

---

The Parliament of the Commonwealth of Australia

# Report on the funding of political parties and election campaigns

Joint Standing Committee on Electoral Matters

November 2011  
Canberra

---

© Commonwealth of Australia 2011

ISBN 978-0-642-79582-3 (Printed version)

ISBN 978-0-642-79583-0 (HTML version)

This work is licensed under the Creative Commons Attribution-NonCommercial-NoDerivs 3.0 Australia License.



The details of this licence are available on the Creative Commons website:

<http://creativecommons.org/licenses/by-nc-nd/3.0/au/>.



## Chair's foreword

Australia can be proud of its democratic system, but there is scope for improvement. In terms of political financing arrangements, the funding and disclosure system that was introduced in 1984 was a leader in its field. However, more than a quarter of a century later, Australia's political financing arrangements are in need of review and revitalising.

While there is no evidence that the funding and disclosure system is being abused, the inquiry has provided an opportunity to strengthen and provide more confidence in the system.

Transparency and accountability must remain central goals of our financing arrangements. Disclosure should continue to be a central pillar of our arrangements in Australia to provide electors with sufficient information on which to base selection of their political representatives.

It is important that any changes made in Australia to funding and disclosure arrangements at the Commonwealth level are not merely a reaction to incidents or calls for reform, but a considered and carefully designed approach to help ensure transparency and accountability.

In Australia, it is important to safeguard the integrity of our funding and disclosure system, but it is also vital not to unduly restrict the ability of individuals and groups to engage in the political arena, whether through donating to a candidate, political party or third party, or advocating on, or seeking to engage the community on, a particular issue. Australians' rights to freedom of political expression and participation must also remain a high priority. In making the recommendations in this report, the committee has sought to strike an appropriate balance between these competing concerns.

Key reforms include increasing the level and frequency of disclosure, by reducing the disclosure threshold from the current \$11 900 (indexed to CPI) to \$1 000, without indexation. The reporting requirement for political parties, associated entities and third parties, which is currently annual will initially move to six-monthly, with a view to moving to contemporaneous reporting following an investigation of options by the Australian Electoral Commission (AEC). The committee has also recommended the introduction of special reporting of single donations over \$100 000, which must be disclosed to the AEC within 14 business days of receiving the donation and made publically available soon after on the AEC website.

To improve overall transparency of the flow of money, the committee also proposes requiring greater disclosure of political expenditure. Currently, expenditure is disclosed as a block sum with no specific details.

These increased disclosure requirements will place additional administrative burdens on those with reporting obligations. To help address this, an additional stream of funding is proposed to assist Independents and political parties in meeting their increased obligations. While the provision of administrative funding does mean additional public money, the increased transparency will leave electors better armed with relevant information about the movement of money.

The committee has also made recommendations to enhance the administrative efficiency of disclosure arrangements, including the AEC enhancing its online lodgement system to assist those with reporting requirements for donations and expenditure.

The committee also recognised that effective compliance arrangements are essential for a workable funding and disclosure scheme. Offences that are straightforward matters of fact, such as the late lodgement of a return, should have administrative penalties attached, to enable the AEC to issue fines for breaches of these laws, rather than requiring criminal prosecution by the Commonwealth Director of Public Prosecutions (CDPP). However, for offences of a more serious nature, penalties should be strengthened to send a clear message to individuals, groups and the CDPP of the gravity of breaches of this nature and the need to take action on these matters.

While there may be a time in the future when overall, stricter regulation of funding, expenditure and disclosure is warranted, currently significantly enhancing the transparency of the movement of money by increasing the amount and timeliness of disclosure is best suited to the Australian context.

The key proposals for reform are set out in the Executive summary, which provides an easy comparison of the current arrangements against the committee's proposed reforms.

On behalf of the committee I thank the individuals and groups who participated in the inquiry. I also thank the members of the committee for their work and contribution to this report, and the committee secretariat for their work in preparing this report.

Daryl Melham MP  
Chair





# Contents

Chair's foreword .....	iii
Membership of the Committee .....	xv
Terms of reference .....	xvii
Resolution .....	xviii
List of abbreviations .....	xx
Executive summary .....	xxi
List of recommendations .....	xxvii

## REPORT

<b>1 Introduction .....</b>	<b>1</b>
Scope .....	2
Conduct .....	3
Report structure .....	3
<b>2 Background .....</b>	<b>7</b>
Overview .....	7
The rising costs of election campaigning .....	9
Federal developments .....	11
Committee and related activities .....	11
Commonwealth Electoral Amendment (Political Donations and Other Measures) Bills .....	16
Electoral Reform Green Paper: Donations, Funding and Expenditure .....	19
JSCEM Roundtable on the Green Paper .....	21
43 <sup>rd</sup> Parliament reform agreements .....	22

---

<b>State developments</b> .....	<b>23</b>
New South Wales.....	24
Queensland.....	28
Victoria.....	30
Australian Capital Territory.....	32
<b>International developments</b> .....	<b>33</b>
<b>Is further reform needed?</b> .....	<b>34</b>
Conclusion .....	36
<b>3 Private funding</b> .....	<b>37</b>
<b>Sources of private funding</b> .....	<b>37</b>
Is change to the current scheme necessary?.....	39
Conclusion .....	42
<b>Setting the disclosure threshold</b> .....	<b>43</b>
Conclusion .....	49
<b>Application of the disclosure threshold</b> .....	<b>50</b>
Conclusion .....	52
<b>Fundraising events</b> .....	<b>53</b>
Conclusion .....	57
<b>Classification of receipts</b> .....	<b>58</b>
Conclusion .....	59
<b>Frequency of reporting</b> .....	<b>60</b>
Contemporaneous or continuous disclosure .....	61
Donation reports during elections.....	64
Six-monthly reporting .....	64
Special reporting of large donations.....	65
Conclusion .....	65
<b>Different reporting obligations for donors and political parties</b> .....	<b>67</b>
Conclusion .....	69
<b>4 Options for private funding reform</b> .....	<b>71</b>
<b>Donation caps</b> .....	<b>71</b>
Conclusion .....	75



---

<b>Bans on types of donations</b> .....	<b>76</b>
Corporate donations.....	77
Conclusion .....	84
Anonymous donations.....	85
Conclusion .....	87
<b>Limits on donations from individuals</b> .....	<b>87</b>
Conclusion .....	89
<b>5 Expenditure</b> .....	<b>91</b>
<b>Background</b> .....	<b>91</b>
Current arrangements .....	93
<b>Improving the current system</b> .....	<b>96</b>
Disclosure of expenditure.....	96
Conclusion .....	101
Campaign committees lodging returns .....	103
Conclusion .....	104
<b>Further reform options</b> .....	<b>104</b>
Caps on general expenditure .....	104
Broadcast advertising expenditure .....	110
Constitutional issues .....	114
Conclusion .....	117
<b>6 Public funding</b> .....	<b>119</b>
<b>Background and current arrangements</b> .....	<b>119</b>
The effectiveness of a public funding scheme.....	121
Conclusion .....	127
<b>Election funding</b> .....	<b>128</b>
Increasing the fairness of the public funding system.....	128
A higher threshold .....	130
Conclusion .....	131
A reimbursement scheme .....	131
Conclusion .....	134
Funding for new political parties.....	134
Conclusion .....	136

Elected candidates and funding .....	136
Conclusion .....	137
Payment of election funding .....	138
Conclusion .....	139
<b>Administrative funding .....</b>	<b>140</b>
Conclusion .....	146
<b>7 Third parties and associated entities .....</b>	<b>147</b>
<b>Current arrangements .....</b>	<b>147</b>
<b>Improving the current scheme .....</b>	<b>150</b>
Definition of political expenditure .....	150
An 'issue in an election' .....	153
Opinion polls or other research .....	155
Conclusion .....	156
Frequency of third party disclosure .....	157
Conclusion .....	158
Partisan connections of third parties .....	159
Conclusion .....	160
Disclosure threshold for third parties .....	160
Conclusion .....	161
Disclosure rules for donors to third parties .....	161
Conclusion .....	164
<b>Further reform options .....</b>	<b>164</b>
Caps on third party expenditure .....	165
Caps on donations to third parties .....	167
Conclusion .....	169
A third party registration scheme .....	170
Conclusion .....	172
Definition of associated entity .....	172
Conclusion .....	176

---

<b>8</b>	<b>Compliance</b> .....	<b>177</b>
	<b>Improving the current system</b> .....	<b>179</b>
	Administrative penalties .....	179
	Strengthening current penalties .....	182
	Conclusion .....	185
	Compliance review powers .....	186
	Conclusion .....	188
	<b>Further reform options</b> .....	<b>189</b>
	Challenges .....	189
	Proactive enforcement .....	192
	Conclusion .....	193
<b>9</b>	<b>Relationships between federal, and state and territory arrangements</b> .....	<b>195</b>
	Background .....	195
	Support for harmonisation .....	196
	Key issues .....	199
	Consensus .....	199
	Constitutional and federalism issues .....	200
	Options for reform .....	202
	Conclusion .....	206
<b>10</b>	<b>Other issues</b> .....	<b>209</b>
	Administrative body for funding and disclosure.....	209
	Conclusion .....	211
	Internal rules for corporate donations .....	212
	Conclusion .....	213

---

**DISSENTING REPORTS**

<b>Dissenting report – The Hon. Bronwyn Bishop MP, The Hon. Alex Somlyay MP, Senator Scott Ryan, Mr Dan Tehan MP and Mr Darren Chester MP .....</b>	<b>215</b>
Introduction .....	217
The Disclosure Threshold .....	218
Circumvention of Disclosure Laws .....	222
Changing the definition of 'gift' .....	224
Tax deductibility and the inconsistency of public 'funding' .....	225
Membership and Donations .....	226
Third Parties.....	227
Summary.....	229
<b>Dissenting report – Senator Lee Rhiannon, The Australian Greens.....</b>	<b>231</b>
Summary.....	232
Overview .....	233
Short term measures.....	235
Long term solutions.....	236


