

Submission

on

Electoral and Political Party Funding

to the

Select Committee on Electoral and Political Party Funding

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31 January 2008

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1. Introduction

The Select Committee on Electoral and Political Party Funding was established by the Legislative Council of the Parliament of New South Wales on 27 June 2007 to inquire into and report on electoral and political party funding.

The Committee issued a Discussion Paper in November 2007 and invited public submissions to be received by 15 February 2008.

Festival of Light Australia is a national organisation which, among other things, has a longstanding interest in democracy, the rule of law, constitutionalism and the separation of powers. It is independent of all political parties.

2. Democratic principles

The funding of political candidates and parties in elections is an integral element of a democratic system of government. As the Discussion Paper states: “The way in which elections are funded and the nature of any associated controls are of critical importance to the integrity of the electoral process, both actual and perceived, and the strength of parliamentary democracy as a whole.”¹ Consequently, election funding should reflect and facilitate the kind of representative democracy cherished by the Australian people.

2.1 Individual freedom

As Professor Lumb points out in his book *Australian Constitutionalism*, the roots of the modern Australian system of government lie in the debates and battles in earlier centuries over providing a system of effective constraints on government power.² The idea of the rule of law, or limited government, overturned the earlier doctrine of unlimited sovereignty under which people were subject to the arbitrary will of the ruler.

The core idea of the Australian system of government is recognition of the right of the citizen to freedom under the law. This fundamental freedom is expressed in many ways, including the right to stand for election and vote, and also through the right of a citizen to use his financial resources to further his political objectives. Any constraint on the freedom of a citizen to fund political candidates or parties needs to be fully justified.

This recognition of individual freedom emerges from the Judaeo-Christian understanding of mankind being made in the image of God and therefore being entitled to respect and dignity.³

2.2 Freedom of association

Another central element of the dignity of mankind is the recognition that people are inherently relational and naturally join with others in groups of various kinds.

In a political context this involves “recognition of the fact that between the ruler and the mass of the citizenry there are a variety of groups to which the citizens belong. They may be occupational (guild, union, association), religious (church), educational (school, university), cultural and social. Certainly, in earlier periods, battles over authority and allegiance were often fought between an overweening State (Monarch) and the Church anxious to preserve the rights of its members but also at times

encroaching on such rights. The concept of limited sovereignty recognises that claims to allegiance or obedience may arise from a number of groups...”⁴

Political parties are among the kinds of association which citizens should have the freedom to form. Furthermore, political parties should have the freedom to raise funds and use them in political campaigns, subject only to constraints which have strong justification.

2.3 Civil society

Freedom of association provides the basis for civil society, which has been defined by the London School of Economics Centre for Civil Society as follows:

*Civil society refers to the arena of uncoerced collective action around shared interests, purposes and values. In theory, its institutional forms are distinct from those of the state, family and market, though in practice, the boundaries between state, civil society, family and market are often complex, blurred and negotiated. Civil society commonly embraces a diversity of spaces, actors and institutional forms, varying in their degree of formality, autonomy and power. Civil societies are often populated by organizations such as registered charities, development non-governmental organizations, community groups, women's organizations, faith-based organizations, professional associations, trade unions, self-help groups, social movements, business associations, coalitions and advocacy groups.*⁵

The links between civil society and democracy were explored by Alexis de Tocqueville and developed by 20th century theorists like Gabriel Almond and Sidney Verba, who identified civil society as having a vital role in a democratic order.⁶ They argued that many civil society organisations facilitate better awareness and a more informed citizenry, who make better voting choices, participate in politics, and hold government more accountable as a result. Such organisations also accustom participants to the processes of democratic decision making.

Consequently, election funding arrangements should facilitate, not hinder, the organisations which constitute civil society, including political parties, trade unions, business associations and advocacy groups.

2.4 Representative democracy

Australia's system of *representative democracy* must be distinguished from *direct democracy* on the one hand and *totalitarian democracy* on the other.

Representative democracy is characterised by elected representatives who form a parliament charged with the responsibility of making decisions and acting in the public interest – without direct consultation with the electorate. This enables swift and resolute action in the face of changing circumstances.

