

**Submission
No 121**

INQUIRY INTO ELECTORAL AND POLITICAL PARTY FUNDING

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The Greens NSW submission to the Select Committee on Electoral and Political Party Funding



From: Lee Rhiannon, Greens MP
Date: 13th February 2008

EXECUTIVE SUMMARY

The current system of donating to political parties and fundraising for election campaigns is in such widespread disrepute that there is an urgent need for a major overhaul of the relevant legislation.

The rich and powerful in this country have access to politicians that few members of the public will ever experience. Much of this access is gained through large political donations and large contributions at fundraisers. It gives the appearance that many government decisions are influenced by donations rather than based on the common good.

I base the assertion that the current system is now widely discredited on the large number of media stories reflecting this sentiment and my own experience of speaking to community groups and individual members of the public across NSW.

Over the past six years the Greens Political Donations project, www.democracy4sale.org, has revealed the true extent of the influence that corporate donations are having on our democratic process. Case studies on donations associated with property developers, the hotel industry, the Manildra Company, the tobacco industry and the Exclusive Brethren included in this submission highlight how interest groups can use the current electoral funding process to further their own sectional interests.

The NSW Inquiry into Electoral and Political Party Funding has the potential to provide leadership for the growing call for reform of the political funding process in Australia.

In this submission a number of recommendations for changes to the current system are set out. Some recommendations do refer to Australian Electoral Commission (AEC) activities. Although the terms of reference only relate to state and local government elections, some AEC practices, such as annual disclosure of donations received by the state division of parties, are relevant to this inquiry.

In summary the Greens support:

- a ban on political donations from companies and other organisations,
- a cap on expenditure in election campaigns for political parties, candidates and third parties,
- greater transparency of the donation process,
- improved reporting of all donations disclosure records on the internet,
- public funding for local government elections,
- proponents of Development Applications to disclose any political donations, and
- a National Summit on political funding.

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1. Donations

In the nine years since 1998/99 when the AEC started publishing donations returns on its website, the major parties in NSW and their national divisions have accepted over \$189,195,951 in donations from corporations, organisations and individuals.

Last year alone the NSW divisions of the major parties declared a combined \$13,405,848 in donations to the AEC. Millions more were donated in amounts less than the \$10,500 donations disclosure threshold.

2007 NSW State Election

The NSW Election Funding Authority (NSWEFA) recently published a total of \$64,793,858 of donations made to all political parties and candidates during the four year period leading up to the 2007 NSW state election.

- The Labor Party NSW branch declared \$27,647,388 in donations.
- The Liberal Party NSW branch declared \$29,585,696 in donations.
- All election candidates declared a further \$6,411,225 in donations.
(62% of these donations were to Labor candidates, largely due to the fact that Liberal candidates did not declare any campaign donations)

The campaign expenditure declared for the same period by all candidates and parties totalled \$36,221,975.

- The Labor Party NSW branch spent \$16,819,116.
- The Liberal Party NSW branch spent only \$5,283,867.
- Labor Party candidates spent a further \$3,069,066, which was 30% of the total \$10,491,116 spent by all election candidates.

In total, Labor spent \$19,888,182, nearly four times as much as the Liberal party, in the lead up to the 2007 NSW state election.

This corporatisation of electoral funding has undermined the public's faith in the democratic process. Many people believe that:

- political donations are a form of bribery or corruption;
- those who give donations and attend expensive party fundraisers are buying access to decision makers;
- politicians are influenced by large donations to their party;
- donors and politicians exploit loopholes and weaknesses in disclosure laws to hide money and avoid scrutiny;
- large donations can create a conflict of interest for politicians, and
- governments make decisions that favour donors to their party even when there is significant community opposition to the decision.

The Greens NSW has campaigned for many years for a ban on political donations from companies and other organisations. We believe this would be the most comprehensive way to restore integrity to the political funding system.

If this proposal is not adopted, there is a pressing need to ban donations from certain industry sectors that are having a damaging impact on our democratic system in NSW. In particular the Greens NSW support an immediate ban on all political donations from property developers, tobacco companies, hotels, clubs and other alcohol related companies.

Case studies on the impact of donations from developers, hotels and clubs, the tobacco industry and other special interest groups are contained in Appendix 1.

The Greens urge this Inquiry to acknowledge the harmful influence that these large donors have had on government decisions regarding planning and development, environmental protection, liquor licensing laws, the regulation of poker machines and smoking rules in hotels.

Recommendation 1:

- 1.1 Ban all forms of donations to political parties except those donations received from individuals or bequests.
- 1.2 If a total ban is not adopted, move to immediately ban all political donations from property developers and companies in tobacco and alcohol related industries.
- 1.3 Cap donations to the level of \$10,000 annually from individuals who are not members of the political party receiving the donation.
- 1.4 Ban all donations from foreign donor companies or individuals.

2. Disclosure of Donations

Political parties

The second reading speeches to the 1981 NSW Election Funding Act and the 1984 amendments to the Commonwealth Electoral Act set out a commitment to transparency to ensure the public knows the source of money received by political parties. However, the reality is that it is very difficult for the public to access this information.

Transparency depends on the maintenance of a rigorous and regular disclosure regime. The current AEC and NSWFEFA procedures fall short in many areas.

An examination of information disclosed through the NSWFEFA and the AEC reveals many procedural inconsistencies and loopholes in the rules that allow both donors and political parties to avoid full and timely scrutiny of their electoral funding.

