

**Submission  
No 132**

## **INQUIRY INTO ELECTORAL AND POLITICAL PARTY FUNDING**

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**ACTION ON SMOKING AND HEALTH (ASH) AUSTRALIA**  
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**SUBMISSION TO  
NSW LEGISLATIVE COUNCIL INQUIRY  
INTO ELECTORAL AND POLITICAL PARTY FUNDING**

February 2008

To:

**Select Committee on Electoral and Political Party Funding  
Parliament House  
Macquarie St  
Sydney NSW 2000**  
[fundinginquiry@parliament.nsw.gov.au](mailto:fundinginquiry@parliament.nsw.gov.au)

From:

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## Introduction

Action on Smoking and Health (ASH) Australia is a non-government health promotion charity founded by The Cancer Council NSW and the National Heart Foundation. The aim of ASH is to reduce tobacco diseases, disability and premature deaths caused by tobacco products.

In its work over the past two decades, ASH has advocated for initiatives in government policies relating to tobacco and health which have been strongly supported by:

- independent health research evidence;
- independent economic evidence;
- expert health and medical advice;
- public health and occupational health and safety principles;
- social equity and anti-discrimination principles; and
- majority public opinion as indicated by independent surveys.

Nevertheless, many of these proposals have been delayed, weakened or undermined after the apparent influence of powerful industry groups with interests in tobacco and gambling. The direct consequence of dilution of policy change has been harm to the community – especially to, but not limited to, the most disadvantaged.

Tobacco companies have for years made large donations to major political parties, and are still making large donations to the Liberal/National parties despite most other parties refusing to accept such donations as unethical and unacceptable. In addition, other interests which now have or have once had various financial/business relationships with tobacco companies – including hotel, club, gambling and retail interests - also exert influence through political donations which have in some critical cases resulted in delays and/or ‘dumbing’ down of evidence-based policies aimed at improving community health. These donations may result in favourable decisions for the donor, or in privileged access to politicians creating a political climate leading indirectly to favourable decisions.

Areas of policy in which we believe this has occurred have included:

- Changes in smokefree workplace and public place laws, delayed and weakened by the influence of tobacco companies and/or tobacco-related hotel and gambling interests on state and territory governments.  
*For more detail, please refer to the submission to this inquiry by The Cancer Council NSW. We concur with their view that there has been undue influence by hotel/gambling interests on government actions. This influence continues to be evident in the NSW decision to allow gaming machines into partly-enclosed smoking areas - in contrast to other states that have banned machines in smoking areas to protect both staff and gamblers.*
- Laws on the display advertising of tobacco products in retail outlets, also delayed and/or weakened by the influence of tobacco retailing bodies on state/territory governments.
- Legislation on graphic/pictorial health warnings on tobacco packets, weakened and delayed after representations by tobacco companies to the federal government.

We believe tobacco-related and tobacco-friendly commercial interests have had an undue influence upon government decisions in these areas, at both an economic and health cost to governments, businesses and communities (costs of \$21b for Australia and \$6.5b for NSW a [http://tobacco.health.usyd.edu.au/site/supersite/resources/pdfs/C&L\\_NSW\\_Report\\_2005.doc](http://tobacco.health.usyd.edu.au/site/supersite/resources/pdfs/C&L_NSW_Report_2005.doc)).

Governments around Australia have legislated to ban tobacco promotion and sponsorship in many forms. This makes it all the more inappropriate that money, gifts or the “sponsorship” of political parties or candidates should still be permitted.

## The current situation in Australia

Money plays a controversial role in Australian politics, with an estimated \$200m a year being accepted in political donations across the country. Whilst several other countries have improved transparency, accountability and regulation, secrecy over donations in Australia is increasing.

Federal Regulation: There are currently no restrictions on the total level of donations. Since December 2005 only disclosures ('gifts') over \$10,000 a year (up from \$1,500) must be reported to the Australian Electoral Commission (AEC). Although the Rudd Government has promised to repeal this amendment, there is no indication as yet of when this will take place.

State Regulation: The only Australian jurisdiction to set a limit that we are aware of is Victoria. Under its *Electoral Act 2002*, holders of casino and gambling licenses and their related companies are prohibited from making political donations over \$50,000 per financial year to each registered political party.

NSW: No limit on total donations. Currently, disclosure of donations and election expenditure is made only every four years, after state elections. Candidates can receive hundreds of thousands of dollars from a party without disclosing the real source of the donation.