Direct democracy involves decisions being made either by referendum or by delegates to a ruling body bound to vote in accordance with decisions made by a majority of their electors. Such a system is inherently slow and can be dominated by sectional interests.

In a *totalitarian democracy*, elected officials are bound to support an ideology independently of the views of the electorate. The ideology may be considered beyond the understanding of the electorate. The duty of the officials is to ensure that any inconsistent public or private activities are eliminated.⁷

Representative democracy works best when elected representatives maintain a close relationship with their constituents. While not being bound by their electorate, representatives are then able to take the views of the electorate into consideration when decisions are made in parliament.

Election funding arrangements should be designed to facilitate a close working relationship between representatives and their constituents.

2.5 Limitation of abuse

While civil society has a vitally important role in a healthy democracy, some elements of society nevertheless create the potential for corruption and abuse. As the Discussion Paper states: “political donations may be used to purchase political favours, access to decision-makers, or consideration in policy formation, undermining faith in government and distorting the democratic process.”⁸

An important element of the Judaeo-Christian perspective on human society is an understanding of frailty or sinfulness of mankind. This notion is captured in Lord Acton’s famous dictum: “Power tends to corrupt and absolute power corrupts absolutely.”⁹

Consequently, some constraints on civil society and commercial institutions are necessary for the limitation of corruption and abuse.

3. Election funding

As outlined above, freedom of association, including the freedom to form political parties for the purpose of election campaigning, is one of the fundamental freedoms of citizens. This entails the freedom to raise and spend funds for election campaigning purposes.

3.1 Public funding

The Discussion Paper states (at 1.2) that “Public funding supports the democratic process by recognising that parties and candidates should have sufficient funds to be able to participate in elections.” This assertion presumes that government, rather than civil society, is responsible for ensuring that parties and candidates are adequately funded. This well-intentioned presumption has the potential to undermine the strength of political parties by reducing their dependence on supporters.

Government funding of parties and candidates conflicts with policy of requiring candidates to deposit with the Electoral Commission an amount of money, which is returned only if the candidate is elected or receives more than 4% of the total first preference votes.¹⁰

The policy of requiring modest deposits by candidates is not a significant obstacle to candidates having reasonable support in the community but may deter would-be candidates lacking such support. This policy acknowledges the important role of civil society in linking candidates with the wider community.

The notion that candidates should be entitled to public funding might be expected in a ‘top-down’ totalitarian democracy but not in a ‘bottom-up’ representative democracy.

3.2 Level of equality

The Discussion Paper further states (s 1.2) that public funding “is also a means of ensuring a level of equality between election participants, so that candidates are not simply elected because they have the most money to spend on their campaigns.”

The election funding reports¹¹ for the March 2003 State election (those for the March 2007 State election are not yet published) provide some data to assess this claim. A summary of the private and public funding of parties which received public funding following the 2003 election is presented in the following table.

Party	Private funds	Public funds	Public / Private
ALP	\$9,801,395	\$3,326,241	34%
CDP	\$532,858	\$231,711	43%
Greens	\$755,399	\$656,978	87%
Liberal/National	\$8,474,069	\$2,543,880	30%
Shooters	\$452,301	\$156,300	35%

The table shows that the amount of public election funding received as a percentage of political donations raised privately is: Liberal/Nationals 30%; Labor 34%; Shooters 35%; CDP 43%; Greens 86%.

Rather than “ensuring a level of equality between election participants”, the public funding each party received is roughly proportional to the amount of political donations each party was able to raise on its own. For four of the five parties receiving public funding this had no significant effect on their relative overall funding compared to each other.

The Greens were an exception. Public funding put the Greens in a more favourable funding position, especially relative to the two other minor parties – the Shooters and the CDP – than they would otherwise have been. The vote for the Greens, and thereby its public funding, may well have been boosted by the great prominence given in the media to environmental issues in recent times.

Judged by efficacy, public funding in the 2003 NSW election failed to deliver greater equality. The wealthiest party (ALP) and the poorest party (Shooters) received approximately the same percentage boost in their funding (34 to 35%). The main effect was to increase the amount available for election campaigning by all parties.

