

Submission  
No 3

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

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**LAST  
DRINKS**  
*Call time on street crime*

**Submission to the Legislative Council Inquiry into the Provisions of the Election  
Funding, Expenditure and Disclosures Amendment Bill 2011**

**Police Association of NSW  
Australian Medical Association (NSW)  
NSW Nurses' Association  
Health Services Union east**

*December 2011*



***Election Funding, Expenditure and Disclosures Amendment Bill 2011 and the Last Drinks campaign.***

The Police Association of NSW, the NSW branch of the Australian Medical Association, the Health Services Union east and the NSW Nurses Association, recognising the impact of alcohol abuse on their members and the community, have formed a coalition to fight for more responsible licensing laws. This coalition has emerged from the concern of its members over the significant increase in alcohol-fueled violence against police, nurses, doctors and ambulance Paramedics. The result is the Last Drinks campaign.

This coalition has as its primary focus the health and well being of its members and the public in general. It has recognised that the overwhelming body of research both in Australia and overseas has shown that the most effective measure to reduce alcohol-fueled violence and criminal behavior is by reducing access to alcohol, especially in the early hours after midnight. In particular the campaign relies on the successful trial of strategies used in the Hamilton area of Newcastle to reduce alcohol related violence, including reducing the opening hours of licensed premises and restricting access to spirits after certain times.

This alliance of member-based organisations has been an effective way of showing the disastrous effects alcohol intoxication can have on so many people whose job is to care for people in our community. It is an unfair burden that not only takes a financial toll on our state, but also a human toll on the members of the unions in the coalition, with many ambulance Paramedics, nurses, doctors and police having been assaulted (physically or verbally) by people affected by alcohol.

This campaign began in March 2010, more than twelve months before the State election and has targeted lawmakers and politicians of every political party. It has not focused on either side of government. It has sought commitments from all politicians to address the social concerns of the coalition partners. The Last Drinks campaign website in particular is where the campaign has its base, with supporters eager to get involved any way they can. Supporters are updated on a regular basis and given as much information as we can to ensure they remain committed to the campaign. The campaign has had over twenty five thousand NSW citizens sign up to the website to show their support.

In order to continue the campaign, funding is required to maintain and update the website and other costs involved in preparation and distribution of media releases. Because the campaign is ongoing and difficult, it is important to keep the information flow to supporters relevant and interesting. In order to achieve this, the coalition partners are considering a joint financial contribution to continue the campaign.

The Last Drinks campaign is an excellent example of ordinary citizens and emergency services workers exercising their right to freely express their concern over a major social issue. There are many examples of such forms of democratic free expression – campaigns for better health services, campaigns for

changes to laws relating to marriage, campaigns to protect the environment and campaigns for law and prison reform. All are examples of legitimate ways for the citizens to express their concerns to their representatives in Parliament. One of the impacts of these kinds of campaigns is that citizen's voting intentions at election time may be influenced by the way in which candidates or parties respond to the campaigns. If a particular candidate or party supports the demands of a campaign, then clearly that may influence voting intentions in favour of that party or candidate.

All of these campaigns or movements are now potentially at risk from the *Election Funding, Expenditure and Disclosures Amendment Bill 1981* and its proposed amendments. This is especially true if one of the member organizations of any campaign coalition is affiliated to any political party.

The *Election Funding, Expenditure and Disclosures Amendment Bill 2011* proposes changes to the Act that will prohibit political donations (as defined by s85) to, inter alia, third-party campaigners (as the PANSW is) unless the donor is an individual registered voter for State, federal or local elections. It also provides for prohibitions on what might be broadly termed indirect donations (eg: a corporation providing funds to a registered voter for the purpose of the individual making a political donation). Section 85 of the Act defines a political donation as (my emphasis):

**85 Meaning of "political donation"**

(1) For the purposes of this Act, a *political donation* is:

(a) a gift made to or for the benefit of a party, or

(b) a gift made to or for the benefit of an elected member, or

(c) a gift made to or *for the benefit* of a candidate or a group of candidates, or

(d) a gift made to or *for the benefit* of an entity or other person (not being a party, elected member, group or candidate), the whole or part of which was used or is intended to be used by the entity or person:

(i) to enable the entity or person to make, directly or indirectly, a political donation or to *incur electoral expenditure*, or

(ii) to reimburse the entity or person for making, directly or *indirectly*, a political donation or *incurring electoral expenditure*.

