

Submission
No 8

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

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United Voice (NSW Branch)

Submission to the NSW Parliament Select Committee on the Provisions of the *Election Funding, Expenditure and Disclosures Amendment Bill 2011*

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1. About United Voice (NSW Branch)

United Voice, known prior to March 2011 as the Liquor, Hospitality and Miscellaneous Workers' Union (LHMU), is a federated trade union of some 120,000 members. The NSW Branch of United Voice ("United Voice") represents workers in a wide range of industries in Hospitality, Health and Aged Care, Manufacturing, Mining and Miscellaneous, Property Services and Children's Services.

United Voice is an active organising union, engaging in workplace representation and some high-profile campaigns by members in certain industries. Examples include the Clean Start campaign in commercial and retail cleaning, the Big Steps campaign in early childhood education and care and the Better Jobs Better Hotels campaign in luxury hotels.

United Voice is registered with the Election Funding Authority of New South Wales as a Third-Party Campaigner. United Voice is affiliated to Unions NSW as peak industrial body in the State. United Voice is also affiliated to the Australian Labor Party ("ALP").

2. Introduction

United Voice welcomes the opportunity to contribute to the Select Committee Inquiry into Provisions of the *Election Funding, Expenditure and Disclosures Amendment Bill 2011*. United Voice has deep concerns about the potential impact of this Bill on United Voice's ability to organise and campaign collectively on issues of importance to our members, where those issues relate to electoral and political matters.

This submission addresses the concerns of United Voice regarding part 1.(a), the constraints on unions in engaging in the political process by taking an overview of the Bill's impacts and then focussing on parts 1.(b), (d), (f) and (g) of the Terms of reference in turn.

United Voice believes there are serious impacts in the Bill on United Voice's ability to engage in the political process. The key concerns that must be addressed are:

1. Any amendments must only relate to expenditure during the declared election campaign period.
2. Unions must be able to continue to donate to campaigns by Unions NSW (or similar umbrella group) as a third-party campaigner so that the third party can act as a collective voice for unions without restriction.
3. Unions must retain the basic right to pay for affiliation to a political party.
4. Expenditure by politically affiliated unions in campaigns must not be considered as expenditure by that political party.

The Bill's prohibitions represent significant infringement on the rights of United Voice, as a not-for-profit membership organisation, to decide what is said that relates to political issues, what funds are used for campaigning for change and with whom we choose to associate.

As such, United Voice believes this Bill should be rejected on the basis that it is an anti-democratic and deliberately discriminatory attack on the rights of union members to campaign on industrial issues of importance to them.

If the Bill is to pass the Legislative Council with amendments, then the legislation must:

1. Preserve the right of a union as third party campaigner to contribute to broader union campaigns;
2. Not aggregate electoral expenditure by the union under any political party's expenditure cap; and
3. Permit not-for-profit organisation such as trade unions to financially affiliate to a political party.

3. Terms of Reference 1.(a)—Constraints imposed by the bill on community and not-for-profit organisations, including unions

3.1 Overview

The constraints imposed by the Bill overall on United Voice include potentially silencing union campaigns run collectively through Unions NSW, banning the ability to financially affiliate with the ALP and counting United Voice's electoral spending (related or not) towards the ALP's cap.

Not-for-profit groups such as unions, community groups, clubs, environment and social justice organisations operate within this state and nation as key service providers within the community as well as participants in our broad democratic political process.

While some groups, such as United Voice, take active part in the political process because it has been deemed useful in achieving the aims of the membership, many groups take little or 'indirect' part.

Through Section 96D, this Bill seeks to silence not-for-profit groups broadly by cutting off campaign funds being used collectively. At the same time, the Bill upholds the virtues of individuals on the electoral roll as more fitting donors than unions and community groups. Unions band together and pool resources to have more influence because individually our members can do and afford little. This is the simple principle on which United Voice and other trade unions have been founded over the last century and a half in Australia. During this time our democracy, rights and conditions have progressively improved.

United Voice today represents a broad range of workers in low paid industries whose individual voices would scarcely be heard in our political system. It is our strong belief that these people deserve the right to have a stake in collective action in third-party campaigns as well as determining their own affiliations.