**APPENDICES**

<b>Appendix A—Submissions and Exhibits .....</b>	<b>241</b>
<b>Appendix B—Hearings and Witnesses .....</b>	<b>245</b>
<b>Appendix C—Commonwealth disclosure requirements .....</b>	<b>249</b>
<b>Appendix D—Comparison of Commonwealth, State and Territory schemes ....</b>	<b>253</b>
<b>Appendix E—Comparison of international political financing schemes.....</b>	<b>259</b>
<b>Appendix F—Commonwealth Electoral Amendment (Tobacco Industry Donations) Bill 2011 .....</b>	<b>263</b>

**LIST OF TABLES**

Table C.1	Commonwealth donations disclosure requirements .....	250
Table D.1	Comparison of Commonwealth, States and Territory schemes .....	254
Table E.1	Comparison of international political financing schemes .....	260





## Membership of the Committee

**Chair** Mr Daryl Melham MP

**Deputy Chair** The Hon Alex Somlyay MP

**Members**

The Hon Bronwyn Bishop MP	Senator Bob Brown (to 5/07/11)
Mr Darren Chester MP (from 2/06/11)	Senator Carol Brown
The Hon Alan Griffin MP	Senator Helen Polley
Ms Amanda Rishworth MP	Senator Lee Rhiannon (from 5/07/11)
Mr Dan Tehan MP (from 2/06/11)	Senator Scott Ryan
Mr Tony Windsor MP (from 25/05/11)	

### Participating Members

Senator the Hon Eric Abetz	Senator Michael Forshaw (to 30/06/11)
Senator Judith Adams	Senator Mark Furner
Senator Chris Back	Senator the Hon Bill Heffernan
Senator Guy Barnett (to 30/06/11)	Senator Gary Humphries
Senator Cory Bernardi	Senator Annette Hurley (to 30/06/11)
Senator Catryna Bilyk	Senator Steve Hutchins (to 30/06/11)
Senator Simon Birmingham	Senator the Hon David Johnston
Senator the Hon Ronald Boswell	Senator Barnaby Joyce
Senator Sue Boyce	Senator Helen Kroger

Senator the Hon George Brandis	Senator Julian McGauran (to 30/06/11)
Senator David Bushby	Senator McKenzie (from 23/06/11)
Senator Doug Cameron	Senator the Hon Nick Minchin (to 30/06/11)
Senator Michaelia Cash	Senator Fiona Nash
Senator the Hon Richard Colbeck	Senator Kerry O'Brien (to 30/06/11)
Senator Helen Coonan (to 22/08/11)	Senator Stephen Parry
Senator Mathias Cormann	Senator Marise Payne
Senator Sean Edwards (from 23/06/11)	Senator Louise Pratt
Senator Alan Eggleston	Senator the Hon Michael Ronaldson
Senator the Hon John Faulkner	Senator the Hon Nigel Scullion
Senator David Fawcett (from 23/06/11)	Senator the Hon Ursula Stephens
Senator the Hon Alan Ferguson (to 30/06/11)	Senator Glenn Sterle
Senator Concetta Fierravanti-Wells	Senator the Hon Judith Troeth (to 30/06/11)
Senator Mitch Fifield	Senator Russell Trood (to 30/06/11)
Senator Mary Jo Fisher	Senator John Williams
Senator the Hon Ian Macdonald	Senator Dana Wortley (to 30/06/11)
Senator Gavin Marshall	Senator Nick Xenophon
Senator the Hon Brett Mason	

## Committee Secretariat

Secretary	Mr Stephen Boyd
Inquiry Secretary	Ms Samantha Mannette
Technical Adviser	Ms Christine Wickremasinghe
Administrative Officer	Ms Natasha Petrovic





## Terms of reference

On 11 May 2011 the Senate referred to the Joint Standing Committee on Electoral Matters the following matter for inquiry and report by 30 September 2011:

Options to improve the system for the funding of political parties and election campaigns, with particular reference to:

- (a) issues raised in the Government's *Electoral Reform Green Paper – Donations, Funding and Expenditure*, released in December 2008;
- (b) the role of third parties in the electoral process;
- (c) the transparency and accountability of the funding regime;
- (d) limiting the escalating cost of elections;
- (e) any relevant measures at the state and territory level and implications for the Commonwealth; and
- (f) the international practices for the funding of political parties and election campaigns, including in Canada, the United Kingdom, New Zealand and the United States of America.

On 25 May 2011 the Special Minister of State, the Hon Gary Gray AO MP, wrote to ascertain the views of the Joint Standing Committee on Electoral Matters on Senator Bob Brown's proposed amendment to the *Commonwealth Electoral Act 1918*, to make it unlawful for political parties to accept donations from manufacturers or wholesalers of tobacco products, or their agents. The committee resolved to examine this matter as part of the wider inquiry into the funding of political parties and election campaigns.

On 21 September 2011 the Senate granted the committee an extension of its reporting date until 1 December 2011. A subsequent extension was granted until 12 December 2011.



## Resolution

On 11 and 12 May 2011, the Senate and the House of Representatives agreed to the following resolution:

- (1) That the following matter be referred to the Joint Standing Committee on Electoral Matters for inquiry and report by 30 September 2011:

Options to improve the system for the funding of political parties and election campaigns, with particular reference to:

- (a) issues raised in the Government's *Electoral Reform Green Paper – Donations, Funding and Expenditure*, released in December 2008;
  - (b) the role of third parties in the electoral process;
  - (c) the transparency and accountability of the funding regime;
  - (d) limiting the escalating cost of elections;
  - (e) any relevant measures at the state and territory level and implications for the Commonwealth; and
  - (f) the international practices for the funding of political parties and election campaigns, including in Canada, the United Kingdom, New Zealand and the United States of America.
- (2) That, for the purposes of this inquiry only, paragraph (3) of the resolution of appointment be amended to read:

That the committee consist of 12 members, 3 Members of the House of Representatives to be nominated by the Government Whip or Whips, 4 Members of the House of Representatives to be nominated by the Opposition Whip or Whips and 1 non-aligned Member, 2 Senators to be nominated by the Leader of the Government in the Senate, 1 Senator to be nominated by the Leader of the Opposition in the Senate and 1 Senator to be nominated by any minority group or groups or independent Senator or independent Senators.

- (3) For the purposes of this inquiry only, the resolution of appointment be amended by inserting the following paragraph:

That participating members may be appointed to the committee. Participating members may participate in hearings of evidence and deliberations of the committee, and have all the rights of a member of the committee, but may not vote on any questions before the committee.



## List of abbreviations

ACTU	Australian Council of Trade Unions
AEC	Australian Electoral Commission
ALP	Australian Labor Party
ART	Accountability Round Table
ASH	Action on Smoking and Health Australia
CFMEU	Construction, Forestry, Mining and Energy Union
CPI	Consumer Price Index
JSCEM	Joint Standing Committee on Electoral Matters
JSCER	Joint Select Committee on Electoral Reform

# Executive summary

## Commonwealth funding and disclosure— Summary of key features and proposed approach

Features	Current scheme	Proposed approach
<b>Donations</b>		
Donation caps	None	Same
Bans on donations	<p>Political parties cannot receive anonymous donations above the disclosure threshold</p> <p>Loans that exceed the disclosure threshold can only be received by political parties, candidates and Senate groups if specified details are kept, both in relation to loans from financial and non-financial institutions</p>	<p>Same</p> <p>Ban all anonymous donations above \$50</p> <p>Ban all 'gifts of foreign property'</p> <p>No bans on particular industry sectors. Concerns about specific industries such as tobacco can be addressed through current self-regulation practices under which some political parties have chosen not to accept donations from that industry</p>
Disclosure threshold	\$10 000, CPI indexed (\$11 500 for 2010-2011 financial year)	Reduce disclosure threshold to \$1 000 and remove indexation, to enhance transparency of the flow of money to political parties, candidates, Senate groups, associated entities and third parties
Applying the disclosure threshold	Applies separately to each branch of a political party	Donations to 'related political parties' should be treated as donations to the same political party for the purposes of disclosure requirements. This will combat the practice of 'donation splitting' where donations under the threshold are made to each branch of a political party, which then could total in the tens of thousands but go undisclosed

Features	Current scheme	Proposed approach
<b>Donations (continued)</b>		
Frequency of reporting	Annual returns and election returns	<p>Move to six-monthly reporting to improve transparency and timeliness</p> <p>Under the current system there is a considerable lag between the receipt of payment and it being disclosed to the AEC and made publically available</p> <p>Explore options for moving to contemporaneous disclosure</p> <p>Require disclosure of a single donation of over \$100 000 within 14 days of receipt, and for this information to be published on the AEC website</p>
Classification of items in returns	<p>Amounts received over the threshold must be disclosed by political parties and associated entities</p> <p>The AEC <i>requests</i> that these payments are classified into 'donations' (e.g. gifts) and 'other receipts' (e.g. membership fees, levies on MPs), but this is not a legislative requirement</p>	<p>Require political parties and associated entities to classify their receipts above the threshold as 'donations' or 'other receipts' to enhance transparency of the type of money being received</p> <p>Define the terms in the legislation</p> <p>Empower the AEC to investigate and enforce this requirement</p>
Public access to disclosure returns	<p>Returns are available for public inspection from the AEC</p> <p>Annual returns are available in a searchable format on the AEC website on the first working day in February</p> <p>Election returns are available in a searchable format on the AEC website 24 weeks after polling day</p> <p>On the form for individual donors, the following personal details are included and made available on the AEC website: Name, postal address, telephone number, email address and signature</p>	<p>Returns should continue to be available to the public</p> <p>Explore options for contemporaneous disclosure (which would likely be online through the AEC) to improve the timeliness of disclosure</p> <p>To enhance the privacy for individuals donors, reduce the details to be published on the website for individuals to: name, suburb, postcode, state and the amount donated</p>
Fundraising events	<p>The treatment of funds from fundraising events is currently unclear</p> <p>The AEC advice is that payments for attendance at a fundraiser should be disclosed by political parties or associated entities if the amount paid is in excess of the value of the services received or if the event is primarily a fundraiser</p>	<p>Amend the definition of 'gift' to include fundraising events to help improve transparency of attendees and money raised at these events</p>

