

**Submission
No 125**

INQUIRY INTO ELECTORAL AND POLITICAL PARTY FUNDING

Organisation:

Name: Dr Norman Thompson

Telephone:

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NSW Parliamentary Inquiry
Electoral and Political Party Funding
Submission by Norman Thompson, PhD
Director, Greens Political Donations Research Project
www.democracy4sale.org

The systems of electoral and political party funding in NSW and at the federal level have many problems that need to be addressed by our parliaments for several important reasons.

The public's faith in the integrity of our electoral system is badly diminished due to large corporate donations. The fact they aren't reported until well after each state, federal and local government election compounds the public concern. When the contributions from businesses, unions and lobby groups around the country are finally made available many people believe this money is used to gain access to politicians which in turn influences decisions made by governments.

As reports of huge amounts of money pouring into the coffers of our political parties from hotels, clubs, property companies various lobby groups, major financial institutions and so on, there is the sense that our politicians are paying attention to these groups rather than acting in the best interests of the Australian people.

This perception is reinforced when industry leaders make honest statements such as "democracy isn't cheap" and describing a company's political donations as "part and parcel of doing business" in our country. This leads many to think that one must have a large bank account to gain access to our leaders and have any impact on governmental decisions.

People would like to have accurate and detailed information on who is bankrolling our political parties. Such information is important for individuals before they vote so they can make informed decisions when they enter the polling booth. However, this information isn't made available until months and sometimes over a year after individuals have voted. For example, much of the money collected by parties for their campaigns leading up to the November 2007 federal election won't be made public by the Australian Electoral Commission (AEC) until the first of February 2009.

The NSW donations disclosure system also has major transparency problems. The political parties are only required to report contributions and expenditure for state elections every four years, with the information made public months after the election. For instance, the four year history of donations to the parties prior to the March 2007 NSW election and their expenditure during the campaign wasn't available for public inspection in the office of the NSW Election Funding Authority (EFA) until the end of November 2007. It wasn't until early February 2008 that this information was readily available to the public when it was posted on the web site of the EFA – almost eleven months after the state election.

Even then much of the donations information is hidden from public view due to various loopholes the political parties can employ to hide their sources of money. This is especially true for funding of the campaigns in each of the 93 electorates in NSW. I will explore that in greater detail later in my submission.

Not only are there major problems with transparency in disclosure of contributions to our political parties. There is a growing concern among members of the public that election campaigns in Australia are becoming like those in the USA due to the constantly increasing appetite by the parties for money to fund these campaigns.

We watch in fascination as American presidential candidates scramble to raise millions of dollars each week to keep their campaigns alive. This makes us wonder if this is the path we will soon be taking in Australia – the only way to be elected to government is to have access to millions of dollars from contributors with all the risks this entails, or one will need to be a millionaire many times over in order to secure a seat in Parliament.

I will explore these issues in greater detail in this submission. Fortunately there are other countries that share many similarities with Australia that have grappled with these issues and have made important reforms. Therefore, there are models we can consider to reform what in Australia has become a serious problem leading to a crisis in the credibility of our political institutions among our citizens.

My Experience Relating to Political Donations

I have worked with donations data from the AEC and EFA for the past six years as Director of the Greens Political Donations Research Project. During the thousands of hours I have worked on this project, I have coded companies and various lobby groups into categories to reflect the type of business in which they are engaged. The project's IT person and I have worked closely together to present the data in as meaningful a manner as possible.

I have written a number of articles for publication with Lee Rhiannon based on this project. We have received considerable media attention for this work. During the past four years I have appeared four times on the ABC's NSW Stateline to discuss various aspects of donations and problems with accepting donations by political parties in NSW and throughout Australia.

In March 2007 a law lecturer from the University of Melbourne and I organised a roundtable on political donations held at the NSW Parliament House. Professor George Williams of the Gilbert Tobin Centre of Public Law at UNSW agreed to co-sponsor the event.

We had academics from six universities from Melbourne to Brisbane attend the roundtable. There were many leading politicians in attendance including Lee Rhiannon, Carmen Lawrence, Andrew Murray, Peter Andren, Giz Watson from the Western Australian Parliament, Daryl Meldrum and Brad Pedersen who is a Manly Councillor and President of Democracy Watch. The Director of Electoral Funding and Disclosure at the Australian Electoral Commission, Kevin Bodel, attended.