The majority of political parties, particularly the larger ones, are registered both with the NSWFEFA and the AEC. The NSWFEFA and the AEC have very different disclosure regimes. This is confusing and means a duplication of work by both the donors and the political parties in reporting donations.

The NSWFEFA only requires parties to submit a disclosure return every four years following a state election. This means that many donations only have to be disclosed several years after they are made. Also, many of the donations declared for the four year period leading up to a state election are not related to the state election campaign. In some cases donations are associated with federal and local council elections and general activities.

The AEC requires state and federal divisions of political parties to submit annual returns disclosing income and expenditure. This information can sometimes include donations that relate to a state or local council election that occurred during that financial year.

Essentially there is a high level of duplication between the state and federal electoral commissions. If this duplication were removed it would allow political parties to more efficiently manage proper disclosure of income and expenditure. The NSWFEFA could assist this process by changing its disclosure process from four yearly election cycles to an annual disclosure process in line with the AEC process.

Donor companies

All donors who donate more than \$1,500 are required to submit a disclosure return to the NSWFEFA every four years and also to submit an annual disclosure return to the AEC for donations over \$10,500. Research undertaken by the Greens Democracy4sale project using data from the AEC and NSWFEFA has found that many donors do not submit returns. In some years it appears that about 50 per cent of donors fail to lodge a disclosure form with the AEC.

When a donor fails to lodge a disclosure form they have broken the law. However the AEC and NSWFEFA have limited resources to investigate and prosecute companies.

It would encourage companies to meet their obligations if there was a more streamlined process for disclosing donations. Donors should be able to make an annual disclosure in a one step process. Federal and state agencies could then use the relevant disclosure information as required.

Publishing donations on the web

Details of all political donations received by parties and candidates should be displayed on the NSWFEFA website for both state elections and local government elections. The public should be able to enter the name of their local member, a candidate or a company and readily see details of all the donations they have given or received. This should be the baseline standard for transparency in the public disclosure of donations information.

The current level of web technology should make it easy and affordable for the NSW EFA to both allow for electronic lodgement of returns via the internet, and to display all the donations data stored in its database in a user friendly, fully searchable website. People should be able to view donations by donor name, donor industry, year, electorate, candidate, party or amount. The Greens democracy4sale.org website has provided this service to the public for the past four years.

Further, donor companies should be categorised into industry categories to help the public better understand the influence that industry sectors are exerting on the political process. The Greens Democracy4sale project has researched and categorised donor companies over the past six years, which has greatly improved the transparency of the influence of political donations. See <http://www.democracy4sale.org>.

As it currently stands, the NSW EFA website restricts the public's ability to analyse information about donor companies and donations.

Elections Canada has an excellent website where donations above \$200 go on the public record within four months, since donor declarations are made quarterly. By contrast, NSW election donation disclosure data can take over four years to appear on a public website. The Canadian website also publishes raw election data in spreadsheets to enable research and analysis of the data. See <http://www.elections.ca>.

Continuous disclosure of donations

Electronic lodgement of party disclosure returns using a web based reporting system would allow for more regular disclosure of donations. It would be feasible for parties to continuously disclose all donations they receive at state and local government level to the NSW EFA, and for the donations to be regularly published on the public record, especially before elections.

The time lag between when candidates receive donations during an election campaign and when those donations are publicly disclosed months after the election dramatically reduces the accountability of political parties and candidates.

For example, the Shooters Party MLC Roy Smith was the Shooters party candidate for the March 2007 State Election. At the time he was also the Executive Officer of the Sporting Shooters Association Australia (NSW). That organisation donated over \$458,000 to the Shooters Party campaign to elect Roy Smith. The donation was not disclosed on the EFA website until February 2008. The information loses its relevance so far removed from the election.

Voters have a right to know about donations before they go to the polls. To this end, the Greens NSW made significant efforts to continuously disclose all donations over the disclosure threshold in the lead up to the last state and federal elections on the Greens party's website.

Tightening disclosure laws

There is a widely held public perception that donors and politicians exploit loopholes and weaknesses in our disclosure laws to hide donations and avoid public scrutiny. Disclosure procedures need to be tightened to restore public confidence in the system.

For example, in the 2007 state election returns lodged with the NSWFEA, the Liberal Party candidates did not disclose receipt of any donations. Yet each sitting member has declared election expenditure averaging around \$40,000 to \$50,000. In the marginal seat of Terrigal, Liberal shadow Minister Chris Hartcher declared campaign expenses of over \$200,000 yet he disclosed no donations. Willoughby's Liberal MP Gladys Berejiklian spent over \$150,000 on her marginal seat campaign, yet declared she received no donations.

The Liberal party candidates channelled all their election donations through the NSW branch party office. While strictly speaking this practice is permissible under the current regime, it is flouting the basic tenets of accountability and transparency. People's expectation of a donations disclosure regime is that it will show them who has donated to an election campaign.

In the previous 2003 state election the Liberal Party candidates only disclosed one lump sum donation from their election campaign account. Again, it is this failure to stand accountable to the voting public that turns people off the democratic process.

In another example, the NSW Labor Party held a fundraising event prior to the 2007 state election where 21 hoteliers each donated \$9,999, just under the AEC's disclosure threshold of \$10,500, and thus avoided having to disclose their donations to the AEC. The donations were not revealed to the public until over a year later when the NSWFEA published the 2007 state election donations (see Appendix 3).