Features	Current scheme	Proposed approach
<b>Donations (continued)</b>		
Donor and political party reporting obligations	<p>Political parties are only required to aggregate individual receipts that exceed the disclosure threshold</p> <p>Donors must aggregate donations of any value made to political parties</p>	<p>Make disclosure requirements for political parties the same as those for donors</p> <p>Require political parties to aggregate donations of any value, as donors currently do, not just values that exceed the disclosure threshold, so that the requirements align, making enforcement and identifying discrepancies more efficient</p>
<b>Public funding</b>		
Reimbursement	None	Introduce a reimbursement scheme for proven electoral expenditure, as one of the options for election funding once the 4% disclosure threshold is reached
Entitlement and allocation of funding	<p>Direct entitlement funding scheme with a threshold requirement of 4% of the first preference vote</p> <p>A per vote formula is applied (2010 election rate was 231.191 cents per vote for House of Representatives and Senate candidates)</p>	<p>Retain the 4% of first preference vote threshold for entitlement</p> <p>Public funding to be allocated to political parties and candidates who have obtained 4% on the basis of the <i>lesser</i> of:</p> <ul style="list-style-type: none"> <li>the application of the per vote formula; or</li> <li>reimbursement for proven expenditure following a claim being lodged</li> </ul> <p>In addition, members who are <i>elected</i> but do not meet the 4% threshold should be entitled to the <i>lesser</i> of:</p> <ul style="list-style-type: none"> <li>the per vote rate for the first preference votes received; or</li> <li>reimbursement for proven expenditure following a claim being lodged</li> </ul>
Administrative/ongoing funding	None	Introduce administrative funding for political parties registered at the Commonwealth level and Independents to assist them in meeting the increased administrative burdens that will come with the proposed reforms

Features	Current scheme	Proposed approach
<b>Expenditure</b>		
Disclosure of expenditure	Political parties do not disclose details of expenditure, only a total figure of 'payments' in their annual returns	Implement detailed disclosure of expenditure by political parties and associated entities  Ensure the AEC is resourced to provide guidance and an efficient lodgement system to facilitate political parties and associated entities with the additional administrative demands
Expenditure caps	None	Same
Campaign committees	Not required to lodge expenditure returns	Same
<b>Third parties</b>		
Disclosure threshold	\$10 000, CPI indexed (\$11 500 for 2010-2011 financial year)  Same as for political parties, associated entities and donors	Reduce to \$1 000 and remove indexation  Keep the third party disclosure threshold in line with political parties, associated entities and donors, as having a different threshold for third parties would add an unnecessary layer of complexity to the scheme
Frequency of reporting	Annually	Move to six-monthly reporting, but consider a move to contemporaneous disclosure to complement any moves along those lines for political parties
Disclosure of donors to third parties	No donor disclosure obligations for donors to third parties, details of donations over the threshold are available on the third party's return	Donors to third parties should have the same obligations as donors to political parties and associated entities
Caps on donations to third parties	None	Same
Caps on third party expenditure	None	Explore options for restricting third party political expenditure within a reasonable period relevant to the election date, to help ensure that public debate is not dominated by high levels of spending by these groups
Bans on donations from certain donors	None	Bans on foreign donations  Bans on anonymous donations above \$50
Registration of third parties	None	Same
Definitional of political expenditure	Defined in <i>Commonwealth Electoral Act</i> (Act) s. 314AEB(1)(a)	Revise the definition of political expenditure to remove the references to an 'issue in an election' and 'opinion polls', to help clarify what matters are covered by the definition and minimise the groups inadvertently captured by the latter reference



<b>Features</b>	<b>Current scheme</b>	<b>Proposed approach</b>
<b>Associated entities</b>		
Definition	'Associated entity' is defined in the Act	Clarify definition of associated entities by defining the terms 'controlled', 'significant extent' and 'benefit', to increase administrative efficiency and maintain transparency and accountability through knowing exactly which entities are 'associated' for the purposes of the Act
<b>Compliance</b>		
Types of offences and penalties	All offences against the Act are criminal offences and require prosecution	<p>Offences and penalties should be categorised based on the seriousness of the offence, to enhance administrative efficiency and address the low incidence of prosecution of funding and disclosure offences</p> <p>Administrative penalties, with a right of review, should be implemented for all offences that are 'straightforward matters of fact' to allow the AEC to more effectively enforce the provisions</p> <p>Matters it could cover are:</p> <ul style="list-style-type: none"> <li>• failure to lodge a disclosure return</li> <li>• lodging an incomplete return</li> <li>• refusal to comply with a notice issued under s. 316</li> </ul> <p>Penalties for more serious offences (those that do not attract administrative penalties) should be strengthened to convey the gravity of breaches of the law to the CDPP and increase prosecution rates</p>
Compliance reviews	<p>AEC can conduct compliance reviews of federal registered parties, their state branches and associated entities</p> <p>AEC can request that certain documents be produced</p>	<p>Same</p> <p>Extend the AEC's power to also conduct compliance reviews and to serve notices on candidates and Senate groups so that Independents are also subject to checks regarding the accuracy of their disclosure</p> <p>Information on compliance reviews should be made publically available on the AEC's website to enhance transparency and accountability</p>
<b>Administering body</b>		
Responsibility for administering the funding and disclosure scheme	Australian Electoral Commission—Funding and Disclosure section	<p>Same</p> <p>Adequately resource the AEC to facilitate the additional administrative responsibilities that will come with the above changes</p>





# List of recommendations

## 3 Private funding

### Recommendation 1 (paragraph 3.59)

The committee recommends that the disclosure threshold be lowered to \$1 000, and CPI indexation be removed.

### Recommendation 2 (paragraph 3.61)

The committee recommends that the *Commonwealth Electoral Act 1918* be amended to require that only the name, suburb, postcode, state and the amount donated by individual donors be released on the public website by the Australian Electoral Commission.

### Recommendation 3 (paragraph 3.72)

The committee recommends that donations to 'related political parties' be treated as donations to the same political party for the purposes of the disclosure threshold. Once the combined donations to related political parties from a single donor reaches the \$1 000 threshold, disclosure is required.

### Recommendation 4 (paragraph 3.96)

The Committee recommends that the definition of 'gift' in the *Commonwealth Electoral Act 1918* be amended to include fundraising events.

**Recommendation 5** (paragraph 3.107)

The committee recommends that the *Commonwealth Electoral Act 1918* be amended, as necessary, to include the following:

- to require political parties and associated entities to classify their receipts exceeding the disclosure threshold as 'donations' or 'other receipts';
- to include an adequate definition of 'donation' and 'other receipt'; and
- to make the requisite changes to the enforcement and investigation provisions to allow the Australian Electoral Commission to investigate and enforce these classifications.

**Recommendation 6** (paragraph 3.134)

The committee recommends that the Australian Government introduce a six-monthly disclosure reporting timeframe, as outlined in the Commonwealth Electoral Amendment (Political Donations and Other Measures) Bill 2010.

**Recommendation 7** (paragraph 3.137)

The committee recommends that if a single donation above \$100 000 is made to a political party, associated entity, third party, candidate or Senate group, then a 'Special Reporting Event' return must be lodged with the Australian Electoral Commission by the political party, associated entity, third party, candidate or Senate group and the donor within 14 days of receipt of the donation. The Australian Electoral Commission must publish details of these returns within 10 business days of lodgement.

**Recommendation 8** (paragraph 3.140)

The committee recommends that the Australian Electoral Commission investigate the feasibility and requirements necessary to implement and administer a system of contemporaneous disclosure and report back to the Special Minister of State by 31 March 2012.

**Recommendation 9** (paragraph 3.146)

The committee recommends that the *Commonwealth Electoral Act 1918* be amended, as necessary, to require political parties to aggregate all individual donation receipts, not just those individual receipts that exceed the disclosure threshold, in line with the current disclosure requirement for donors.

## 4 Options for private funding reform

### Recommendation 10 (paragraph 4.74)

The committee recommends that the *Commonwealth Electoral Act 1918* be amended to ban political parties, Independent candidates, associated entities and third parties from receiving ‘gifts of foreign property’.

### Recommendation 11 (paragraph 4.90)

The committee recommends that a ban be imposed on anonymous donations above \$50 to political parties, associated entities, third parties, Independent candidates and Senate groups.

### Recommendation 12 (paragraph 4.102)

The committee recommends that in addition to the measure to prohibit gifts of foreign property being implemented, methods to curb the potential for circumvention be examined and solutions devised.

## 5 Expenditure

### Recommendation 13 (paragraph 5.51)

The committee recommends that the *Commonwealth Electoral Act 1918* be amended, as necessary, to require political parties and associated entities to disclose details of their expenditure above the applicable disclosure threshold in their six-monthly returns.

### Recommendation 14 (paragraph 5.52)

The committee recommends that to complement the requirement for political parties and associated entities to disclose details of expenditure above the disclosure threshold, the Australian Electoral Commission should provide guidance and enhance its online lodgement system to help ensure that those with reporting obligations have a clear understanding of, and the administrative means by which, to meet this obligation.

## 6 Public funding

### Recommendation 15 (paragraph 6.42)

The committee recommends that public funding to political parties and candidates be allocated on the basis of the lesser of:

- the application of the per vote formula to the first preference votes won; or
- reimbursement for proven expenditure following the lodgement of a claim,

provided they obtain four per cent of the first preference vote, as proposed in the Commonwealth Electoral Amendment (Political Donations and Other Measures) Bill 2010.

### Recommendation 16 (paragraph 6.93)

The committee recommends that members elected with less than four per cent of the first preference vote be eligible for election funding. These members should be entitled to the lesser of:

- the application of the 'per vote' rate to the first preference votes won; or
- reimbursement for proven expenditure following the lodgement of a claim.