Four of us presented papers at this roundtable: Professor George Williams, Associate Professor Graeme Orr, Dr Joo-Cheong Tham, and me.

Transparency in Political Contributions and Expenditure in NSW

During that time I have worked on the Greens Political Donations Research Project I have seen many problems relating to lack of transparency in both federal and NSW schemes. In my submission I will mainly focus on the NSW system. At the end of this paper I will refer briefly to the many problems with the AEC.

Both the federal and NSW disclosure procedures are complex so it takes much time to understand and to access the information. This means the way the material is presented makes it quite difficult for the general public to get a clear picture of whom is contributing to our political parties, and especially the types of companies and organisations that donate. Unless one is prepared to spend hours going through the material people probably give up in frustration.

The changes by the Howard government to the federal disclosure laws effective in December 2005 raised the threshold for identifying donors so high that many will never be known by the public. Rather than follow the recommendations of the AEC, the Coalition government moved in the direction of much greater secrecy.

While I believe the disclosure thresholds for parties, groups and candidates are appropriate in NSW in sharp contrast to federal disclosure thresholds, the reporting period is totally inappropriate.

The NSW EFA requires all political parties contesting a NSW state election to submit a return showing contributions and expenditure during the four years between elections. Candidates also must submit a return showing donations and expenditure – the time period for their reporting differs depending on whether or not they contested the previous election.

Recommendation 1

In NSW there should be continuous quarterly disclosure of political contributions and money from fundraising events by the political parties each year after NSW state elections. The final disclosure should be no later than one week prior to the next election. In the 21st Century new electronic methods of data reporting means this would be a reasonable step to take.

There should be prompt and transparent disclosure of all donations on a public website maintained by the Election Funding Authority. All contributions to a party, group or candidate must be available to the public before an election. We have a right to know who is bankrolling parties, groups and candidates before we vote.

The current practice of releasing this data to the public many months after the state election is totally unacceptable. The last election was in March 2007. However, it was only in December 2007 that members of the public could go to the EFA's office to go through the returns page by page while a member of the organisation has to sit and watch that nothing is removed from the folders. The latter is understandable, but a waste of resources.

While I have found the staff at the EFA most courteous, helpful and informative, such a situation is intolerable. This discourages all but the most dedicated and knowledgeable about the system to attempt find who is providing much of the money used by the state's political parties.

Recommendation 2

The law needs to be changed so that donations and expenditure data are placed on the EFA website as soon as it is received from the political parties.

There is a loophole available to companies and individual to hide their donations to individual candidates' campaigns in state elections which must be closed.

Many candidates have State Electoral Councils (SEC) that receive money for the candidates' campaign. Some of the money for state elections is even funneled through the parties' Federal Electoral Councils (FEC). Each candidate must report the amount of money they receive from their SEC or FEC, but they are not required to report the source of that money. For example, a property developer could give a candidate's SEC \$10,000 and the public would not know the candidate is receiving money from that developer. The head office of the party would have to report the developer's donation in their return, but it would be grouped with all the money the party received and not revealed by electorate.

Recommendation 3

Money given to each SEC and FEC must clearly be identified by donor's name in the candidate's return.

There is an increasing trend among the major parties, especially among state Liberal candidates running for the Legislative Assembly in NSW elections, to report receiving no donations nor any money from fund raising events.

Many of these candidates reported quite large campaign expenditure. Examples of Legislative Assembly candidates in 2007 who received **no donations** and yet had large expenditures in their campaigns include Michael Baird, Liberal for Manly (\$263,434). Barry O'Farrell, Liberal for Ku-ring-gai (\$42,237), Jillian Skinner, Liberal for North Shore (\$41,195), Edward Mandla, Liberal for Sydney (\$72,864), Gregory Smith, Liberal for Epping (\$134,732), Robert Stokes, Liberal for Pittwater (\$92,809) and Peter Debnam, Liberal for Vaucluse (\$93,834). And this pattern of no reported donations combined with large campaign expenditure goes on and on for the Liberals in the last NSW state election.