Preventing the risk of corruption in local government

In 2007 the Independent Commission Against Corruption (ICAC) released a position paper titled 'Corruption Risks in NSW Development Approval Processes'. It reported that seventeen per cent of the complaints that the ICAC receives relate to planning, and 28% of all requests for corruption prevention advice concern planning matters.

In particular the ICAC recommended that any proponent that submits a development application for consideration by a local council or the Planning Minister should be made to publicly declare all political donations they have made to elected Councillors, their campaigns, their parties or the Minister or his or her party or campaign.

Further, it recommended that local government Councillors must declare any donations they have received from a proponent, and abstain from discussion or voting on matters affecting campaign donors.

Given that last year alone property developers donated \$4,701,433 to the major parties, which represented 22% of all political donations, these recommendations should be introduced immediately to prevent the risk of corruption in the planning process.

Recommendation 2:

- 2.1 The NSWFEA change its disclosure period for political parties to each financial year to coincide with the AEC system. (Candidates would still be required to submit returns after their respective local, state and federal elections.)
- 2.2 All party disclosures be submitted using an electronic lodgement form via the internet (unless an exemption is granted).

- 2.3 All donations are published in a user-friendly searchable database on the respective websites of the AEC and NSWFEFA. These donations should be searchable by either date, party, candidate, electorate, donor or amount, as appropriate.
- 2.4 Donors contributing more than \$1,500 should be required to submit an annual return to both the AEC and NSWFEFA in the relevant financial year, specifying if the donation is for local, state or federal activities.
- 2.5 Fund the NSWFEFA to set up an online disclosure system to enable donors, political parties, candidates, associated entities and third parties to disclose donations online, and for this material to be made readily available to the AEC.
- 2.6 Fund the NSWFEFA to improve the publishing of donations data on the public website.
- 2.7 Require all donations over \$1,500 reported by political parties and candidates to the AEC and the NSWFEFA to include information on the full contact details and the nature of the donor's activities (eg type of company, industry or occupation if the donor is an individual).
- 2.8 Provide the AEC and the NSWFEFA with adequate powers and resources to enforce full disclosure by parties and donors.
- 2.9 In accordance with ICAC recommendations, require all proponents of development applications to publicly declare any donations made to elected representatives, their campaigns or parties, or to the Planning Minister or his or her party or campaign.
- 2.10 Require all local government Councillors to abstain from discussion or voting on matters affecting their campaign donors.

3. Expenditure

An effective way to bring fairness to the system of electoral funding and to reduce the corrupting influence of large donations is to put controls on the demand side. This can be achieved by introducing caps on election expenditure.

In New Zealand the cap on expenditure for individual candidates is \$20,000 and \$1 million for political parties. This means that a political party in New Zealand can spend up to \$2.38 million on its 'election expenses' - \$1 million plus \$20,000 for each of the 69 electorates contested by the party.

In Canada the cap on expenditure is calculated based on the number of voters in each electorate. Third party advertising is also limited to \$150,000.

Recommendation 3:

- 3.1 For state elections expenditure for individual lower house candidates be capped at \$30,000 and the expenditure for a political party running a state wide campaign be capped at \$1 million (not including its candidate's lower house expenditure).
- 3.2 Place a cap on local government election expenditure by candidates and a group of candidates at whichever is the greater amount of: 50 cents per voter, calculated on per capita basis according to the number of voters on the electoral roll in the local government area/ward, or \$10,000.
- 3.3 Statewide party expenditure for local government elections should be capped at \$500,000. This amount is separate from campaign expenditure incurred by the party's candidate or group of candidates for a local council area or ward.

4. Public Funding

The Greens support the introduction of public funding reforms similar to the system that is now working successfully in Canada.

In 2004 Canada introduced new electoral funding laws that only allow political donations from individuals. No other sources are permissible. Canadian political parties receive approximately three times the public funding of political parties in Australia, paid in quarterly instalments, giving a steady public income. Spread over a four year parliamentary term this adds up to \$6.80 per vote. By contrast, parties in NSW receive a lump sum payment after each election.

Canada's new laws have reduced public cynicism towards politicians. Whilst some public wariness of politicians' motives still persists, accusations of buying political influence are no longer being made, as donations are not large enough to significantly corrupt. In the absence of large corporate donors, Canada's new laws encourage parties to seek more donors, thereby increasing grassroots political involvement.

If similar laws were introduced in NSW, it would fix the single most important electoral funding problem at present, namely, the perceived and real influence of big donations on political decision-making.

Local government elections

Considering public funding is provided for political activities in state and federal elections, it is logical to extend this provision to local council elections.

Public funding for state and federal elections is widely accepted in Australia. Although there periodically is controversy about some specific payments there is no prominent voice for the removal of this form of funding from the current political process.

There would be wide support for public funding of local council elections, bringing local council elections into line with state and federal elections. Public funding for electoral expenses would help reduce the influence exerted by big donors, and it is a necessary prerequisite for cleaning up the political funding process. Public funding also enhances democracy as it assists those who are not wealthy to engage in elections.

Public funding of TV and radio advertising

In New Zealand public funding consists largely of funded broadcasts. The Electoral Commission negotiates with broadcasters about how much free and discounted air time they will give to parties. Since 1990 the Electoral Commission has purchased broadcasting time for candidates to screen election advertisements. New Zealand's public radio and television stations also allocate time for candidate's opening and closing speeches.

The Greens support the provision of publicly funded election advertisement timeslots on free to air television and commercial radio and the ABC.