Judged by wisdom, public funding is dubious at best. By providing a conduit for funding which bypasses civil society, the representative nature of Australian democracy is weakened. Public funding increases the likelihood of celebrity candidates, who are disconnected from civil society, being elected.

3.3 Inappropriate sources

The third reason for public funding given in the Discussion Paper is “to minimise the danger of electoral funds being obtained from inappropriate sources.”

The major parties – those with a real chance of winning government – are presumably at greatest risk of obtaining electoral funds from inappropriate sources. Since the 2003 public funding merely added another 30-34% to the \$8.5 million and \$9.8 million they raised privately, this public funding is unlikely to have affected their attitude to funds from inappropriate sources.

If public funding were discontinued, the most likely result would simply be less money spent in total on electioneering.

Of course it would be possible to have a system where elections were entirely publicly funded and political parties were prohibited from raising private funds for election campaigns but this is incompatible with a free, democratic society.

Private funding from inappropriate sources is undesirable and should be resisted, but public funding does not diminish this risk. Potentially inappropriate influence is better addressed through requirements for disclosure of political contributions and campaign expenditure.

3.4 Tax deductibility

The Discussion Paper (s 1.8) raises tax deductibility of political donations as a possible area for reform. Of course this is a matter for federal legislation but it would certainly be within the power of the NSW Parliament to commend action on this matter to the Commonwealth Parliament.

An important effect of tax deductibility of donations generally is to strengthen the links between citizens and the associations and parties which make up civil society. In the case of political parties, tax deductibility of donations would facilitate the raising of private funds for campaign purposes.

3.5 Recommendations

Recommendation 1

In order to avoid undermining the important relationships between citizens and political candidates, public funding of political parties and candidates in elections should be discontinued.

Recommendation 2

In order to minimise the risk of inappropriate influence on political parties and candidates significant private contributions to political parties and candidates and political campaign expenditure should continue to be subject to mandatory public disclosure.

Recommendation 3

In order to strengthen the links between citizens and political candidates, the federal government should be asked to consider raising the maximum tax-deductible donation to a registered political party.

4. Disclosure of election funding

Mandatory public disclosure of financial contributions to political parties and candidates and their campaign expenditures is an important safeguard against inappropriate influence on the political system.

4.1 Disclosure threshold criteria

Disclosure thresholds should be set to achieve an appropriate balance between encouraging participation in the democratic process through financial support to political parties and candidates, and the public interest in knowing the source of political donations, especially larger donations.

The current disclosure thresholds (established in 1993) are \$1500 for gifts to parties, \$1000 for gifts to groups and \$500 for gifts to candidates.

Factors supporting an increase in the threshold for disclosure include:

- (a) preserving the privacy of citizens (and their businesses) who choose to make political donations, and
- (b) limiting the compliance costs of political parties in reporting the sources of donations over the threshold.

The disclosure threshold should be high enough to allow political parties to attract adequate private donations without an undue administrative burden of disclosure.

The major factor limiting any increase in the threshold is the public interest of enabling the public to be aware of the major supporters of political parties. A robust democracy requires openness and accountability in the contributions to political parties, since those contributing large amounts could have significant influence over candidates who are elected to positions of responsibility and authority. The disclosure threshold should be set at a level that will allow the public knowledge of the source of the larger donations to political parties and candidates.

4.2 Election funding data

The Election Funding Reports¹² produced by the NSW Election Funding Authority show summaries of the political contributions received and electoral expenditure incurred by Legislative Assembly candidates and by parties endorsing Legislative Council candidates.

The Legislative Assembly reports show that donations less than the \$200 threshold for candidates in the 2003 election accounted for only 5% of the total income. The remaining 95% of their income was from donations above the threshold and had to be disclosed. This threshold was unreasonably low, which is no doubt why it was increased to \$500 for the 2007 election.

The Legislative Council report shows that donations less than the \$1500 threshold for parties in the 2003 election (which remained unchanged for the 2007 election) accounted for 15% of the total income. The remaining 85% of party income had to be disclosed. Analysis of the Legislative Council data yields the relationship between the threshold and the proportion of income below it shown in the following table.