There are a few similar examples among Labor candidates in 2007. However, most ALP candidates reported receiving donations and money from fund raising events. In some instances the contributions they received and disclosed are quite large – Paul Gibson in Blacktown (\$336,355), Matt Brown in Kiama (\$209,547) and Kristina Keneally in Heffron (\$107,006).

Unlike the Liberals, at least we know the identities of contributors to many of the ALP candidates in the lead up to the 2007 state election. Any other method of funding is really just funneling money to individual electorates so the public doesn't know who is bankrolling their potential local member in the NSW Parliament.

Recommendation 4

Money earmarked for lower house electorate campaigns that is funneled through the head offices of the political parties must be identified by donors of that money.

Improving the Reporting of Donations Data by the EFA

In addition to continual disclosure of donations on the web site of the EFA, there are other steps that can be made so the public can understand who is donating, for what purpose and to realise the data is accurate. My understanding that changes will require amending NSW electoral laws.

Although the EFA collects information on direct donations and money collected at fund raising events, this is reported separately on their web site. This is an oversight since attendance at fund raisers can enhance access by donors to government ministers and other important parliamentarians.

Recommendation 5

Contributions to candidate, groups and parties should be labeled on the EFA web site either as direct donations or money from fundraising events.

Material isn't presented on the EFA web site in an easily accessible form. While this year the donations to the party and separately for each candidate in the 93 state electorates for the four year period 2003 – 2007 are in alphabetic order so it is easier to find companies and individuals within each party and electorate, it is impossible to search for a company across parties and electorates.

Recommendation 6

The EFA web site should be set up so that a person can type the name of a company, union, other organisation or individual into a search function and access all donations made by that entity to all parties and candidates. This should work for all years on the EFA web site – 2003 and 2007 data.

In order to ensure the integrity of the data collected by the EFA it is important to cross check data from parties to the AEC and EFA and the information submitted by parties and donors.

Unfortunately there are examples of contributions being reported to the AEC and not the NSW EFA and vice versa. There are instances when donors declare donations the party doesn't.

Also many donors fail to submit donors' forms both to the AEC and EFA. Although they are legally required to do so, I have been told there have been no prosecutions for failure to submit to the AEC since the mid 1990s and none at all by the EFA. Since many donors know this, there is little incentive to submit such forms. This is regrettable since such information is important for the public to see in order to fully understand who is buying influence with our politicians.

Recommendation 7

Donations declarations made to the EFA should be cross checked with the parties' returns made to the AEC. If there are discrepancies further investigations should be made of the political parties.

Recommendation 8

The NSW EFA should be adequately funded and given additional powers so they can investigate possible non-compliance with the law by political parties and donors to those parties.

The public has the right to know exactly what type of company or organisation is donating to the parties. This certainly isn't the case now. Personally I have worked for hours attempting to find information on many companies, and often have been unsuccessful even after paying for ASIC recommended brokers for information.

Companies must give an address, but it can be their accountant, lawyer or some other agent. They aren't required to give a phone number. Even when I can find phone numbers the owners of the businesses often refuse to disclose the type of work they do.

I will give several examples of companies that have donated considerable money to political parties in NSW yet little or nothing is known about them.

The following companies or organisations of this type have donated to the NSW ALP over the past five years. The total amount they have given over that period is in parentheses: Austerand Pty Ltd – Better Australia Foundation (\$140,000), Marston Pty Ltd (\$150,000), and Strategic Contacts (\$89,250). Even senior Sydney Morning Herald journalists have unsuccessfully attempted to discover the nature of work for some of these companies or organisations.

The list goes on for over 600 companies on both sides of politics. This defeats any notion of transparency in our disclosure system of sources of money for political parties.

Recommendation 9

All donors should be required to state the type of business in which they are engaged. This information should then be used by the EFA to categorise donations into industry type so the public can easily discover the amounts of money flowing into the coffers of the parties from various groups like property, hotels, clubs, tobacco and so on.

Local Government Elections

The reporting of contributions and expenditure in local government elections is especially inadequate in NSW. 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 and inspect them there after ringing for an appointment, or to request the data from each individual council. Most people I've discussed this with aren't even aware the information is available.