Recommendation 4:

- 4.1 Pursue the introduction of Canadian style electoral funding laws in NSW, including the introduction of publicly funded election advertising during the election campaign period.
- 4.2 Provide public funding for local government elections with funding granted to those candidates or groups who gain four per cent or more of the primary vote and those who are elected.
- 4.3 The NSW public funding of candidates and groups in local government elections to be based on a reimbursement model requiring invoices or receipts for election expenditure to be submitted.
- 4.4 The suggested size of the funding pool for each council or ward should be the same as applies for Legislative Assembly seats, adjusted according to the number of voters on the electoral roll for each council or ward.
- 4.5 The maximum funding entitlement of a candidate or group to be calculated by reference to the number of votes or percentage of vote obtained.
- 4.6 No candidate or group is to receive more than half of the total pool of potential funding available for the council or ward contested.

5. Associated Entities

In addition to contributions made directly to candidates and parties, donations can also flow through companies, trusts and other entities associated with the political parties. These organisations are often referred to as associated entities. There are about 80 associated entities listed with the AEC.

For more information on associated entities see Appendix 2.

Under current federal laws associated entities are fined \$1,000 if they do not disclose details of a donor, but the donation received does not have to be forfeited. If a party accepts an anonymous donation it can be fined \$5,000 and has to forfeit the money given by the donor. This inconsistency needs to be removed by applying the stricter rule to associated entities as well.

Recommendation 5:

- 5.1 The rules for donors giving to political parties, candidates and associated entities needs to be consistent at both state and federal levels.
- 5.2 All anonymous donations over \$1,500 to political parties, candidates and associated entities to be forfeited to the AEC or the NSWFEA. Fines of up to \$5,000 to be imposed on political parties, candidates and associated entities for accepting an anonymous donation of more than \$1,500.

6. Third party expenditure

The involvement of third parties in collecting money and campaigning in elections requires tighter controls.

The term “third parties” refers to individuals or organisations that engage financially in an election campaign but are not candidates, political parties or their associated entities. Third parties may be special interest groups, lobby groups or individuals, corporate or institutional supporters of a political party or candidate.

Third parties are currently required by the AEC to disclose details of the donations made to political parties or candidates, donations they receive for election related expenditure and their expenditure over an election period on election advertising, campaign material, mail-outs, polling and research.

Election expenditure caps on third parties would enhance our democracy and remove loopholes that would enable parties to avoid any expenditure caps placed on parties.

The proposed change to expenditure caps set out in the recommendation below is largely based on the 2000 Canadian Election Act. The new law is working well in Canada and has survived at least one legal challenge in the Supreme Court of Canada.

Recommendation 6:

- 6.1 Third party expenditure to be capped at \$50,000.
- 6.2 The cap to apply from four months prior to the state election date, up to and including the election date.
- 6.3 A third party expenditure cap of \$5,000 during the four months leading up to a local government election.

7. NSW Election Funding Authority

The current composition of the NSW Election Funding Authority as specified in Section 6 of the Election Funding Act is the Electoral Commissioner, a nominee of the Premier and a nominee of the leader of the Opposition.

One of the functions of the NSW EFA is to rule on what constitutes electoral expenditure under the Election Funding Act in order to determine whether candidates receive electoral funding for that item of expenditure. Effectively a Labor Party and Liberal Party appointee adjudicate on their own electoral expenditure and that of the smaller political parties and independent candidates. This is inappropriate. The method of determining the composition of the NSW EFA creates an unethical set of circumstances. Party political appointments to the NSW EFA should end.

Further, the NSW EFA requires more permanent staff to oversee more thorough disclosure procedures for state and local government elections, and to help build the corporate knowledge of the organisation.

Recommendation 7:

- 7.1 Amend the legislation so that the three staff positions at the NSW EFA are comprised of the Electoral Commissioner and two senior officers of the NSW EFA.
- 7.2 Increase staffing levels at the NSW EFA.

8. National Summit on political funding

Former NSW Premier Bob Carr and Premier Morris Iemma have both dodged the issue of donations reform for NSW state elections and local government elections by saying that they support reform but it needs to take place at the national level.

While NSW can initiate widespread political funding reform, there is a clear need for a consistent national approach to improve funding and disclosure standards and avoid unnecessary duplication between federal and state agencies.

A federal government sponsored National Summit on this issue would help focus the debate on resolving the complexities of establishing a system based on the highest standards of probity and transparency.

Recommendation 8:

- 8.1 That the NSW government request the federal government to initiate a National Summit on Political Funding open to a range of politicians, academics, representatives of current donor groups and members of the public.

Conclusion

Political donations have eroded the democratic process. If we want a thriving, democratic society where the public has faith in politicians and their decisions, many changes must be made to the electoral funding system in Australia. These include greater transparency in the source of donations, limits or bans on donations from corporations and other organisations, and caps on electoral spending.

Decisions by governments must be based on the common good, not the needs and wishes of powerful interest groups.



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SUMMARY OF RECOMMENDATIONS

Recommendation 1: Donations

- 1.1 Ban all forms of donations to political parties except those donations received from individuals or bequests.
- 1.2 If a total ban is not adopted, move to immediately ban all political donations from property developers and companies in tobacco and alcohol related industries.
- 1.3 Cap donations to the level of \$1,000 annually from individuals who are not members of the political party receiving the donation.
- 1.4 Ban all donations from foreign donor companies or individuals.