This Bill is clearly aimed at gutting third-party campaigning on both directly and indirectly political issues. This will severely affect the ability of United Voice to be heard on issues of concern. Further, this Bill is a deliberate attempt to cut off political parties that are allied or affiliated to not-for-profit groups, such the ALP, Shooters and Fishers Party, potentially the Greens and the Christian Democrats among others not represented in NSW Parliament.

3.2 Any amendments must only relate to expenditure during the declared election campaign period.

Due to broad and unspecified provisions within the Bill, there is potential that unions

may face limits to the allowable political activity in the period between election campaigns. Any changes to the existing legislation must only relate to expenditure during the declared election campaign period, otherwise unions and other groups will be subject to levels of censorship of their activities at all times.

The core work of United Voice is campaigning with members for better pay and working conditions. United Voice can only achieve this through ongoing organising activity as well as high visibility and long-term campaigns on more contentious issues. This activity requires resources of United Voice to be directed into the campaign itself as well as into action with associated unions where necessary. Enterprise bargaining does not adhere to election timetables and this work must be allowed to proceed unhindered. Similarly, other matters United Voice chooses to campaign around can arise at any time.

4. Terms of Reference 1.(b)—The impact on peak organisations, whose constituent entities are themselves membership-based

4.1 Unions must be able to continue to donate to campaigns by Unions NSW (or similar umbrella group) as a third-party campaigner so that the third party can act as a collective voice without restriction.

United Voice is a union of individual members. The Executive of United Voice values the right to continue the long-standing affiliation to the peak union body in the State, Unions NSW. Like United Voice, Unions NSW is a registered third-party campaigner, which would be banned from receiving any donations other than directly from individuals on the electoral roll. This measure would outlaw campaigns like the current Better Services, Better State or the earlier Your Rights At Work campaign. It could also prevent Unions NSW from bargaining State Wages Cases, Occupational Health and Safety reform and even campaigns for changes to Superannuation.

United Voice deliberately and actively takes part in collective campaigns such as these through the activity of our members and officials, through donations and other resources. These are campaigns by individuals acting collectively and they should be seen as such. United Voice is a union of low-paid workers who believe in pulling together to win a better deal. These people have a right to be part of a collective that can campaign on directly or indirectly political issues at any time.

Where necessary, United Voice runs large campaigns that attract the assistance of other unions. Clean Start is one such campaign, run by cleaners nationally in retail shopping centres and previously in city commercial office buildings. Clean Start aims to negotiate an enterprise bargaining agreement that pays cleaners a decent wage and recognises key principles of safety, respect and job security. This campaign

involves long-term negotiation with contract cleaning companies and can involve many stakeholders, including other unions.

United Voice represents cleaners who work for contractors in government sites as well. A separate section of our cleaning membership are school cleaners. It is vital that, when government contracts are due for renewal and enterprise bargaining is underway, United Voice can campaign to achieve the best outcomes for its members without being hamstrung by provisions of this Bill that would make campaigning an illegal activity.

That is why it is essential, as detailed in Section 3.2 regarding the specific election campaign period, that this level of campaigning remains possible at any time. Further, United Voice deserves to be able to act collectively with other unions to campaign together industrially and politically as third-party campaigners.

4.2 United Voice and the Sydney Alliance

United Voice has another relationship—with the Sydney Alliance—that may be adversely and unfairly affected by the ban on non-individual donations. United Voice is proud to be a founding member of the Sydney Alliance, which has grown to more than 45 partner organisations from diverse fields such as community organisations, educational organisations, individual churches, religious organisations and unions.

United Voice seeks from its involvement in the Sydney Alliance a relationship with a broad coalition of organisations that can take public action for the common good. United Voice members engage with other citizens of Sydney who wish to push those in Government to engage on issues of major importance, like public transport.

Contributing volunteer efforts as well as donations are important to the work of United Voice in standing up for a better Sydney, through the Sydney Alliance. It would be grossly unfair for non-party political organisations to be targeted by this Bill and for United Voice to be denied involvement due to third-party campaigner restrictions.