## Problems in the present system

We would ask this basic question: "Does this system provide Australia and NSW with the best democracy – providing the fairest airing and testing of ideas and policies in public and parliamentary forums and resulting in decisions based on evidence and expert advice in the public interest?" We believe NSW currently fails this test.

There is considerable lack of transparency and too many loopholes in our political financing system, including:

- Federal and state schemes do not provide timely disclosure.
- Current limits on political/electoral donations and funding are inadequate.
- Parties are not legally required to accurately categorise a receipt as a "donation" or otherwise.
- Considerations that would normally be understood as donations (for example, fundraising dinners) fail to be declared as such because they can escape the narrow definition of "gifts". Tobacco companies have sponsored both Liberal and ALP fundraisers or forums in recent years. These occasions are routinely used to provide privileged access to politicians, with donors' direct or indirect benefit in mind.
- Parties can avoid public scrutiny by arranging for donations to go into party committees or other bodies which can then be stated as the source of the funding, thereby "laundering" the donation. The privilege of access to public life and public funding should be associated with complete transparency.
- There have been many accusations of advertising by governments both federal and state appearing to serve political rather than public education or information purposes, particularly in the lead-up to election periods.

Under these weak rules, political donations can distort and undermine the democratic political process.

## **Transparency in NSW**

The NSW Election Funding Authority (EFA) requires all political parties contesting state elections to submit a return showing contributions and expenditure during the four years between elections. Candidates must also submit a return showing donations and expenditure - the period for their reporting differs according to whether or not they contested the previous election.

We agree that the reporting period for parties, groups and candidates in NSW, once in every four years, is too long. Political contributions and money from fundraising events should be disclosed by political parties at least quarterly, including at least once in the month before an election.

There should be prompt and transparent disclosure of all donations on a public website maintained by the EFA. All contributions to a party, group or candidate should be available to the public before an election so that electors can be aware of who is funding parties, groups and candidates before we vote.

The current practice of releasing this information to the public many months after the state election is unacceptable. The last election was in March 2007; but it was not until December 2007 that members of the public could see the returns, and then only by going to the authority's office to examine the returns page by page, overseen by staff of the organisation. This is prohibitive and a waste of public resources. The law should be changed so that donations and expenditure data are placed on the EFA website immediately and are accessible electronically.

It is also critical to close the loophole that allows companies and individuals to hide their donations to individual candidates' campaigns in state elections.

Many candidates have State Electoral Councils (SEC) that receive money for the candidate's campaign. Each candidate must report the amount of money they receive from their SEC, but they are not required to report the source of that funding. For example, a tobacco company could give a candidate's SEC \$10,000 and the public could remain unaware that the candidate is receiving money from that company. The party's head office would have to report the company's donation in their return, but it would be grouped with all the money the party received and not shown by electorate. Money given to each SEC should clearly be identified by the donor's name in the candidate's return.

## **Local government**

Reporting of contributions and expenditure in local government elections is widely regarded as inadequate. Currently these data are released to the public months after the elections. The only way people can see the data at that point is either to go to the NSW EFA by appointment and inspect them there, or to request the data from each individual council.

Again, we should be guaranteed access to information about the money contributed to councillors' campaigns prior to casting our votes. This information should be placed on the EFA website and on each council's website in the month before an election.

We believe that public funding should be considered for local government elections. We support the view that only those candidates who refuse to accept money from corporations, unions and lobby groups should be eligible for public funding of their campaigns.

## International responses

The issue of party finance has in the past been dealt with in sharply contrasting ways across the world, but there are now signs of some convergence in the debate. There are at least three interrelated questions:

- How free should parties be to raise and spend funds, as they like?
- How much information about party finance should the voter be entitled to have?
- How far should public resources be used to support and develop political parties?