The public should have access to information about the money contributed to councillors' campaigns prior to casting their votes. It should be placed on the EFA web site and each council's web site no later than one week prior to the election.

Recommendation 10

All donations and expenditure for local government elections should be made available to the public in an electronic format a minimum of one week prior to the election. This information should be placed on the NSW EFA web site and the web sites of each individual council.

There should be public funding for local government elections. The purpose of public funding is to reduce the need for private donations. The amount a candidate, group or party receives in public funding should not exceed the money they spend on their campaigns.

Later I will speak about banning corporate and union donations, capping contributions by individuals including candidates to their own campaign, and capping electoral expenditure. However, since public funding for local government elections in NSW would be a new and innovative reform, I believe it should immediately be tied to certain conditions – such as only

available to candidates, groups and parties that only accept contributions from individuals capped at \$500 per donor.

Recommendation 11

Public funding should be introduced for NSW local government elections. Candidates, groups and parties are eligible for such funding if they only accept donations from individuals. These donations will be capped at \$500 per donor.

Limits on Donations and Electoral Expenditure

In the past years every time the suggestion is made that major electoral reform should be made in NSW, political leaders such as Bob Carr and Morris Iemma have argued that reform can only occur on a national level.

NSW has pioneered electoral reform in Australia starting in 1981. Such reforms were then followed by the federal government and finally many other states. Therefore, to say our state can't be the leader in this area is wrong. It probably is an excuse for wanting larger and large amounts of money to run ever expensive and wasteful election campaigns with the constant and uninformative 30 second grabs on television.

In order to create a more level playing ground for all political parties and avoid the dangers associated with seeking donations from companies and other organisations that want favours from our government, we must move quickly toward reforms. If we don't, our democracy runs the danger of being for sale to the highest bidders.

Carmen Lawrence has labeled the direction Australia is moving toward with the quest for more and more donations as a "corporate democracy" – the number of shares you purchase in the party of your choice determines your political power. Is this what we want for our country? I think not.

Australia lags far behind many other western democracies in reform of the electoral funding provisions in electoral law. Even the USA is more progressive in the requirements of continuous disclosure of donations.

One of the countries that can serve as a model for reform in our country is Canada. This country shares many characteristics with Australia. It is large in area, yet has a small population, and is a multicultural county that has a similar economic base to Australia.

Canada realised the corrupting influence of political donations a number of years ago. They began their reforms of the electoral funding system and have continued to fine tune it.

Like most western democracies, Canada does not allow donations from foreigners. The rationale is that individuals who are not allowed to vote in their country should not be allowed to have an influence on the outcome of their elections. Businesses are not allowed to make political contributions in Canada. However, in many other western countries where businesses can make donations, companies not registered in their country are not allowed to make political donations for similar reasons.

In contrast Australia does accept donations from people who are not citizens or permanent residents, as well as from companies that are not registered in Australia. This means that individuals such as Lord Michael Ashcroft have been able to contribute \$1 million to the federal division of the Liberal Party. Many foreign companies also have made substantial donations to parties, such as the large Chinese property company Shimao Holdings Company Limited that gave \$100,000 to NSW Labor in 2002-03.

Recommendation 12

Political donations should only be accepted from individuals who are Australian citizens or permanent residents. If corporate donations are allowed, the company should be registered in Australia.

As the Canadians recognise, donations from corporations and unions have the power to corrupt the political process. Therefore, they now ban all such donations. Only individuals are allowed to donate to political parties and the amount they can donate yearly is capped.

I think there is sufficient evidence that donations are damaging the fabric of our political institutions in Australia. This means all donations from corporations, unions and lobby organisations should be banned.

Recommendation 13

Political donations can only be made by individuals. These donations should be capped at \$2,000 per year to any one political party unless the person is a member of that party. The cap should be \$10,000 a year for members of the party. Candidates in elections can not donate more than \$10,000 of their own money to their campaigns.

If such reasonable measures won't be accepted by the major parties in our state, at least donations from industry groups that are most likely to benefit from decisions made by local and state governments should be banned immediately.