5. Terms of Reference 1.(d)—The impact of the prohibition on the payment of affiliation fees for organisations affiliated to political parties

5.1 Unions must retain the basic right to pay for affiliation to a political party.

The Executive Officers of United Voice are democratically elected by the membership as per United Voice rules, registered under the *Fair Work Act*. The current Executive was elected on a platform that included affiliation to the Australian Labor Party, which has long been the practice of United Voice. This practice continues because it is a democratic decision made in the best interests of members.

Paid affiliation allows United Voice to take part in the development and implementation of policy. This provision to ban affiliation by unions and membership organisations is designed to remove the right of individuals acting as a group to take an active part in the political process.

The ALP is the key target of this provision. The internal workings of a political party, coincidentally the political party of opposition in this State, are being interfered with by this Government Bill. Furthermore, the basic right of United Voice to affiliate with the ALP and take active part in its workings as a democratic party in a democratic state, would be removed.

6. Terms of Reference 1.(f)—The impact of the aggregation of the electoral spending of affiliated organisations under the expenditure cap of the party to which they are affiliated

6.1 Expenditure by politically affiliated unions in campaigns must not be considered as expenditure by that political party.

While United Voice is affiliated to the ALP, it does not always agree with the policy of the party. Nor does United Voice mount industrial or other campaigns with the intention of acting as an affiliate of the ALP. However, this provision unjustly and inaccurately would aggregate electoral expenditure by United Voice under the applicable cap for the ALP. The apparent intention of this provision is to punish the ALP for having affiliate unions at the same time as tarring an affiliate's unrelated political campaigning with a party political brush.

Caps on electoral expenditure by third-party campaigners and political parties exist in the current legislation to limit a potential double-up of expenditure. The current cap for electoral communication expenditure by a political party is \$100,000 per Legislative Assembly electorates contested plus each individual electorate expenditure cap of \$50,000.

Under this Bill, United Voice would be banned from paying affiliation fees to the ALP and at the same time, would make the ALP liable for the union's electoral expenditure. This restraint on United Voice's right to exercise the collective will and resources of the membership would be severe as well as absurd.

United Voice's business is to campaign around changes to government contracts and procurement, since that is relevant to a number of the industries such as cleaning and security that are covered. No matter what the party of government, these areas must be open to campaigning by United Voice at all times. The most basic rights to freedom of political communication are at stake here.

While United Voice does not seek to address part 1.(h) of the Terms of Reference, it is noted that cases from the High Court have already been quoted in the debate about this Bill. These have noted the implied freedom of communication in the Constitution that could be impinged upon by legislation that limits the ability of affiliated organisations to spend resources on political campaigns around election time.

United Voice is a distinct organisation, which chooses to affiliate to the ALP. Our campaigns around political issues are run by us for our members. These campaigns may or may not relate to policies of the ALP. These activities should not be counted as support for ALP activities and the Party should not have to account for our activities. It is inappropriate to conflate these two aspects of political communication for the sake of penalising certain political parties.

7. Terms of Reference 1.(g)—Any amendments necessary to address any adverse impact identified

Given that the Bill appears to be heading towards amendment, rather than outright rejection as United Voice would prefer, the following amendments are suggested:

1. All provisions of the Bill are explicitly confined to the election campaign period only.
2. Third-party campaigners are allowed as entities that can make political donations to other third-party campaigners, subject to existing caps.
3. Third-party campaigner expenditure is exempt from any political party's cap.
4. Not-for-profit organisations including unions must be exempted from the prohibition on financial affiliation to political parties.

8. Conclusion

The *Election Funding, Expenditure and Disclosures Amendment Bill 2011* has been developed on the flawed grounds of seeking in particular to disrupt the abilities of unions and the ALP to campaign on political issues. United Voice would like to see the Bill defeated outright.

It is unacceptable to United Voice as a third-party campaigner that United Voice should not be able to contribute to a campaign with the assistance of other unions and the peak body, Unions NSW.

The aggregation of affiliate expenditure under a political party's cap is also unacceptable to United Voice, as is the ban on paid political affiliation. These provisions impinge on United Voice's right to political communication and must be addressed, as per the recommendations.