### Recommendation 17 (paragraph 6.101)

The committee recommends that the *Commonwealth Electoral Act 1918* be amended, as necessary, to ensure the payment of election funding entitlements for eligible candidates and Senate groups can be made to the party, whether or not the party is organised on the basis of a particular state or territory.

### Recommendation 18 (paragraph 6.129)

The committee recommends that the *Commonwealth Electoral Act 1918* be amended to implement a scheme of ongoing administrative funding for registered political parties and Independents. The proposal for administrative funding is part of a broader package of public funding reforms and should complement the changes to election funding arrangements in recommendations 14, 15 and 16. The Australian Government should, in consultation with key stakeholders, develop a model for the entitlement and payment of administrative funding appropriate for application at the Commonwealth level.

---

## 7 Third parties and associated entities

### Recommendation 19 (paragraph 7.46)

The committee recommends removing the reference to ‘issues in an election’ from the definition of political expenditure, by deleting section 314AEB(1)(a)(ii) of the *Commonwealth Electoral Act 1918*.

### Recommendation 20 (paragraph 7.50)

The committee recommends removing the reference to opinion polls and other research from the definition of political expenditure, by deleting section 314AEB(1)(a)(v) of the *Commonwealth Electoral Act 1918*.

### Recommendation 21 (paragraph 7.57)

The committee recommends that the frequency of disclosure reporting obligations for third parties under the *Commonwealth Electoral Act 1918* align with the frequency with which political party disclosure takes place, to minimise the potential for circumvention of requirements.

### Recommendation 22 (paragraph 7.68)

The committee recommends that third parties be subject to the same disclosure threshold as political parties, Independent candidates, Senate groups, associated entities and donors.

### Recommendation 23 (paragraph 7.82)

The committee recommends that the *Commonwealth Electoral Act 1918* be amended, as necessary, to impose a disclosure obligation on donors to third parties. Amendments should be worded so that only the name, suburb, state and postcode of individual donors are required to be made public.

### Recommendation 24 (paragraph 7.105)

The committee recommends that the Australian Government investigate options for:

- restricting or capping third party political expenditure; and
- setting a reasonable period relevant to the election date around which this restriction would apply.

**Recommendation 25** (paragraph 7.134)

The committee recommends that the *Commonwealth Electoral Act 1918* be amended to improve the clarity of the definition of 'Associated Entity'. Particular steps that could be taken might include the following:

- Defining 'controlled' as used in section 287(1)(a) to include the right of a party to appoint a majority of directors, trustees or office bearers;
- Defining 'to a significant extent' as used in section 287(1)(b) to include the receipt of a political party of more than 50 per cent of the distributed funds, entitlements or benefits enjoyed and/or services provided by the associated entity in a financial year; and
- Defining 'benefit' as used in section 287(1)(b) to include the receipt of favourable, non-commercial arrangements where the party or its members ultimately receives the benefit.

## 8 Compliance

**Recommendation 26** (paragraph 8.39)

The committee recommends that the *Commonwealth Electoral Act 1918* be amended, as necessary, to make offences classified as 'straightforward matters of fact' subject to administrative penalties issued by the Australian Electoral Commission. The issuance of an administrative penalty should be accompanied by a mechanism for internal review.

**Recommendation 27** (paragraph 8.41)

The committee recommends that the penalties in relation to offences that are classified as more 'serious' should be strengthened along the lines proposed in the Commonwealth Electoral Amendment (Political Donations and Other Measures) Bill 2010.

**Recommendation 28** (paragraph 8.50)

The committee recommends that the *Commonwealth Electoral Act 1918* be amended, as necessary, to provide the Australian Electoral Commission with the power to conduct compliance reviews and serve notices on candidates and Senate groups, in addition to federal registered political parties, their state branches and associated entities.



**Recommendation 29** (paragraph 8.52)

The committee recommends that the *Commonwealth Electoral Act 1918* be amended, as necessary, to require the Australian Electoral Commission to make available on its website compliance review reports and details of final determinations on reviews.

**10 Other issues****Recommendation 30** (paragraph 10.12)

The committee recommends that the funding and disclosure functions in the *Commonwealth Electoral Act 1918* continue to be exercised and administered by the Australian Electoral Commission, and that the Australian Electoral Commission receive additional resources to carry out these functions and exercise its enforcement powers.



## Introduction

- 1.1 This inquiry by the Joint Standing Committee on Electoral Matters (the committee) into options to improve the funding of political parties and election campaigns follows a series of committee inquiries into Australia's political financing arrangements.
- 1.2 In its *First Report* in 1983, the Joint Select Committee on Electoral Reform (JSCER), a predecessor of the current committee, stated that:

In Australia it is known that all the political parties have drawn attention to the high cost of elections and to their financial difficulties. In addition, there has been public disquiet about the influence of large donors or would-be donors...<sup>1</sup>
- 1.3 Evidence to the committee for this inquiry suggests that these issues remain significant almost thirty years later.
- 1.4 In 1984, public funding of election campaigns and laws governing the disclosure of political donations and electoral expenditure were introduced in Australia. This new system contained many of the recommendations made by the JSCER in its 1983 report, which also led to major electoral reforms in Australia outside the arena of political financing arrangements.
- 1.5 The *Electoral Reform Green Paper – Donations, Funding and Expenditure* (first Green Paper) outlined the three main approaches taken internationally for regulating donations and expenditure:
  - (a) no regulation;
  - (b) detailed disclosure of financial transactions, but without regulation in the form of limits, caps or bans; and

---

1 Joint Select Committee on Electoral Reform, *First Report*, September 1983, Commonwealth Parliament of Australia, p. 153.

- (c) regulation of receipts, expenditure and debt in concert with disclosure requirements.<sup>2</sup>

1.6 Australia's system of regulation of political financing is currently based on the second approach, with the disclosure of political donations and expenditure by political parties, Independent candidates, donors, third parties and associated entities, aimed at providing transparency of the movement of money in the political system, without imposing limitations on, for example, the amounts that can be spent and received.

## Scope

- 1.7 On 11 May 2011 the Senate referred to the Joint Standing Committee on Electoral Matters an inquiry into options to improve the system for the funding of political parties and election campaigns. In particular, the committee was to examine: issues arising out of the Government's *Electoral Reform Green Paper – Donations, Funding and Expenditure*; the role of third parties in the electoral process; the transparency and accountability of the funding regime; limiting the escalating costs of elections; relevant measures at the state and territory level; and relevant international practices.
- 1.8 The committee was aware from the outset that much work had already been done on the reasons for which advocates for change feel reform is necessary and the range of options available for regulating political financing arrangements.
- 1.9 On 25 May 2011 the Special Minister of State, the Hon Gary Gray AO MP, wrote to ascertain the views of the Joint Standing Committee on Electoral Matters on Senator Bob Brown's proposed amendment<sup>3</sup> to the *Commonwealth Electoral Act 1918*, to make it unlawful for political parties to accept donations from manufacturers or wholesalers of tobacco products, or their agents. The committee resolved to examine this matter as part of the wider inquiry into the funding of political parties and election campaigns.

---

2 Commonwealth of Australia, *Electoral Reform Green Paper – Donations, Funding and Expenditure*, December 2008, p. 19.

3 Commonwealth Electoral Amendment (Tobacco Industry Donations) Bill 2011 is available at: <<http://www.comlaw.gov.au/Details/C2011B00102>>

## Conduct

- 1.10 On 13 May 2011 the Chair of the committee, Mr Daryl Melham MP, announced the inquiry. It was advertised nationally in *The Australian* newspaper on 18 May 2011, inviting members of the public to make submissions.
- 1.11 The committee also wrote to all Members and Senators and Senators-elect, state premiers and territory chief ministers, the Australian Electoral Commission, registered major political parties and relevant academics and interest groups.
- 1.12 During the course of the inquiry the committee received 37 written submissions (Appendix A). The committee received additional oral evidence at 7 public hearings in Canberra, Sydney and Melbourne (Appendix B). The submissions and transcripts of evidence from the public hearings are available on the committee's website at: [www.aph.gov.au/em](http://www.aph.gov.au/em).
- 1.13 A number of submissions made to the committee's inquiry into the conduct of the 2010 federal election and matters related thereto also covered relevant political funding matters.<sup>4</sup> The standard review of the 2010 federal election commenced in November 2010 and was well underway before this inquiry into political funding was referred. At its public hearings on 4 and 30 March, and 13 and 18 April 2011 for its previous inquiry, the committee also received evidence relevant to this inquiry into political funding.
- 1.14 On 21 September 2011 the Senate granted the committee an extension of its reporting date until 1 December 2011. A further extension was granted until 12 December 2011.

## Report structure

- 1.15 Australia's current political financing regulatory scheme involves a focus on transparency of funding sources and the movement of money between political actors. In this report, the committee examined the effectiveness of existing arrangements and options to improve the current system.

---

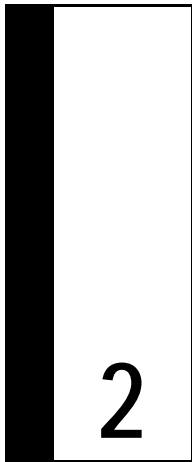
4 In particular, see submissions 3, 16, 68, 86, 87 and 90. Submissions to the JSCEM inquiry into the conduct of the 2010 federal election are available at:  
<<http://www.aph.gov.au/house/committee/em/elect10/subs.htm>>

- 1.16 The committee also considered the desirability of a shift to a more detailed funding and disclosure model involving limitations on the receipt of funds and expenditure. The committee discussed the issues that need to be considered if such a regulatory shift is to be undertaken.
- 1.17 Chapter 2 covers key developments in political funding arrangements in Australia and recent moves to improve transparency and accountability in political funding and disclosure, including the government's electoral reform green paper process, relevant legislation and activities by the committee. The chapter also briefly noted relevant state and international reforms, which include a broader approach to regulation of political financing.
- 1.18 Chapters 3 to 9 each focus on a specific aspect of the political financing arrangements; private funding, expenditure, public funding, third parties and compliance. Each chapter contains an outline of the current arrangements, concerns about and challenges of this system, possible options for reform, committee conclusions, and where appropriate, recommendations to improve the funding of political parties and election campaigns.
- 1.19 Due to the complexity of private funding arrangements and reform options, the discussion of these issues have been separated into two chapters. Chapter 3 focuses on sources of private funding, and disclosure and reporting requirements. Chapter 4 explores options for reform to private funding arrangements, including caps, bans on types of donors, and limits on donations.
- 1.20 Chapter 5 covers political and campaign expenditure and options to improve the current regulatory system and to increase the regulation of political expenditure.
- 1.21 Public funding is discussed in Chapter 6. The chapter covers the background to the public funding scheme and the current arrangements. It then discusses options for increasing the fairness of the public funding system.
- 1.22 The role of third parties in the political and election processes is considered in Chapter 7, including their functions as donors and campaigners, how they are defined, and their reporting obligations as compared with political parties. The definition of associated entities is also discussed.