Party income which would be disclosable with different thresholds							
Threshold	\$1500	\$2500	\$4000	\$5000	\$6000	\$7000	\$10000
Proportion Exempt	15%	17%	20%	21%	26%	27%	30%
Proportion Disclosable	85%	83%	80%	79%	74%	73%	70%

It is evident from the table that a threshold of \$4000, for example, would result in 80% of the total party income being disclosable. The remaining 20% would be exempt from detailed disclosure.

Another way of analysing the data is to consider the number of donations, rather than the amount raised. The number of exempt donations under the \$1500 threshold is estimated to be about 3000 while the reported number of donations over the threshold is 749, giving a total estimated number of 3749 individual donations. Therefore the number of donations under the \$1500 threshold is about

80% of the total. If the threshold were raised to \$4000, the proportion of exempt donations would rise to about 87%.

4.3 Determining disclosure thresholds

The three criteria listed above for determining an appropriate threshold were: limiting compliance costs, preserving donor privacy and safeguarding the public interest. Compliance costs would be reduced slightly by lifting the threshold but, since (about) 80% of donations are currently exempt from detailed reporting, the reduction would be small. Donor privacy for more generous donations would be considerably enhanced by lifting the threshold, which may help parties raise funds. The public interest would be diminished by lifting the threshold but for a threshold increase to \$4000 the decrease would be small, since 80% of donated funds would still be open to public scrutiny.

Determining the threshold through reference to a fixed proportion of the total donation income raised has several advantages:

- (a) It safeguards the public interest by ensuring that a fixed proportion of the donation income raised is subject to public disclosure.
- (b) It adjusts the threshold to compensate for changes in donor generosity affected by changing salaries, living costs and other economic factors.
- (c) It can also be applied to determine an appropriate threshold for donations to candidates.

4.4 Recommendation

Recommendation 4

The disclosure threshold for each election should be set by analysing reported donations at the previous election and determining a threshold intended to ensure that approximately 80% of total donation income is publicly disclosed.

On this basis the threshold for donations to parties in the 2007 election would have been \$4000, with a likely threshold for the 2011 election of \$5000.

5. Limits and prohibitions

In the absence of any evidence that the political process in New South Wales is being corrupted by political influence linked to large donations, there is no justification for limiting the size of donations to political parties or prohibiting donations from particular sources.

Disclosure of donations above a fixed threshold provides the opportunity for other political parties, the media and the general public to raise concerns about any perceived undue influence associated with such donations.

6. Endnotes

1. *Discussion Paper*, Select Committee on Electoral and Political Party Funding, November 2007, s 1.1.
2. Lumb, RD: *Australian Constitutionalism*, Butterworths, 1983, Ch 1.
3. Genesis 1:27.
4. Lumb, *op cit*, p 5.
5. *What is civil society?* Centre for Civil Society, London School of Economics, 1 January 2004.
6. Almond, G, & Verba, S; *The Civic Culture: Political Attitudes And Democracy In Five Nations*, Sage, 1989.
7. See the 1952 book *The Origins of Totalitarian Democracy* by Israeli historian J. L. Talmon.
8. *Discussion Paper*, *op cit*, s 1.4.
9. "Letter to Mandell Creighton, 5 April 1887", in *The Life and Letters of Mandell Creighton*, 1904, p 372 available at <http://ia300215.us.archive.org/0/items/a566044401creiuoft/a566044401creiuoft.pdf>; also "Letter to Mandell Creighton", 5 April 1887, in *Essays on Freedom and Power*, Gertrude Himmelfarb (ed.) (World Publishing, 1948), pp. 335-336.
10. For Legislative Assembly candidates the deposit is \$250. For Legislative Council candidates the deposit is \$500 for an ungrouped candidate and up to \$5000 for a group. See the NSW Electoral Commission website www.elections.nsw.gov.au.
11. Summary of political contributions received and electoral expenditure incurred by parties that endorsed a group or by independent groups at legislative council 2003 at: http://www.efa.nsw.gov.au/__data/assets/pdf_file/0015/30138/2003SummaryPartiesGroups.pdf
12. See http://www.efa.nsw.gov.au/state_government_elections/election_funding_reports