Recommendation 2: Disclosure of Donations

- 2.1 The NSWFEFA change its disclosure period for political parties to each financial year to coincide with the AEC system. (Candidates would still be required to submit returns after their respective local, state and federal elections.)
- 2.2 All party disclosures be submitted using an electronic lodgement form via the internet (unless an exemption is granted).
- 2.3 All donations are published in a user-friendly searchable database on the respective websites of the AEC and NSWFEFA. These donations should be searchable by either date, party, candidate, electorate, donor or amount, as appropriate.
- 2.4 Donors contributing more than \$1,500 should be required to submit an annual return to both the AEC and NSWFEFA in the relevant financial year, specifying if the donation is for local, state or federal activities.
- 2.5 Fund the NSWFEFA to set up an online disclosure system to enable donors, political parties, candidates, associated entities and third parties to disclose donations online, and for this material to be made readily available to the AEC.
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- 2.10 Require all local government Councillors to abstain from discussion or voting on matters affecting their campaign donors.

Recommendation 3: Expenditure

- 3.1 For state elections expenditure for individual lower house candidates be capped at \$30,000 and the expenditure for a political party running a state wide campaign be capped at \$1 million (not including its candidate's lower house expenditure).

- 3.2 Place a cap on local government election expenditure by candidates and a group of candidates at whichever is the greater amount of: 50 cents per voter, calculated on per capita basis according to the number of voters on the electoral roll in the local government area/ward, or \$10,000.
- 3.3 Statewide party expenditure for local government elections should be capped at \$500,000. This amount is separate from campaign expenditure incurred by the party's candidate or group of candidates for a local council area or ward.

Recommendation 4: Public Funding

- 4.1 Pursue the introduction of Canadian style electoral funding laws in NSW, including the introduction of publicly funded election advertising during the election campaign period.
- 4.2 Provide public funding for local government elections with funding granted to those candidates or groups who gain four per cent or more of the primary vote and those who are elected.
- 4.3 The NSW public funding of candidates and groups in local government elections to be based on a reimbursement model requiring invoices or receipts for election expenditure to be submitted.
- 4.4 The suggested size of the funding pool for each council or ward should be the same as applies for Legislative Assembly seats, adjusted according to the number of voters on the electoral roll for each council or ward.
- 4.5 The maximum funding entitlement of a candidate or group to be calculated by reference to the number of votes or percentage of vote obtained.
- 4.6 No candidate or group is to receive more than half of the total pool of potential funding available for the council or ward contested.

Recommendation 5: Associated Entities

- 5.1 The rules for donors giving to political parties, candidates and associated entities needs to be consistent at both state and federal levels.
- 5.2 All anonymous donations over \$1,500 to political parties, candidates and associated entities to be forfeited to the AEC or the NSWFEFA. Fines of up to \$5,000 to be imposed on political parties, candidates and associated entities for accepting an anonymous donation of more than \$1,500.

Recommendation 6: Third Party Expenditure

- 6.1 Third party expenditure to be capped at \$50,000.
- 6.2 The cap to apply from four months prior to the state election date, up to and including the election date.
- 6.3 A third party expenditure cap of \$5,000 during the four months leading up to a local government election.

Recommendation 7: NSW Election Funding Authority

- 7.1 Amend the legislation so that the three staff positions at the NSWFEFA are comprised of the Electoral Commission and two senior officers of the NSWFEFA.
- 7.2 Increase staffing levels at the NSWFEFA.

Recommendation 8: National Summit on Political Funding

- 8.1 That the NSW government request the federal government to initiate a National Summit on Political Funding open to a range politicians, academics, representatives of current donor groups and members of the public.
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APPENDIX 1 - POLITICAL DONATIONS CASE STUDIES

Source: www.democracy4sale.org

Introduction

Corporate donations to political parties appear to many people as a corrupting force in our political system. Yet it is difficult to establish that the giving of donations allows the donors to directly influence government decisions. Companies may give money and then receive a favourable outcome but the public is not privy to these arrangements. Agreements reached between party leaders and corporate managers at their private fund raising dinners are not disclosed.

However, we can show a broader pattern of influence where during the period that donations from a particular industry have increased the laws that govern activities in that sector have been amended in ways that benefit the corporate sector.

The following case studies examine where:

1. Millions of dollars in developer donations to the major parties coincided with bipartisan planning law changes that favoured developers,
2. Huge donations from the hotel and clubs industry to NSW Labor coincided with law changes that benefited hotels,
3. Tobacco industry lobbies Government and Opposition with large donations,
4. New ethanol fuel subsidies followed massive donations from Manildra to the federal government,
5. Exclusive Bretheren can influence election agendas whilst avoiding disclosure.

1. Developer Donations

In the past nine years property developers have donated over \$21,569,078 to the major parties in NSW. If you include the federal divisions of the major parties that figure goes up to \$31,136,203. In 2006/07, despite the disclosure threshold being raised from \$1,500 to \$10,500, developer donations peaked with \$3,275,933 flowing to the major parties.

The rise of developer donations in recent years has coincided with changes in planning and development laws. Under successive NSW governments, both Labor and Coalition, the Environmental Planning and Assessment Act (EPAA), a progressive piece of legislation when passed in 1979, has been successively watered down. The introduction of EPAA Part 3A provisions in 2005 gave a windfall to developers who can rely on the Planning Minister to approve large-scale developments with less rigorous environmental assessment.

