

Submission
No 14

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

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Part 1- Introduction

This is the submission of the Transport Worker's Union of NSW (TWU) to the inquiry of the *Election Funding, Expenditure and Disclosure Amendment Bill 2011 (2011 Bill)* authorised by State Secretary Wayne Forno. The TWU supports any reform by government which sets out to promote transparency and fairness in the political sphere, strengthening the accountability of parties within our democratic system to the public. The TWU believes that amendments made in 2010 to the *Election Funding, Expenditure and Disclosure Act 2010 (the Act)*, regulating the amount of funds which can be made by entities or individuals to a political party (third party campaigners) encourages such transparency. While the Act as it currently stands limits the amount of funding that can be distributed to political parties, it allows the TWU to act on behalf of its members and distribute funds during election periods accordingly.

The TWU is a not-for-profit organisation whose first concern is for its members. We represent a voice for our membership and devote our time to campaigns that affirm the values and interests of our members. These interests may correspond to particular policies, views and values developed by political parties. In this respect any campaigns undertaken by the TWU on behalf of its members are evidently political. Thus any restrictions that negate the ability for the TWU to act on behalf of its members in such a capacity run counter to our aims and cause. The amendments proposed by the 2011 Bill seeks to limit organisations such as the TWU from contributing to public debate by prohibiting their ability to act as a third party campaigner or affiliate to a political organisation which corresponds with its members interests. Such amendments devalue the TWU's right to freedom of association.

Proposed changes to the Act prohibit the funding of entities and allow only for individual contributions to be made to political parties and campaigns. The individualisation of political funding endorses a system where only those who can afford it can make a contribution to the political process in NSW. This removes the ability of organisations to pull funds together on behalf of their members for a particular cause and therefore act in a constructive way to promote political change. Regulation to electoral funding should not be a disincentive for any organisation to engage in the public debate.

While the TWU supports reform to electoral funding which creates greater transparency and accountability, we believe that the proposed amendments by the NSW government will have a detrimental effect on the ability of our membership to actively engage in the public domain and exert collective power to encourage political change; either through the TWU acting as a third party campaigner or through prohibiting affiliation fees. Therefore the TWU reaffirms the concerns made by Unions NSW and further specified within this submission.

Part 2- The impact political funding reforms on TWU members

a. Partial removal of the right of unions to support third party campaigns/ Effect of restrictions of donations to third party campaigns

The TWU supports campaigns that are seen to be in the best interest of our members. This support comes in many forms but when we have the capacity to do so, the most viable option for the TWU is to register its support through helping to finance the desired campaign. It is only through the collective efforts of organisations that campaigns such as the *Better Services for a Better State* can provide the means to voice the concerns of the members of unions in a public forum. The effectiveness and longevity of this campaign was a product of a pool of funds provided by unions affiliated with Unions NSW. With the resources available to it, in 2009 Unions NSW was able to develop an interactive website and reinvigorate the public's interest in the campaign by relaunching it during the March 2011 election. Section 96D(1) of the 2011 Bill, however, would not allow the *Better Services for a Better State* and campaigns like it to function at full capacity. When resources dry up within a campaign, this undermines the capacity for those engaged in the campaign to voice their concerns and contribute to public debate. To ban the main mechanism for organisations to grow their resources places restrictions on the free speech of those individuals who would benefit from a debate on issues prescribed within a particular campaign.

Our members don't have the financial capacity to determine and/ or change government initiatives and subsequently rely on the TWU to do their bidding on their behalf. Any reform which extinguishes the ability for an organisation to act on its members' behalf is unwarranted and goes against what our union stands for.

b. Implications of a scheme of individual donations

The TWU is particularly concerned with the move towards individualised donations. Section 96D(1) of the 2011 Bill states:

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...

The TWU believes that a ban on organisational donations would not have the desired effect of the proposal, to reduce the influence of a number of particular groups on political process. Rather this would further concentrate the field of influence, redirecting dominance away from collectives, unions and/ or companies to a small number of financially set individuals. Individualised donations have the potential to discriminate based on an individual's economic status. A ban on organisational donations would mean individuals who cannot afford to donate substantive amounts to a candidate or political party are absent from the public debate. The TWU believes that a collective voice is essential to our democracy and supports the

recommendations alluded to within the Unions NSW's submission; to delete any reference to a third party campaigner in s 96D(1) of the 2011 Bill.

c. Removal of affiliation fees

The TWU's first and foremost concern is for its members. As an entity, the TWU has always sought to stand and support its membership regarding issues they encounter in their place of work, be it fair rates of pay for long distance drivers or safety cages for bus drivers in areas prone to violent attacks. The TWU's role is to ensure its membership has access to a fairer and safer place of work and the TWU has aligned itself to organisations which share these concerns and those of our membership base. The TWU has affiliated with organisations such as Unions NSW and the Labor Party because of a commonality of values and concern for issues affecting our members.