- 1.23 Chapter 8 considers the challenging issue of compliance with funding and disclosure schemes. The more complex the scheme the greater challenges it may pose to compliance with, and enforcement of, funding, expenditure and disclosure requirements.
- 1.24 Chapter 9 focuses on the relationship between state or territory and federal political financing arrangements, and considers whether greater harmonisation between the different levels is possible.
- 1.25 Chapter 10 contains other relevant issues not covered in the earlier chapters.







## Background

### Overview

- 2.1 In recent years there has been advocacy for, and attempts to, reform financial arrangements for political and election activities. Concerns have been expressed by some that the escalating costs of elections puts considerable pressure on candidates and parties to fundraise in order to remain competitive. Many advocates for reform argue that this need for funds for campaigning and administration places candidates and parties in a vulnerable position, leaving them open to the perception that their decisions could be influenced by donors who make significant financial contributions.
- 2.2 Others challenge this view and regard this supposed link between political donations and the perception of undue influence or corruption as overstated. They argue that the right of both individuals and businesses to participate through political donations is fundamental to the democratic process, and that increased regulation that involves caps or bans on donations and expenditure and more onerous disclosure requirements, would unfairly restrict the political expression of political participants and place unwarranted administrative burdens on those involved.
- 2.3 Governments can seek to influence funding, expenditure and disclosure arrangements by regulation or subsidy. A study on political financing in Commonwealth countries outlined the following options:
  - Regulations generally consist of:
    - (a) bans on corrupt electoral practices (such as the buying of votes);

- (b) financial deposits for candidates: these are intended to deter frivolous candidatures;
  - (c) disclosure regulations (requiring parties and/or candidates to submit for official scrutiny and/or to publish financial accounts);
  - (d) limits on campaign expenditure: for example, ceilings on permitted spending by each candidate for parliament, ceilings on spending by presidential candidates and by each of the national party organisations;
  - (e) contribution limits (restrictions on the amounts an individual or corporation is permitted to donate to an election campaign or to a political party);
  - (f) bans against certain types of contribution (for example, foreign contributions or donations by corporations or trade unions).
- Subsidies include:
- (a) grants to party groups in the legislature or to individual legislators for research assistance or other facilities (though not officially a form of political subsidy, a proportion of such money tends to be used for partisan political purposes);
  - (b) direct financial payments to parties or candidates from public funds;
  - (c) tax reliefs (income tax reliefs, tax credits, matching grants and other forms of tax remission on political donations);
  - (d) free or subsidised access to television and radio for candidates and parties;
  - (e) other subsidies-in-kind (for example, free postage for election literature, or free use of public buildings or poster sites).<sup>1</sup>

2.4 The committee noted the observation in the *Electoral Reform Green Paper – Donations, Funding and Expenditure* (first Green Paper) that:

How these strategies can be assembled, and especially how they interact, are important considerations in determining the framework and the detail of a cohesive and effective scheme of donation, funding, expenditure and disclosure regulation.<sup>2</sup>

---

1 M Pinto-Duschinsky, *Political financing in the Commonwealth* [2001], Commonwealth Secretariat, United Kingdom, pp. 7-8.

2 Commonwealth of Australia, *Electoral Reform Green Paper – Donations, Funding and Expenditure*, December 2008, p. 78.

- 2.5 The Australian Government currently utilises a range of regulatory and subsidy mechanisms in its political financing arrangements. As part of this inquiry the committee considered refinements of the existing arrangements and explored options for more substantial reform.

## The rising costs of election campaigning

- 2.6 The rising cost of election campaigning has been identified as a matter of concern by a number of submitters to this inquiry and in the context of wider consideration of these issues. This pattern of rising costs associated with electioneering has been referred to by some as a campaigning ‘arms race’.<sup>3</sup>
- 2.7 In the Joint Standing Committee on Electoral Matters (JSCEM) report on the conduct of the 2004 federal election, the committee examined the issues of rising campaign costs and expressed concern that ‘the steady and substantial increase in these costs may not be sustainable’.<sup>4</sup>
- 2.8 In a report released in 2006 on funding and disclosure, the committee noted that the funding arms race was one of the major trends of the 1996 to 2006 period, and observed that ‘while it appears to presently benefit the major parties, [it] is of growing concern to many in those parties’.<sup>5</sup>
- 2.9 Five years on, individuals, groups and some political parties submitting to this inquiry remain concerned about the high level of expenditure in connection to political and election campaigning.
- 2.10 The Australian Labor Party advocates change in this area to help reign in escalating costs associated with campaigning. It argued that:

Australians value a tough electoral contest between parties, leaders and candidates at local level. In recent years, however, the size of political campaigns have grown at an alarming rate, with some in the community concerned that election spending has risen to unsustainable levels. An ‘arms race’ has emerged between

---

3 Commonwealth of Australia, *Electoral Reform Green Paper – Donations, Funding and Expenditure*, December 2008, p. 1.

4 Joint Standing Committee on Electoral Matters, *The 2004 Federal Election: Report of the inquiry into the conduct of the 2004 Federal Election and matters related thereto*, September 2005, Commonwealth Parliament of Australia, p. 288.

5 Joint Standing Committee on Electoral Matters, *Funding and Disclosure: Inquiry into disclosure of donations to political parties and candidates*, February 2006, Commonwealth Parliament of Australia, p. 28. Details of this report will be outlined later in this chapter.

political parties, with media buying reaching saturation point during the election campaign period. This has placed increased pressure on political parties to seek out further donations, with a concomitant impact on public credibility for political parties.<sup>6</sup>

2.11 The Australian Greens were adamant that the arms race associated with elections must be addressed, and they advocated for substantial reform of the funding and disclosure system in Australia.<sup>7</sup>

2.12 Some groups recognised that the rising costs were an issue, but advocated for a more measured approach to addressing the problem. The Nationals, for example, submitted that:

The Nationals support the argument for containing or at least easing the escalation of election campaign spending. However, any system of restrictions on political expenditure in election campaigns must be approached cautiously and take into account the real cost of communicating with voters, the range of factors contributing to the cost of campaigning and the varying structures of Australia's political parties.<sup>8</sup>

2.13 Other groups also expressed their concerns about the rising costs of election campaigns. In the JSCEM roundtable discussion in 2009 on the first Green Paper, the Construction, Forestry, Mining and Energy Union (CFMEU) expressed its concern, stating that:

The CFMEU has been a major donor in elections for a long time. We do not relish the idea of spending workers' resources on the public electoral process and we particularly do not relish the idea of those amounts climbing because of the campaigning arms race that the minister rightly speaks about. We believe there has to be a better way rather than this race towards US style expenditure in public elections.<sup>9</sup>

---

6 Australian Labor Party, *Submission 21*, p. 2.

7 The Australian Greens, *Submission 12*, p. 4.

8 The Nationals, *Submission 24*, p. 4.

9 Mr John Sutton, Construction, Forestry, Mining and Energy Union, Roundtable discussion on the Electoral Reform Green Paper – Donations, Funding and Expenditure, *Committee Hansard*, 16 April 2009, p. 3.

## Federal developments

2.14 A number of relevant government, legislative and committee activities have been undertaken on the issue of political financing arrangements in recent years. Key developments are outlined below.

## Committee and related activities

### Introduction of public funding and disclosure arrangements

2.15 In 1984, public funding of election campaigns and the disclosure of political donations and electoral expenditure was introduced in Australia.

2.16 As mentioned in Chapter 1, the committee's predecessor, the Joint Select Committee on Electoral Reform (JSCER), was instrumental in the introduction of public funding and disclosure arrangements. Many of the recommendations of the JSCER in its *First Report* in 1983 formed the basis of the new arrangements.

2.17 The JSCER made 39 recommendations addressing public funding and disclosure, which provided for:

- a system of public funding for political parties for election purposes;
- funding to political candidates who secure a certain amount of votes;
- disclosure of sources of funding or services;
- candidates and parties to keep and submit records of expenditure on campaigns;
- penalties for not adhering to disclosure requirements; and
- the new funding and disclosure system to be administered by the Australian Electoral Commission.<sup>10</sup>

2.18 At that time, the views on many of the political funding and disclosure issues were split along party lines. The Australian Labor Party and Australian Democrats supported the introduction of public funding, which they argued would help narrow the gap between competing parties with different financial resources.<sup>11</sup> The Liberal Party of Australia and the National Party of Australia opposed public funding, with their arguments

---

10 Joint Select Committee on Electoral Reform, *First Report*, September 1983, Commonwealth Parliament of Australia, pp. 215-221.

11 Joint Select Committee on Electoral Reform, *First Report*, September 1983, Commonwealth Parliament of Australia, pp. 148-149.

against such a scheme including that no case had been made out against private funding of political parties and that scarce public funds could be better spent.<sup>12</sup>

- 2.19 The political parties similarly diverged on the introduction of disclosure requirements.

### Report on the 2004 federal election

- 2.20 The JSCEM report on the conduct of the 2004 federal election included chapters on issues associated with modern election campaigns and funding and disclosure issues.