The Government's proposed planning law changes for 2008 will remove most planning powers from elected local councils and give them to government appointed panels that will implement the government's objective of massively increasing medium-density residential and commercial development across the state. The ability of local communities to protect their villages, towns or suburbs from overdevelopment will be extinguished.

Donations are on the nose with the public because of the clear potential for decisions affecting our urban and rural environments to be distorted by the influence of powerful

developers who donate to political parties. The concurrence of sweeping planning law changes and increasing levels of developer donations has undermined public confidence in the planning process. Power has been centralised with the Planning Minister, whose party has accepted millions of dollars from developers.

In NSW many of the companies who have won government tenders to build big ticket infrastructure developments have also been big political donors. All the big residential developers have donated to the major parties in NSW at some stage.

Paul Keating argued several years ago that the only meaningful way to assuage public concern about planning favouritism for developers was to ban political parties from accepting developer donations.

Managing Director of Australand, Brendan Crotty, was reported in *The Australian* (Ooi, 2003) as defending the companies' projects and said the Greens were entitled to protest. He went on to describe the company's political donations as "part and parcel of doing business". Australand has donated over \$1,123,443 to the major parties during the past 9 years.

Leighton Holdings' chief executive, Wal King said of his reasons for donating: "If you don't do it, there's a chance of getting a black mark against your name. It's like giving your wife flowers - why wouldn't you do it?" (*SMH*, 02/02/2002)

The whole culture of developer donations is rotten. The problem can only be reversed by introducing a complete ban on developer donations to political parties.

2. Hotels and Clubs industry

Hotels

The NSW hotel industry has donated more than \$3.5 million to the NSW Labor Party in the nine years to July 2007. Though the industry is clearly contributing to the party in power in NSW, significant donations also go to the Coalition opposition. In the same period the Liberal and National parties received over \$1.4 million from hotels.

Australian Hotels Association (AHA) officials have stated they use these donations to buy access. What happens when that access is achieved is not known. But what we do know is that at the same time these donations flow to the Labor, Liberal and National parties, the MPs from these parties are voting together in the NSW parliament to pass laws that benefit hotels.

The NSW President of the AHA, John Thorpe, clearly realises the importance of donations. He was reported on the ABC's Stateline in 2004 as saying, "*Democracy's not cheap. And your firm and your company - everybody's involved with assisting political parties because at this stage we need to keep these people in place to have the democracy we have today.*" He repeated these comments in 2006.

The Labor Party came to power in NSW in 1995. Since that time there have been a number of changes to the law that have benefited hotels. Although the Liberals introduced the controversial extended hotel trading hours in 1989, Labor has allowed 24-hour openings to flourish. Currently NSW has over 70 per cent of all hotels in Australia

that operate with 24-hour licenses.

Social and health problems associated with 24-hour openings are extensive and many residents and social workers have lobbied the Labor government to reduce the numbers of these licenses. Their demands have been unsuccessful and instead the government has responded favourably to hotels lobbying on the issue.

Most of the changes to hotel operations under the Labor government have been to laws governing gaming machines and smoking. The Smoking Regulation Act 1997 re-defined the meaning of an enclosed public place so that smoking was allowed in hotels, as long as fresh air could circulate. But with more countries and other Australian states banning smoking in hotels, pubs and restaurants the NSW government has come under pressure over the past decade to put the health of workers and patrons first.

In early 2006 the government bowed to public pressure and agreed to phase in smoke-free hotels by July 2007. But the hotel industry would not be displeased with this outcome because the so-called ban has been achieved by changing the definition of outdoor areas and not by an outright ban on smoking. Under the so-called ban smoking will be permitted in hotel rooms that are open to as little as 25 per cent fresh air.

In 1997 the Carr Labor Government cleared the way for poker machines in hotels. This was a move that enriched many publicans. Between 1998 and 2003 the government made further decisions, which enabled hotels to receive more money from gaming machines. These changes included: allowing TAB Ltd to enter into agreements with individual hotels to buy machines or to put machines in the hotels for a share of the profits; permitting hotels to buy gaming machines from other hotels; reducing the period the machines must be closed down; making it easier for hotels to apply for an exemption to the new three-hour shut down period of their machines by claiming hardship.

A big rush of money came in during the two year run up to the 2003 NSW state election. In this period Labor received over \$2.3 million while the Coalition opposition parties received \$608,090 in hotel donations. Prior to the 2003 election The Sydney Morning Herald reported that the hotel industry was concerned about changes to gaming laws expected to be introduced after the March election. The Carr Government was expected to easily win, which probably accounts for Labor's larger share of the hotel industry donations. After 2003 the hotel industry returned to contributing more equally to Labor and the Coalition.

During the 2007 NSW election campaign the lobbyist group Australian Hotels Association (AHA) feted the Labor Party with a major fundraiser at the Four Seasons Hotel in Sydney. This event was expected to raise hundreds of thousands of dollars for the ALP state election campaign. NSW Labor declared accepting \$647,708 from the AHA alone in the four years leading up to the 2007 state election.

While it can be assumed that privately Labor welcomed these donations, publicly they did not want to highlight their links with the hotel industry. Ministers in the Lemna Government and a stream of MPs refused to comment on the function. John Thorpe confirmed that individual MPs were expected to sit one at a table with hoteliers, and that the Premier would give a speech.

The AHA also held a fundraising event for the Liberals. Reports suggest that this function was considerably smaller with less money raised. By the time this event was held it was

widely expected that Labor would win the election comfortably. The AHA itself only donated \$264,650 to the NSW Liberals in the lead up to the 2007 state election.