Proposed section 96D reads (our emphasis):

**96D Prohibition on political donations other than by individuals on the electoral roll**

(1) It is unlawful for a political donation to a party, elected member, group, candidate or *third-party campaigner to be accepted* unless the donor is an individual who is enrolled on the roll of electors for



State elections, the roll of electors for federal elections or the roll of electors for local government elections.

A third-party campaigner is "an entity or other person (not being a registered party, elected member, group or candidate) who incurs electoral communication expenditure during a capped expenditure period (as defined in Part 6) that exceeds \$2,000 in total." Every entity or person who engages in electoral communication in the lead up to an election (including any union or lobby group wishing to pursue a particular policy) will be a third-party campaigner.

Section 87 of the Act reads:

**87 Meaning of "electoral expenditure" and "electoral communication expenditure"**

(1) For the purposes of this Act, *electoral expenditure* is expenditure for or in connection with promoting or opposing, *directly or indirectly*, a party or the election of a candidate or candidates or for the purpose of *influencing, directly or indirectly, the voting at an election*.

The rest of the section defines specifically the subset of electoral expenditure that is electoral communication expenditure.

If a member of the coalition for the Last Drinks campaign makes a donation of funds to another member of the coalition for the purposes of eg funding a media campaign whose aim is to target politicians and which resulted (directly or indirectly) in influencing voter intention, then that could be interpreted as a political donation under s85(1)(d). It could be interpreted as benefitting that candidate or party that supported the objectives of the campaign. The term "for the benefit of" is not defined in the legislation. The funding donated by the members of the coalition for the maintenance of the Last Drinks website could be caught here.

If it were considered a political donation, then it would be prohibited by virtue of the propose section 96D.

Further, if any campaign electoral expenditure that may be interpreted as influencing voter intention directly or indirectly, occurs during the capped period, then that amount will be aggregated to the allowable cap of the entity. If that entity is affiliated to a party, then the amount will also be aggregated to the party's expenditure for the purposes of the cap.

Proposed section 95 G reads:

**(6) Aggregation of expenditure of parties and affiliated organizations**

Electoral communication expenditure incurred by a party that is of or less than the amount specified in section 95F for the party (as modified by subsection (2) in the case of associated parties) is to be treated as expenditure that exceeds the applicable cap if that expenditure and

any other electoral communication expenditure by an affiliated organisation of that party exceed the applicable cap so specified for the party.

By the time an election campaign is running, candidates and parties have usually made their positions on policy clear. Any activity by the Last Drinks campaign that could directly or indirectly influence voter intention by eg identifying those candidates or parties that supported the campaign's objectives, may be seen to be benefitting that candidature.

Very clearly, the aim of campaigns of the kind mentioned above, is to change public policy or legislation. If these campaigns occur close to elections, then the aim is often to gain commitment from politicians to the proposed reforms and by so doing, influencing voters directly or indirectly to vote for those politicians or parties supporting the campaign objectives.

The proposed amendment has the potential to stop campaigns like the Last Drinks campaign, certainly during the lead up to a State election. Groups of not-for-profit organizations that come together in a loose coalition to campaign over any social issue may find themselves disenfranchised because they fall foul of these laws.

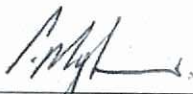
If this is the intention of the legislature, then it would be a serious attack on the freedom of the citizenry to collectively engage in public debate through membership of a union or other community organization. If it is not the intention of the legislature to stifle free speech and the right of the citizenry to engage in such campaigns, then the *Election Funding, Expenditure and Disclosures Amendment Bill 2011* should either be withdrawn or rewritten to remove the current uncertainties of the Act.



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