There are many countries that have implemented reforms that should be considered for Australia, including:

- 40 countries, including Canada, USA, UK, Iceland, Ireland, France, Canada, Poland, Japan, Israel, Brazil, Argentina and others, have banned foreign donations.
- 30 countries, including Canada, Belgium, France, Ireland, Spain, Israel, Japan and others, have laws specifying a maximum amount that a single donor can contribute.
- 22 countries, including France, Israel, Hungary, Poland, Portugal Argentina, Brazil and others, have various types of bans on corporate donations to political parties.
- 27 countries, including France, Belgium, Spain, Portugal, Italy, Hungary, Brazil, Argentina have bans on donations from government contractors.
- 9 countries, including Portugal, Mexico, Bulgaria, Brazil and others, have imposed a maximum amount that a party can raise overall.
- 17 countries, including France, Portugal, Poland, Israel, Brazil, Argentina and others, have a ban on trade unions donations to political parties.
- 27 countries, including Canada, UK, Spain, New Zealand, Poland , Portugal, Belgium and others, have imposed a ceiling on overall party election expenditure.

Source: IDEA: International Institute for Democracy and Electoral Assistance. *Funding of Political parties and Election Campaigns Handbook (2003)* at [www.idea.int/publications/funding\\_parties/index.cfm](http://www.idea.int/publications/funding_parties/index.cfm)  
IDEA is an intergovernmental organisation supporting sustainable democracy worldwide. This handbook compares party funding in more than 100 countries across several regions. The Matrix of Political Finance Laws and Regulations is available on the International IDEA website [www.idea.int/matrix](http://www.idea.int/matrix)

Some countries – such as Canada, Germany, NZ and UK - have moved to limit political donations and set up transparent disclosure systems; Australia, however, has lagged behind, and has even moved backwards recently in making donations more secret.

The examples below from Germany and Canada, and the suggestions of IDEA above, provide good examples for Australia and NSW.

(Note: amounts below are in \$AUD based on exchange rate at October 9, 2007)

### Canada

Since Dec. 2006 political donations are regulated by the Federal Accountability Act, its provisions including:

- A limit of \$1130 pa on individual contributions to a party or independent candidate;
- A total ban on donations from corporations, trade unions and associations; and
- A ban on cash donations over \$23 (for donations over \$23 a receipt must be issued).

### Germany

Political donations are regulated in paragraph 5 of the “Parteiengesetz”, last updated 2004. Its provisions include:

- Parties are allowed to take cash up to \$1585;
- Bans on donations from public corporations, trade associations, anonymous donations over \$792 and donations that are given in expectation of a return service;
- Donations over \$15,850 a year must be declared (with name and address) in the statement of accounts
- Donations over \$79,242 a year must be declared to the President of the Lower House of Parliament.

## Recommendations

The current Australian political financing system creates inequities between people and between parties and undermines our democratic process. Large donations to parties are damaging public confidence in government, buying access to politicians that ordinary people and community groups cannot afford. This unbalances our democracy, often leading to governmental decisions skewed towards wealthy interests and against independent evidence and wider public interest.

If there is to be a “fair go” in Australian politics, these inequities need to be addressed. The following reforms are recommended:

1. Measures to increase transparency in the source of donations, including:
  - (a) prompt and transparent reports at least quarterly and in the month before an election, to a public website maintained by the Election Funding Authority;
  - (b) requirements for party committees or other fundraising bodies to state the sources of their donations; and
  - (c) a requirement that all funding disclosures must be accompanied by a report from an accredited auditor.
2. Limits on donations, such as no more than \$1,000 per year per donor.
3. Either a total ban or at least limits on political donations from organisations, including corporations and trade unions; and a total ban on donations from foreign or trans-national entities.
4. Caps on total electoral spending by all parties and candidates; and tighter controls over “independent” campaign spending by the supporters of political parties and candidates.
5. An independent committee to monitor all government advertising campaigns and ensure that public funds so spent are for the purposes of public education, not political gain.
6. In local government, introduction of public funding, conditional on compliance with caps on private funding and transparent disclosure prior to elections.
7. Increased penalties for breaching political funding laws.
8. Adequate funding to the EFA to enforce these laws.
9. Political donations no longer tax deductible – as proposed by the Assistant Federal Treasurer.
10. NSW Parliament to recommend to the Federal Government that a National Summit be convened to develop a national strategy to fundamentally reform - at federal, state/territory and local government levels - legislation in this area; measures 1-9 above should form the basis of the NSW position at the national level. This Summit should include not just politicians but a wide range of legal experts, academics and community representatives; it should be allowed sufficient time for proper consideration and comprehensive debate of all reform options.

## Conclusion

We are recommending the above ten measures to improve government policies and legislation – to ensure that they are based on independent evidence and expert advice, rather than on the financial pressure of powerful interest groups.