While any connection between political donations and law changes that benefit the hotel industry cannot be established a number of public figures have raised concerns. Professor Ian Webster, an Emeritus Professor at the University of New South Wales and an expert in the alcohol and drugs area, recently appeared on SBS Insight which was exploring the impact of 24-hour licensing of hotels on health and social problems. Professor Webster argued that political donations from the liquor industry should be banned.

Professor Webster stated that social agencies dealing with alcohol issues were a “bit like David fighting Goliath. When there’s a powerful industry with lots of money, lots of access involving alcohol, clubs and hotels and gambling, it’s a very powerful influence. ... I’m very concerned about the access that money buys to political influence.”

Clubs

The money flowing into NSW Labor's coffers from clubs has increased tremendously over the years. For example, in 1998-99 the party received \$276,636 from clubs. The Randwick Labor Club, which is closely aligned with the Labor Party but is not classified as an associated entity, contributed \$225,500 to Labor that year. Therefore, the other clubs were very minor donors.

By 2001-02 clubs contributed over \$302,807 to the NSW ALP with only \$100,000 of that coming from the Randwick Labor Club. During this period there was much discussion of the tax on gaming in clubs by the state government, with a tax increase occurring after the March 2003 state election.

In 2002-03 the amount contributed to the NSW Labor Party by clubs fell to approximately \$98,000, with \$75,000 from the Randwick Club. At the same time the large clubs and their lobby group shifted their donations to the opposition Coalition parties. This shift coincided with the Labor government's introduction of increased gaming taxes on these clubs.

For instance, the registered clubs' lobby group, Clubs NSW, cut its donations to NSW Labor from almost \$160,000 in 2001-02 to just \$11,000 in 2002-03. At the same time donations from the lobbyist group Clubs NSW to the Liberals went from zero in 2001-02 to \$114,760 the next year.

Since 2004/05 clubs, which are traditionally Labor supporters, have drifted back towards donating to Labor. From July 2004 to June 2007 clubs gave \$434,840 to NSW Labor and only \$195,530 to NSW Liberals.

This case clearly shows how the pattern of donating can swing in response to government policy changes.

3. Manildra

The previous federal Coalition government made a number of decisions that benefited Manildra, the flour milling business that also has a near monopoly on ethanol production

in Australia.

Manildra received a 38 cents a litre ethanol subsidy from September 2002 for making ethanol to be blended into or used as a transport fuel. According to Alan Ramsey in the Sydney Morning Herald (2003) this amounted to almost \$21 million during the first 10 months. Then in July 2003 the Federal government announced another \$10 million in short term assistance to the ethanol industry. Most of this money went to Manildra since they produce about 96% of the ethanol in Australia and CSR the remaining 4%. This scheme ran until the end of 2003 or until payments reached a cap of \$10 million.

Using freedom of information laws, Labor's Kerry O'Brien obtained a letter written by Manildra's chairman Dick Honan to John Howard in August 2002 thanking him for his support of the ethanol industry. In the letter Mr. Honan said he had spoken with the then head of the Prime Minister's department about Manildra and CSR Distilleries' concerns over the scheduled arrival of 13.9 million litres of cheap ethanol from Brazil. He believed that cheap imported ethanol could destroy any prospect of an Australian renewable fuels industry (Ramsey, 2003).

Approximately two weeks after the letter was written John Howard announced cabinet's decision for the substantial subsidy of local ethanol and prohibitive excise arrangements of imported ethanol. A tanker of cheap Brazilian ethanol had to be diverted in mid ocean and sold by two importing companies for a loss of \$1 million.

In the ensuing outcry about this matter Labor asked a series of questions in Parliament which led to the controversy of whether or not the Prime Minister misled Parliament. Also, many reporters discussed the political donations from Manildra to the Coalition parties (for example, see Ramsey, 2003;. Steketee, 2003).

According to the party returns to the AEC, Manildra has contributed \$694,970 to the NSW and Federal offices of the Coalition parties during the past five years. Most of that money was given since July 2001 and almost evenly divided between the Liberal and National Parties. A portion of this money went directly to the 2001 campaigns coffers of sitting NSW Liberal MPs, including John Howard, Tony Abbott, Ross Cameron and Jackie Kelly (Ramsey, 2003). Ramsey goes on to point out that Honan donated \$112,000 of this to the National Party in two cheques written more than six months after the 2001 Federal election and four months before the cabinet decision on ethanol in September 2002.

Manildra continues to make large donations to both sides of politics. In 2006/07 alone they donated \$367,950 to the major parties, including \$213,000 to NSW Labor and \$100,000 to the NSW Liberals.

4. Tobacco industry donations

In 2006 the NSW government, with the support of the Coalition, made two significant decisions in favour of the tobacco industry. First it changed the definition of an enclosed space to allow smoking to continue in pubs and clubs and secondly it went back on its commitment to remove cigarettes from sight in shops.

In the nine years since 1998/99 the major parties accepted over \$1,829,905 from the two tobacco giants, Philip Morris and British American Tobacco.

- The Labor Party accepted at least \$413,700
- The Liberal Party accepted over \$1,174,005
- The National Party accepted over \$242,200

Whilst the Labor Party has undertaken not to accept any further donations from tobacco companies the Liberal and National parties still accept large sums of tobacco money. Last year alone the Liberal Party accepted \$133,600 from Philip Morris and British American Tobacco.