- 2.21 The committee made a number of recommendations in that report relating to funding and disclosure. These were:

- To raise the disclosure threshold to amounts over \$10 000 for donors, candidates, political parties, and associated entities. (Recommendation 49)
- To index the political donations threshold to the Consumer Price Index (CPI). (Recommendation 50)
- To increase the tax deduction for a contribution to a political party, whether from an individual or a corporation, to an inflation-indexed \$2 000 per year. (Recommendation 51)
- To provide that donations to an Independent candidate, whether from an individual or corporation, are tax deductible in the same manner and to the same level as donations to registered political parties. (Recommendation 52)
- That third parties be required to meet the same financial reporting requirements as political parties, associated entities, and donors. (Recommendation 53)<sup>13</sup>

- 2.22 The then Government generally supported these amendments and legislated to give effect to these proposals. The *Electoral and Referendum Amendment (Electoral Integrity and Other Measures) Act 2006* made the following changes to funding and disclosure arrangements:

---

12 Joint Select Committee on Electoral Reform, *First Report*, September 1983, Commonwealth Parliament of Australia, pp. 149-150.

13 Joint Standing Committee on Electoral Matters, *The 2004 Federal Election: Report of the inquiry into the conduct of the 2004 Federal Election and matters related thereto*, September 2005, Commonwealth Parliament of Australia, pp. 333-344.

- Raised the minimum threshold requirement for donations to be made public to \$10 000. It had previously been \$200 for candidates, \$1 000 for groups, and \$1 500 for political parties.
- The disclosure threshold was indexed annually to the CPI.
- Increased the ceiling for tax deductions to \$1 500 and extended it to companies.
- Abolished the requirement for election period broadcaster and publisher returns of election advertisements.
- Abolished the requirement for an election period return of third party election expenditure, but introduced a new annual return of political expenditure with similar requirements to the abolished third party return.
- Extended the definition of an 'associated entity'.

2.23 A minority report accompanied that report. These members supported some aspects of the report, but disagreed with a number of recommendations, which, if implemented, they argued, would 'clearly compromise the effectiveness, fairness and integrity' of the Electoral Act.<sup>14</sup>

2.24 In relation to funding and disclosure, these members objected to recommendations 49 (raising the disclosure threshold), 50 (indexing the threshold to the CPI) and 51 (increasing tax deductibility for donations to political parties). They stated that they rejected 'any change which makes it easier for individuals or corporations to make large donations to political parties in secret', arguing that:

- Raising the disclosure threshold would:
  - ⇒ make it easier for corporate donors to give money to certain parties without having to disclose it;
  - ⇒ allow large amounts of money to flow, without scrutiny;
- Introducing CPI indexing would:
  - ⇒ see the amount increasing around 2 to 2.5 per cent each year;
  - ⇒ cause confusion amongst donors as to whether their donations were within or outside the disclosure limit from year to year; and

---

14 Joint Standing Committee on Electoral Matters, 'Minority Report' in the *The 2004 Federal Election: Report of the inquiry into the conduct of the 2004 Federal Election and matters related thereto*, September 2005, Commonwealth Parliament of Australia, p. 355.

- Tax deductibility increases would:
  - ⇒ encourage individuals and other entities to make extensive political contributions, in secret, and at tax payer expense.<sup>15</sup>

## Funding and disclosure report 2006

- 2.25 The JSCER *Funding and Disclosure* report for its inquiry into disclosure of donations to political parties and candidates was the culmination of work by the committee over a number of parliaments.
- 2.26 The focus of the inquiry was on improving the disclosure of donations to political parties and candidates and identifying the true source of those donations.
- 2.27 The committee outlined three avenues of reform to improve the funding and disclosure system and concluded that:
- Higher thresholds for the disclosure of political donations would encourage individuals, small businesses and other organisations to make donations to political parties and candidates.
  - Proposals to ban certain types of contributions or limit donations amounts were not necessary as there was, at that point in time, no evidentiary support that amounts donated had given rise to corruption or undue influence.
  - Higher tax deductibility levels for donations to political parties and Independent candidates would encourage more people to participate in the democratic process and decrease the parties' reliance on a smaller number of large donations.<sup>16</sup>
- 2.28 A dissenting report accompanied this report, with some members expressing concern that it is 'likely that the proposed changes would erode the primary objectives' of the funding and disclosure scheme established by the JSCER in 1983.<sup>17</sup> These members supported:
- Retaining lower disclosure thresholds;

---

15 Joint Standing Committee on Electoral Matters, 'Minority Report' in the *The 2004 Federal Election: Report of the inquiry into the conduct of the 2004 Federal Election and matters related thereto*, September 2005, Commonwealth Parliament of Australia, pp. 377-378.

16 Joint Standing Committee on Electoral Matters, *Funding and Disclosure: Inquiry into disclosure of donations to political parties and candidates*, February 2006, Commonwealth Parliament of Australia, p. iv.

17 Joint Standing Committee on Electoral Matters, 'Dissenting Report' in the *Funding and Disclosure: Inquiry into disclosure of donations to political parties and candidates*, February 2006, Commonwealth Parliament of Australia, p. 15.



- Extending the ban on anonymous donations to associated entities and imposing prohibitions on donations from foreign persons and organisations;
- Retaining lower tax deductibility levels and not extending tax deductibility to corporations or donations to Independent candidates; and
- Increasing the AEC's powers and resources to conduct compliance audits and investigations in relation to suspected non disclosure.<sup>18</sup>

### Advisory report on Tax Laws Amendment (2008 Measures No. 1) Bill 2008

- 2.29 In March 2008, Schedule 1 of the Tax Laws Amendment (2008 Measures No. 1) Bill 2008 was referred to the JSCEM. The measure relevant to political funding and disclosure arrangements was that Schedule 1 of the bill sought to remove the tax deductibility for contributions and gifts to political parties, members and candidates.
- 2.30 The committee supported the passage of the bill, concluding that the 'underlying inequity of tax deductibility for political contributions and gifts confers advantages and disadvantages to taxpayers on the basis of their taxable income, should be discontinued'.<sup>19</sup>
- 2.31 However, in the minority report, some members did not support the bill, recommending that consideration of this issue be deferred and assessed as part of a comprehensive review of campaign finance.
- 2.32 This measure was eventually enacted with the *Tax Laws Amendment (Political Contributions and Gifts) Act 2010*, which limits existing provisions that allow businesses tax deductions of up to \$1 500 for gifts and contributions to political parties and Independent candidates and members. This applied retrospectively from 1 July 2008.
- 2.33 However, while the original 2008 bill also sought to limit individuals' tax deductions for gifts and contributions to political parties and Independent candidates and members, at the request of the Senate, the Government agree not to remove the deductions from individuals. This illustrated the importance that is placed on individuals' freedoms to participate in the

---

18 Joint Standing Committee on Electoral Matters, 'Dissenting Report' in the *Funding and Disclosure: Inquiry into disclosure of donations to political parties and candidates*, February 2006, Commonwealth Parliament of Australia, pp. 15-26.

19 Joint Standing Committee on Electoral Matters, *Advisory report on Schedule 1 of the Tax Laws Amendment (2008 Measures No. 1) Bill 2008*, June 2008, Commonwealth Parliament of Australia, pp. 40-41.

political process, with making donations recognised as a important form of political expression.

## Commonwealth Electoral Amendment (Political Donations and Other Measures) Bills

### Advisory report on the 2008 Bill

2.34 In June 2008 the Senate referred the Commonwealth Electoral Amendment (Political Donations and Other Measures) Bill 2008 to the JSCEM for inquiry and report in conjunction with its inquiry into the 2007 federal election. The bill aimed to:

- reduce the disclosure threshold to \$1 000 and remove CPI indexation;
- close the loophole to avoid reaching the threshold by dividing donations ('donation splitting') between different party divisions, by treating 'related political parties' as one entity for the purposes of the disclosure threshold and the disclosure of gifts;
- introduce six-monthly disclosure reporting;
- require people who make donations above the threshold to candidates, and agents of candidates and Senate groups to furnish a return within eight weeks after polling day;
- extend the prohibition on the receipt of anonymous donations above the threshold to prohibit the receipt of all anonymous donations by registered political parties and candidates;
- tie public funding to campaign receipts; and
- prohibit foreign donations.

2.35 The JSCEM reported in October 2008 and recommended that the Senate support the proposals in the bill relating to electoral funding, the donations disclosure threshold, reporting periods and the biannual framework, donation splitting, foreign and anonymous donations, and penalties, offences and compliance.

2.36 The committee also recommended the following two changes to the bill:

- Broadening of the current definition of 'electoral expenditure' in section 308 of the Act to 'include reasonable costs incurred for the rental of

dedicated campaign premises, the hiring and payment of dedicated campaign staff, and office administration;<sup>20</sup> and

- An amendment of the proposals in the bill relating to anonymous donations so as to allow for anonymous donations of under \$50 to be received 'without a disclosure obligation being incurred by the donor, and without the recipient being required to forfeit the donation or donations to the Commonwealth'.<sup>21</sup>

2.37 In the dissenting report, some members argued that campaign finance reform was a complex issue that requires integrated reform. These members recommended that:

- Further debate on the bill should be deferred until proper scrutiny and discussion of the first Green Paper process had been undertaken; and
- To amend the bill to allow anonymous donations below \$250 to be received 'without a disclosure obligation being incurred by the donor, and without the recipient being required to forfeit the donation or donations to the Commonwealth'.<sup>22</sup>

2.38 The bill was subsequently negated at the second reading stage in the Senate on 11 March 2009.

### Subsequent bills

2.39 The Commonwealth Electoral Amendment (Political Donations and Other Measures) Bill 2009 was introduced in March 2009. It was essentially a revised version of the 2008 bill with the addition of application and savings provisions.<sup>23</sup>

2.40 The second reading of the bill was moved in the Senate on 17 March 2009 and no further action was taken, and the bill lapsed at the end of the 42<sup>nd</sup> Parliament.

