 8) failure to disclose full details would lead to a loss of public funding amount for those who qualify or legal action as appropriate.**

5) SOME ASPECTS ON EXPENDITURE.

A “level field” election contest requires some leveling of expenditure costs for all, in theory, to be able to compete fairly. Without a limit on campaign costs the process will lead to greater overall costs.

For myself, without all parties having access to certain election services, a “level field” contest can not be provided, e.g. postal votes where the big parties who have the money and know how together with the certainty that they will receive public funding to reimburse them have a decided advantage. This “election service” should be provided by the State Electoral Commission through them being properly funded by the Government. Expenditure by the big parties for activity in this area should not be given credit in any claim for public funding.

I understand that New Zealand has a system that limits the amount candidates and political parties can spend in an election campaign. For myself I feel that some restriction on expenditure is warranted to curtail costs for elections in New South Wales and Australia. There might be some legal difficulties as regard the implied provisions for political discourse in the Commonwealth Constitution but its working out remains to be seen.

The position in New Zealand should be studied by the Committee, even if necessary, by going to New Zealand to see how it works in great detail. The strengths can be incorporated into any new system in New South Wales and the weaknesses addressed, hopefully, to eliminate abuse of the system.

Recommendation.

That the Committee study the New Zealand system, which has limits on expenditure, to see if it would be appropriate to introduce it in New South Wales.

That expenditure on Postal Votes work by the major parties has no credit in any public funding claim.

6) AN “IN KIND” TYPE PUBLIC FUNDING ASPECT.

Andrew Fisher, the Labor Prime Minister of Australia, 1908-08, 10-13 and again in 1914 – 15, was responsible for the legislation that provides a pamphlet setting out the “Yes” and “No” case on Referendum questions to every household in Australia prior to the people voting on the issue.

As well for Local Government Elections a candidate can outline their candidature on a sheet (limited by a certain number of words) which is displayed by the electoral authorities on their behalf.

Could we have a position where the electoral authority produces a pamphlet setting out the policy of the candidates in the Lower and Upper House per electorate which is distributed to every household? There would have to be some limitation on the number of policy items covered and the number of words permitted overall. A \$ value would be assigned to it and the amount (or part thereof) be deducted from any public funding entitlement.

As well the items would be posted on the Internet.

18)

People could elect not to receive the pamphlet if they so wished.

Of course there would have to be a cut off point for candidates/parties to submit their policy and the pamphlet to be able to be printed and distributed. Candidates/Parties who miss the cut off point would simply miss out on the opportunity.

I would imagine that over a period of time the Internet, at a cheaper cost, would become the main avenue for this item to be promoted.

Again I would suspect that the cost would work against this idea.

Recommendation.

That the idea of a pamphlet showing all candidates/parties policy be produced by the electoral authority and distributed to all households to be investigated. Some trade – off would have to be made in the public funding area.

7) SUNDRY.

*** Payment of Public Funding money.**

Political parties are not standing for Parliament. It is their candidates who are and so, as a principle, public funding money should, in the first instance, be paid to the candidate. If a candidate wants to assign it to their party they should be allowed to do so.

However the principle should stand that the candidate receives the public funding payment.

. * Retain payment on submission of a return basis notwithstanding quarterly reporting of donations and gifts etc.

*** No claim payment can exceed the expenditure incurred by the candidate/political party.**

*** Local Government.**

As **public funding** is available at the Federal and State level it seems logical that it **should be extended to the Local Government** level on the same basis as the state provisions.