Each year tobacco use costs the lives of around 19,000 Australians and costs our economy an estimated \$21 billion.

5. Exclusive Brethren

Weak disclosure laws allow interest groups to spend hundreds of thousands of dollars in an election campaign without lodging any of the required forms with the AEC. An example is the Exclusive Brethren. This fundamental Christian church has influenced elections in Canada, the USA, New Zealand and Australia (see [Australian Policy Online](#) article) including an attack on the Australian Greens in the lead-up to the last Federal election.

Under Australian law donations and election expenditures associated with these groups should be disclosed. We only know that the AEC is still considering whether the Exclusive Brethren have a disclosure obligation related to the 2004 election. Considering the vagueness of our disclosure laws and the weak powers of the AEC, it is possible that they will not have to make these disclosures.

APPENDIX 2 - ASSOCIATED ENTITIES

Political parties go to great lengths to obscure the source of their donations by creating companies called associated entities. Associated entities are defined under current electoral law. The Australian Electoral Commission investigates these entities and declared them as an associated entity in accordance with the legal definition.

They are essentially front organisations that operate mainly or entirely for the benefit of a political party. The associated entity receives large donations, then passes the money on to the political party. While these organisations are required to submit returns to the AEC detailing their sources of income, the use of associated entities on the part of political parties adds another layer of complexity to the entire disclosure process.

In 1983, a number of changes were made to the Commonwealth Electoral Act (1902) to increase the transparency of political donations. It was recognised that donations could potentially influence the political process and so public disclosure was deemed necessary for the preservation of the integrity of the system. Donations above \$200 to a candidate or above \$1000 to a party were to be disclosed. Anonymous donations were prohibited and the process was to be regulated by the Australian Electoral Commission (AEC).

There are about 80 associated entities listed with the AEC. About 30 associated entities that donate to political parties in NSW or at the federal level appear on the democracy4sale.org website. Many other associated entities operate in other states or are currently not in use.

Considerable money flows through these entities. For example, The Free Enterprise Foundation¹, which is a Coalition associated entity, distributed over three million dollars to the Federal Office of the Liberal Party between July 1998 and June 2003 and smaller amounts to the NSW divisions of the Liberal and National Parties.

Political parties, candidates and associated entities cannot accept anonymous donations of \$1,000 or more under the Federal disclosure scheme. An anonymous donation is one for which both the name and address of the donors is not given to the AEC. However, there is a loophole in disclosure the AEC has unsuccessfully attempted to close for a number of years. While the entity that doesn't disclose an anonymous donor can be fined \$1,000 they do not have to forfeit the money received to the government. However, if a party accepts an anonymous donation it can be fined \$5,000 and has to forfeit the money given by the donor.

The Greens have called on Parliament to close this loophole so that anonymous donations to associated entities are treated in the same manner as those to the political parties and candidates.

Obviously it is an advantage for political parties not to have organisations declared to be associated entities. The AEC can audit the books of associated entities but not independent organisations. The Democracy4sale.org also lists Possible Associated Entities. These entities are being investigated by the AEC since there is reason to believe they are such entities. Once they have been declared associated entities the public can then see where they receive their money.

There are also other similar organisations that are very closely aligned with political parties and are major sources of funds but which cannot be defined as associated entities. The Greens [Democracy4sale](http://Democracy4sale.org) project defines these organisations as Political Party Affiliates.

For more information visit www.democracy4sale.org

APPENDIX 3 – SYDNEY MORNING HERALD ARTICLE

Hoteliers roll out a barrel of funds for their Macquarie St mates

by Andrew Clennell, State Political Editor, Sydney Morning Herald
Saturday, 02 February 2008

IT WAS the mother of all fund-raisers. Every cabinet minister and Labor MP was instructed by the Premier's Office to attend and sit at a table with hoteliers from around the state at the Four Seasons Hotel on February 12 last year, six weeks from the state election.

Now the full benefit of the function for Morris Iemma's Government organised by the Australian Hotels Association has been revealed: \$492,820 in donations to NSW Labor.

The details come not from the extensive records published on the website of the Australian Electoral Commission yesterday but from records in the office of the NSW Electoral Commission dug out by the NSW Greens.

At the function, 21 hotels gave \$9999 each - just under the AEC declaration threshold of \$10,500, in what the NSW Greens MP Lee Rhiannon described yesterday as a deliberate tactic. An extra \$501 each would have meant the donations were published on the AEC website.

Other figures gathered from the NSW Electoral Commission showed the Australian Hotels Association donated \$828,000 in total to leading party MPs and independents in the four years before the state election.

Recent policy changes hotels have won from the Government include lax rules on outdoor smoking areas, the ability to place poker machines in outdoor smoking areas and the right to have the game keno in pubs.

But the Government denies there is any connection between donations to the Labor party and Government policy.

Hotels are unhappy at the new liquor bill, which was introduced by the Government under pressure from the *Herald* and other media over the donations issue. The bill will allow more small bars but failed to extend trading hours on Sundays, which hotels had lobbied hard for.

Ms Rhiannon said: "Considering the damage alcohol does to public health it is concerning that Labor is willing to accept \$492,820 from an AHA fund-raiser."

Labor's state secretary, Karl Bitar, said it was "rubbish" to suggest there was some strategy by hotels to donate under the \$10,500 mark, saying it was clear from the fact the Greens were able to obtain the records that the information was open.

end