---

20 Joint Standing Committee on Electoral Matters, *Advisory report on the Commonwealth Electoral Amendment (Political Donations and Other Measures) Bill 2008*, October 2008, Commonwealth Parliament of Australia, p. 24.

21 Joint Standing Committee on Electoral Matters, *Advisory report on the Commonwealth Electoral Amendment (Political Donations and Other Measures) Bill 2008*, October 2008, Commonwealth Parliament of Australia, p. 64.

22 Joint Standing Committee on Electoral Matters, 'Dissenting Report' in the *Advisory report on the Commonwealth Electoral Amendment (Political Donations and Other Measures) Bill 2008*, October 2008, Commonwealth Parliament of Australia, pp. 79-80.

23 Parliamentary Library, 'Commonwealth Electoral Amendment (Political Donations and Other Measure) Bill 2009', *Bills Digest no. 115, 2008-2009*, 18 March 2009, pp. 2-3.

2.41 In the current 43<sup>rd</sup> parliament, the Australian Government introduced the Commonwealth Electoral Amendment (Political Donations and Other Measures) Bill 2010.

2.42 In the second reading, the Special Minister of State, the Hon Gary Gray AO MP, indicated that the 2010 bill was 'in substantially the same form as that introduced in March 2009'.<sup>24</sup> The main changes contained in the bill were to:

- reduce the donations disclosure threshold from \$11 500 (current rate, CPI-indexed) to \$1 000 and remove CPI indexation
- prohibit foreign donations to registered political parties, candidates and members of Senate groups and also prevent the use of foreign donations for political expenditure
- prohibit anonymous donations above \$50 to registered political parties, candidates and members of Senate groups and also prevent the use of anonymous donations above \$50 for political expenditure
- permit anonymous donations of \$50 or less in certain circumstances
- limit the potential for 'donation splitting'
- introduce a claims system for electoral funding and link funding to electoral expenditure
- extend the range of electoral expenditure that can be claimed and prevent existing members of Parliament from claiming electoral expenditure that has been met from their parliamentary entitlements, allowances and benefits
- introduce a biannual disclosure framework in place of annual returns and reduce timeframes for election returns, and
- introduce new offences and increase penalties for a range of existing offences.<sup>25</sup>

2.43 The Special Minister of State stated that:

The measures contained in this bill increase transparency and add to administrative processes for political parties and candidates. It is not the intention of the government to burden parties and

---

24 The Hon G Gray, Special Minister of State, 'Second reading speech: Commonwealth Electoral Amendment (Political Donations and Other Measures) Bill 2010', House of Representatives, *Debates*, 20 October 2010, p. 869.

25 Parliamentary Library, 'Commonwealth Electoral Amendment (Political Donations and Other Measures) Bill 2010', *Bills Digest no. 43, 2010-11*, 17 November 2010, p. 3.

candidates, but to increase the transparency and integrity of the electoral system.<sup>26</sup>

- 2.44 The 2010 bill passed the House of Representatives in November 2010 and was introduced and the second reading moved in the Senate. However, it has not progressed further.
- 2.45 A number of the proposals in the Commonwealth Electoral Amendment (Political Donations and Other Measures) bills are relevant to the current debate and, where applicable, are covered in the coming chapters.

## Electoral Reform Green Paper: Donations, Funding and Expenditure

- 2.46 In December 2008 the Australian Government released the *Electoral Reform Green Paper – Donations, Funding and Expenditure*. In introducing the first Green Paper, the then Special Minister of State, Senator the Hon John Faulkner, outlined a number of new challenges that the Australian democracy was facing:
- Spiralling costs of electioneering have created a campaigning ‘arms race’ – heightening the danger that fundraising pressures on political parties and candidates will open the door to donations that might attempt to buy access and influence.
  - New media and new technologies raise questions of whether our legislation and regulation remain appropriate and effective.
  - ‘Third party’ participants in the electoral process have played an increasing role, influencing the political contest without being subject to the same regulations which apply to political parties, raising concerns about accountability and transparency.
  - Australia has overlapping electoral systems, regulating different levels of government, creating uncertainty and confusion.<sup>27</sup>
- 2.47 The purpose of the first Green Paper was as a consultation paper to encourage public debate on options for addressing these challenges and improving Australia’s political funding and disclosure system. When the paper was released the Australian Government invited submissions on relevant issues.

---

26 The Hon G Gray, Special Minister of State, ‘Second reading speech: Commonwealth Electoral Amendment (Political Donations and Other Measures) Bill 2010’, House of Representatives, *Debates*, 20 October 2010, p. 869.

27 Commonwealth of Australia, *Electoral Reform Green Paper – Donations, Funding and Expenditure*, December 2008, p. 1.

2.48 The first Green Paper outlined various options for reform at the federal level and included discussion points to guide submissions. The key themes included:

- principles informing the regulation of electoral funding and disclosure;
- different approaches to regulation in Australia at the federal and state and territory levels, and in other selected countries;
- public funding;
- sources of private funding;
- disclosure obligations and timeliness;
- bans and caps on private funding;
- caps on expenditure;
- enforcement of the funding and financial disclosure system; and
- alternative approaches to election financial regulation and options for the future.

2.49 In concluding comments in the first Green Paper, the Australian Government acknowledged that:

The complexity of the issues is exacerbated by the fact that changes to the public funding regime, to donation and contribution regulations, and to disclosure requirements, inevitably interact, with the potential for unintended as well as desired consequences. Moreover, other aspects of election campaigning and the administration and conduct of elections not directly addressed by such reforms may nonetheless be affected by them as political parties adjust their structures and processes in response. Such changes may not be undesirable, but it is important they not be unforeseen, and that proposals for reforms are considered holistically.<sup>28</sup>

2.50 Fifty submissions were made in response to the first Green Paper. The majority of the submissions supported significant reform of Australia's funding disclosure system at the federal level. A number of the submissions opposed the need for, and the nature of, reforms that increased the regulation of political financing arrangements, as had been

---

28 Commonwealth of Australia, *Electoral Reform Green Paper – Donations, Funding and Expenditure*, December 2008, p. 79.

proposed by the Australian Government in its Commonwealth Electoral Amendment (Political Donations and Other Measures) Bill 2008.

- 2.51 Certain issues covered in the first Green Paper are discussed in detail in the relevant chapters of this report.

## JSCEM Roundtable on the Green Paper

- 2.52 On 16 April 2009 the previous Joint Standing Committee on Electoral Matters conducted a roundtable discussion<sup>29</sup> on the first Green Paper as part of its wider inquiry into the conduct of the 2007 federal election.
- 2.53 The committee indicated at that time that in conducting the roundtable it saw its role as facilitating discussion on key issues and not to select or recommend any preferred options.
- 2.54 The committee heard from a number of submitters<sup>30</sup> to the Green paper process. The broad topics of discussion included:
- caps, limits, bans and public subsidies;
  - alternative regulatory approaches in relation to advertising, restrictions on donors and enhancing disclosure; and
  - harmonisation of federal, state (and potentially) local government arrangements.
- 2.55 While no clear path forward emerged from the roundtable discussion, comments made by the CFMEU were reflective of many views expressed at the roundtable – and in other fora on this issue – about the need for reform on these issues. The CFMEU National Secretary at the time argued that:

I do not think there are any perfect solutions in this area. Everything, as we have seen from the debate today, has some problems associated with it, but nonetheless we cannot be in the realm of doing nothing and just watching the money spent on elections escalate out of control. We have to take concrete steps.<sup>31</sup>

---

29 A copy of the transcript is available on the JSCEM website at: <http://www.aph.gov.au/house/committee/em/greenpaper/hearings/Transcript%2016%20roundtable.pdf>

30 The groups represented were: Democratic Audit of Australia, Action on Smoking and Health Australia, The Wilderness Society, Public Interest Advocacy Centre and the Construction, Forestry, Mining and Energy Union. Professor George Williams and former senator Mr Andrew Murray also appeared in a private capacity.

31 Mr John Sutton, National Secretary, Construction Forestry, Mining and Energy Union, *Committee Hansard*, 16 April 2009, p. 51.

## 43<sup>rd</sup> Parliament reform agreements

- 2.56 The Australian Labor Party reached agreement with the Australian Greens and Independent Members in the formation of a minority government in the 43<sup>rd</sup> Parliament. These agreements included commitments relevant to Australian political funding and disclosure arrangements.
- 2.57 In the agreement between the Australian Greens and the Australian Labor Party, the parties to the agreement committed to ‘work together and with other parliamentarians to’:
- b) Seek immediate reform of funding of political parties and election campaigns by legislating to lower the donation disclosure threshold from an indexed \$11,500 to \$1,000; to prevent donation splitting between different branches of political parties; to ban foreign donations; to ban anonymous donations over \$50; to increase timeliness and frequency of donation disclosure; to tie public funding to genuine campaign expenditure and to create a ‘truth in advertising’ offence in the Commonwealth Electoral Act.
  - c) Seek further reform of funding of political parties and election campaigns by having a truly representative committee of the Parliament conduct a national inquiry into a range of options with the final report to be received no later than 1 October 2011, enabling any legislative reform to be dealt with in 2012.
    - ⇒ i. The Parties note that the Greens are predisposed to a system of full public funding for elections as in Canada.<sup>32</sup>
- 2.58 These points were also included in the agreement with the Independent Members, Mr Tony Windsor and Mr Rob Oakeshott MP, and the Australian Labor Party.<sup>33</sup>

---

32 *The Australian Greens & The Australian Labor Party ('The Parties') – Agreement*, pp. 2-3, <<http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22media%2Fpressrel%2F165017%22>> viewed 20 October 2011.

33 *The Australian Labor Party & the Independent Members (Mr Tony Windsor and Mr Rob Oakeshott) ('the Parties') – Agreement* p. 2, <[http://parlinfo.aph.gov.au/parlInfo/download/library/jrnart/218795/upload\\_binary/218795.pdf;fileType=application%2Fpdf#search=%22library/jrnart/218795%22](http://parlinfo.aph.gov.au/parlInfo/download/library/jrnart/218795/upload_binary/218795.pdf;fileType=application%2Fpdf#search=%22library/jrnart/218795%22)> viewed 20 October 2011.