Such groups include the property industry, tobacco and all groups involved in the alcohol and gaming industries, including hotels, clubs and casinos. Many groups across political parties have called for such bans. Various branches of the Labor Party in inner Sydney have over the years called for bans on donations from property companies. In January 2008 an eastern Sydney Labor branch passed motions requesting the NSW ALP ban all donations from property companies, tobacco conglomerates and all companies that deal in alcohol, including bars and clubs.

Recommendation 14

If all corporate donations aren't banned, all donations from property companies, tobacco conglomerates and companies that deal in alcohol and gaming must be banned.

If the amount of money spent on election campaigns were capped there wouldn't be the need on the part of political parties to scramble for larger and larger amounts of money to fund their campaigns.

While the USA has far superior disclosure laws to Australia's, states in the US have not yet been able to limit electoral spending. This is due to their Supreme Court striking down such moves based on the right of freedom of speech. However, Canada has been able to put into place caps on electoral spending even with their Charter of Rights and Freedom.

Since limits on electoral spending are a crucial aspect of any real reform of our electoral funding laws, we must pursue such a path in Australia.

Recommendation 15

For state elections expenditure for individual lower house candidates should be capped at \$25,000 and the expenditure for a political party running a state wide campaign be capped at \$1 million.

Recommendation 16

Local government areas vary greatly in size, therefore a different formula needs to be put into place for those elections. A reasonable formula would be a cap on expenditure of 50 cents per voter on the electoral role in each ward or total local government area.

Misuse of Public Funds by Governments for Political Advantage

There have been a number of complaints on the federal and states levels that some government advertising is for the political advantage of the political party in power. In order to reduce unnecessary advertising and increase public confidence in the political process, safeguards need to be put into place.

Recommendation 17

The NSW Auditor General should be given the powers to vet all government ads prior to their running and reject those that aren't only for valid education of the public on important issues. Any deemed to be for the advantage of the political party in power would not be allowed to go ahead.

Electoral Funding and Expenditure Reforms Throughout Australia

I believe it is crucial that a national summit be called to explore all issues of electoral funding and expenditure in elections in Australia. This summit

should be composed of members of the public, academics working on electoral policy issues, and representatives of all political parties.

There is much duplication in disclosure of donations and expenditure at the federal and state levels. It is important that each state has its own disclosure scheme as well as one at the federal level. If we moved to a single federal system there is always the danger that a situation could arise like the Coalition under John Howard controlling both houses of parliament and changing the disclosure laws so there is little or no transparency.

However, there is much duplication between the federal and some state systems, and changes could be made to streamline the schemes and increase transparency.

There are many problems with the current federal laws under which the AEC operates. There are many loopholes for avoiding proper disclosure, and the AEC has too few powers to adequately deal with avoidance. There needs to be considerable moves to made major reforms in this area. Many suggestions for positive change have been recommended by the federal Joint Standing Committee on Electoral Matters in the past and should be acted on.

Recommendation 18

This committee should call on the federal government to convene a national summit to consider reform of the electoral laws in Australia. This summit should be composed of members of the public, academics working on electoral policy issues, and representative of all political parties.

A Final Point

There have been valid expressions of concern with the composition of the Electoral and Political Party Funding Committee.

Andrew Clennell summed up some of these concerns in the Sydney Morning Herald article published on 27 September 2007 entitled “Donations inquiry stymied by Iemma Government”.

In his article Mr Clennell said, “The Iemma Government has neutered an upper house inquiry into political donations by blocking the appointment of

one of the few vocal MPs on the donations issue, Lee Rhiannon of the Greens.” He goes on to say, “Ms Rhiannon has been the only MP to speak out consistently against the power of the hotel lobby and its donations to the Labor Party. The Greens have also called for the banning of donations from developers.”

Due to the Labor Government’s actions, there is a strong possibility that the public will believe this committee will act in such a way as to ignore the true importance of the problems in electoral funding in this state. In order to restore the perception of the NSW government’s objectivity and openness, I believe it is important that Ms Rhiannon be placed on this committee.

Recommendation 19

The committee should call on the Premier and Leader of the Opposition to formally move to have Lee Rhiannon included on this committee.

Norman Thompson