A decision to affiliate to an organisation has never been made by the TWU without consultation of its members. The relationship the TWU has with the organisations it chooses to affiliate with such as the Labor Party and Unions NSW is the result of this process. This is a choice made by our members and the TWU upholds the decisions made by its membership. Any reform to the electoral funding legislation that seeks to discredit the relationship developed between organisations that choose to affiliate and the subsequent fees associated with affiliation we believe violates our members' freedom of association. Section 96D(4) of the 2011 Bill seeks to prohibit fees associated with party affiliation;

Annual or other subscriptions paid to a party by a person or entity...for affiliation with the party that are, by the operation of section 85 (3), taken to be gifts...are subject to this section. Accordingly, payment of any such subscription by an industrial organisation or other entity is unlawful under this section.

Affiliation fees are a requirement of affiliating to an organisation and the fees associated with such affiliation recognise that the relationship established between the organisations is made in good faith. Affiliation entitles our members to have a say in the policy development and structure of the organisations they choose to affiliate with. By prohibiting and/or restricting affiliation fees this may diminish the relationship built between those organisations and therefore silence the voice of our members, who have chosen to affiliate to an organisation under the condition that such affiliation provides them with another avenue to pursue the TWU's aims and causes.

Affiliation fees have been a longstanding requirement of affiliating to the organisations the TWU continues to affiliate with and therefore any reform to remove such fees would place an unreasonable restriction on the organisations financial and political structures.

The TWU believes that affiliation fees are an internal matter and therefore should be dealt with by the internal structures of our organisation. The TWU upholds that affiliation to an organisation and any fees associated with it should be discussed with its members and not

subject to stringent regulation by outside bodies. The TWU supports the recommendations made by Unions NSW that re-enforce the current allowance of affiliation fees.

d. Complex and broad definition of ‘electoral communication expenditure’

As a consequence of amendments to the *Election Funding, Expenditure and Disclosure Act* in 2010, the term ‘electoral communications expenditure’ was developed to classify the expenditure incurred by a political party or third party campaigner during an election period. Section 87 of the Act sets out a comprehensive list explaining electoral communications expenditure which is to apply respectively to both political parties and third party campaigners, with no suggestion of the length of time that expenditure incurred by organisations is classified as ‘electoral’. This has created a grey area, whereby it has become impossible to differentiate what is considered political expenditure or a part of the daily function of an organisation.¹ The confusion amongst unions and the sort of uncertainty found by us as to how the existing electoral funding laws apply to TWU industrial campaigns could create a disincentive for some organisations to enter the public debate in a substantial way because of the risk of violating the regulations.

The definition of ‘electoral communications expenditure’ aims to provide a blanket approach to expenditure seen to be of a political nature. In doing so, the Act also fails to recognise the various functions of unions and the funding used to support these functions.

The TWU believes that any reform to the Act should seriously consider setting out a clearer definition of what is ‘electoral communications expenditure’ as the current definition is very ambiguous.

The TWU believes that the best way to ensure clarity is to develop a separate section of the Act which means that those organisations previously understood to be third party campaigners do not adhere to the same ‘electoral communications expenditure’ definition as candidates and political parties. The TWU supports recommendations made by Unions NSW, which would provide a plain definition so that unions are able to comply with legislation.

¹ ACTU (2009), *ACTU Submission on the Electoral Reform Green Paper: Donations, Funding and Expenditure*, ACTU, Melbourne.

Part 3- Conclusion

The TWU understands that our political system is continually evolving and reform is required to maintain transparency of political bodies. However, such reforms should not undermine the capacity for collective bodies to rally behind a cause because of its political content. The *2011 Bill* denies members of an organisation the ability to contribute to the wider public debate and to do so with other organisations which share their concerns. The TWU supports the concerns raised by Unions NSW to the proposed amendments to the Act, which in our view puts our members' ability to exercise a collective political voice at risk.

Union campaigns such as the *Better Services for a Better State* cannot run on man power alone and require the collective efforts and funding to ensure their longevity. An individualised system of funding would prohibit such campaigns from occurring because amendments to the Act would prohibit organisations such as Unions NSW using the funds gained from affiliation fees to speak out on behalf of its members on a particular issue.

In summary, the TWU opposes any reforms which limit our ability to represent our membership as a collective. Unions exist in order to represent individuals as a collective who cannot effectively represent themselves as individuals and the 2011 Bill would undermine our capacity to act in this way.

Transport Workers' Union of NSW
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