## State developments

- 2.59 Under Australia's federal system states and territories may have a separate set of rules governing elections – and consequently political financing arrangements – within their jurisdictions. Currently, the Australian Capital Territory, New South Wales, Tasmania and Western Australia have legislated to regulate funding and disclosure arrangements in their state or territory.
- 2.60 The purpose of this section is not to outline the political financing arrangements in each state, but to note key developments or significant reforms that may have occurred. Appendix D provides a brief overview of key aspects of each state's political funding and disclosure arrangements.
- 2.61 A number of funding and disclosure initiatives have been pursued at the state level in Australia, including taking up elements of the Commonwealth Electoral Amendment (Political Donations and Other Measures) Bill. In particular, significant reforms have been undertaken in New South Wales and Queensland.
- 2.62 When questioned about the recent reforms in New South Wales and Queensland, the AEC indicated that it was not in a position to provide a detailed critique of each system. However, the AEC identified a number of similarities between the design of the funding and disclosure systems in each state:

There is much in common between the two, although they take different approaches in some aspects, but the fundamentals of them are very similar. They are based on donation caps, expenditure caps and centralised campaign accounts through which all transactions for election campaigns have to be made. There is increased public funding. I have not quite done the sums, but it looks like the election funding is increased from what was previously the case in those two states, plus there is the introduction of ongoing annual administrative funding for political parties. That is all premised on previous election results – on both votes obtained and members elected. Third parties are also being brought in as part of the group that is going to be subjected to these regulations. So it is not just the primary players of political parties and candidates but also third parties: anyone else who wants to engage in the campaign, like the ACTU, the mining industry and so forth.<sup>34</sup>

---

34 Mr Brad Edgman, Australian Electoral Commission, *Committee Hansard*, 8 August 2011, p. 3.

- 2.63 The nature of the approaches taken in New South Wales and Queensland give rise to certain difficulties, including possible constitutional issues, as limitations are being placed on groups and individuals' engagement in political and electoral processes. The extent to which restriction of political expression and participation in the political arena is warranted is a fundamental issue that these states have had to consider and make a determination on in the reform of their systems.
- 2.64 The key reforms in New South Wales and Queensland are summarised below. Brief mention is also made of parliamentary inquiries into political financing issues in Victoria and the Australian Capital Territory, which have indicated support for reforms in this area. Specific issues are discussed in more detail in the relevant chapters of this report.

## New South Wales

- 2.65 New South Wales has increased its regulation of political funding and disclosure at the state level. In June 2008, the passage of the Election Funding Amendment (Political Donations and Expenditure) Bill 2008 and the Local Government and Planning Legislation Amendment (Political Donations) Bill 2008, gave effect to what the state government described as 'the most significant reform of NSW campaign finance law since the enactment of the original' election funding and disclosure Act.<sup>35</sup>
- 2.66 The *Election Funding Amendment (Political Donations and Expenditure) Act 2008* introduced the following key reforms in New South Wales:
- (a) new rules for the management of campaign finances that prevent elected members and candidates from having personal campaign accounts, and from having direct involvement in the receipt and handling of political donations;
  - (b) a uniform disclosure threshold of \$1 000 for parties, groups, elected members and candidates to simplify the disclosure process and improve compliance;
  - (c) biannual disclosure of political donations (including membership fees and affiliation fees paid by trade unions) and electoral expenditure, rather than disclosure once

---

35 New South Wales Government, *Response to the report of the Select Committee on Electoral and Political Party Funding*, December 2008, p. 1, <[http://www.parliament.nsw.gov.au/Prod/parliament/committee.nsf/0/1CA6D5A89FABD975CA25746D00063640?open&refnavid=CO3\\_1](http://www.parliament.nsw.gov.au/Prod/parliament/committee.nsf/0/1CA6D5A89FABD975CA25746D00063640?open&refnavid=CO3_1)> viewed 21 October 2011.

- every four years following state or local government elections or following a by-election;
- (d) a reduced time period of eight weeks for the disclosure of political donations and expenditure to the EFA [Electoral Funding Authority], consistent with the Commonwealth's proposal;
  - (e) a requirement that donations that exceed the disclosure threshold of \$1 000 must come from either individuals or entities with an Australian Business Number to improve transparency;
  - (f) new powers to enable the EFA to recover double the amount of any unlawful political donation that has been knowingly accepted;
  - (g) increased penalties for breaches of the law;
  - (h) disclosure of the terms and conditions of loans of \$1 000 or more which are not from a bank or other financial institution;
  - (i) a requirement that all donations must be paid into the campaign account of the party, group of candidate, and a requirement that all electoral expenditure must be paid from the campaign account, to ensure that political donations are used for legitimate purposes; and
  - (j) a ban on certain 'in kind' donations valued at \$1 000 or more (excluding volunteer labour).<sup>36</sup>

2.67 In March 2010, the NSW Joint Standing Committee on Electoral Matters reported on its inquiry into the public funding of election campaigns and made a number of recommendations in relation to caps and bans on donations, quarantined accounts, other sources of income, disclosure, caps on expenditure, public funding, compliance and enforcement, legislative and administrative reform and local government arrangements. The NSW JSCEM supported reform of political financing arrangements in the state, but stressed that its recommendations must be viewed as part of an 'integrated package' of reform.<sup>37</sup>

---

36 New South Wales Government, *Response to the report of the Select Committee on Electoral and Political Party Funding*, December 2008, pp. 1-2, <[http://www.parliament.nsw.gov.au/Prod/parlment/committee.nsf/0/1CA6D5A89FABD975CA25746D00063640?open&refnavid=CO3\\_1](http://www.parliament.nsw.gov.au/Prod/parlment/committee.nsf/0/1CA6D5A89FABD975CA25746D00063640?open&refnavid=CO3_1)> viewed 21 October 2011.

37 Parliament of New South Wales, Joint Standing Committee on Electoral Matters, *Public funding of election campaigns*, Report No. 2/54 – March 2010, p. 1.

2.68 In November 2011, the Election Funding and Disclosures Amendment Bill 2010 was passed. It amended the NSW *Election Funding and Disclosures Act 1981* to:

- place caps on political donations;
- impose limits on campaign expenditure;
- regulate the electoral participation of third parties; and
- increase public funding for state election campaigns.<sup>38</sup>

2.69 The Electoral Funding Authority of NSW, a statutory body, is responsible for administering the state's *Election Funding, Expenditure and Disclosures Act 1981*. Key features of the current NSW system include:<sup>39</sup>

#### Disclosure

- Political donations disclosure threshold of \$1 000 for a single donation, or multiple donations from one donor or the same recipient that total \$1 000 in a financial year;
- Disclosures are published on the Authority's website as soon as practicable after the due date for making the disclosures and kept for six years;

#### Prohibitions on types of donations and donors

- Prohibition on making certain indirect campaign contributions that exceeds \$1 000 or the total value of the items provided by the same person/entity exceeds \$1 000 (punishable by a \$11 000 fine);
- Prohibition on anonymous donations (punishable by a \$11 000 fine);
- Prohibition on donations from certain political donors, including:
  - ⇒ corporations which are property developers, tobacco industry business entities and profit making liquor or gambling industry entities;
  - ⇒ if an entity does not have a number allocated or recognised by Australian Securities and Investments Commission;

---

38 Parliament of New South Wales, Legislative Review Committee, *Legislation Review Digest No. 15 of 2010–8 November 2010*, p. 15, <[http://www.parliament.nsw.gov.au/Prod/parliament/committee.nsf/0/263ab33a40ddcc87ca2577d500142361/\\$FILE/2010.15%20%20Legislation%20Review%20Digest.pdf](http://www.parliament.nsw.gov.au/Prod/parliament/committee.nsf/0/263ab33a40ddcc87ca2577d500142361/$FILE/2010.15%20%20Legislation%20Review%20Digest.pdf)> viewed 31 October 2011.

39 NSW Electoral Funding Authority website, <<http://www.efa.nsw.gov.au/>> viewed 7 October 2011.

- ⇒ if an individual is not on the electoral roll for federal, state or local government elections in Australia (punishable by a \$11 000 fine);

### Caps

- Caps are adjusted for inflation each financial year;
- Caps applicable to the 2011-2012 financial year include \$5 200 for registered parties or groups and \$2 100 for candidates, an elected member, unregistered parties or a third-party campaigner.
- Subscriptions paid to a party are exempt from the cap on political donations, except for any amount that exceeds the maximum amount allowed to be paid to a party as a subscription (\$2 000);

### Public funding

- Four per cent (or elected member) threshold for eligibility for public funding;
- Public funding for 'electoral communication' expenditure to eligible parties and candidates;
- Advanced payments to a registered party for the purposes of political communication may be made under certain circumstances;
- Administrative funding<sup>40</sup> is available for eligible parties and Independent members; and
- Policy development funding is available to parties that are not eligible for payments from the Administration Fund.

2.70 The Greens New South Wales acknowledged that the full impact of the NSW reforms are not yet known, but did outline what it saw as significant benefits and small problems with the system. It argued that the 'ban on the making and receiving of political donations from the developer, tobacco and for profit alcohol and gambling industries' was a positive move, but also identified a number of problems with the system, including that the election expenditure and reimbursement model needed to be simplified.<sup>41</sup>

2.71 Reforms to political financing arrangements in New South Wales are continuing. In September 2011 the Election Funding, Expenditure and Disclosures Amendment Bill 2011 was introduced into the NSW

---

40 *Election Funding, Expenditure and Disclosures Act 1981*, part 6A.

41 The Greens NSW, *Submission 18*, p. 2.

Legislative Assembly. Premier Barry O'Farrell explained the intent of the bill, stating that:

This bill will ban donations from other than individuals, including corporations, industrial organisations, peak industry groups, religious institutions and community organisations – in other words, third party interest groups. It will do this by making it unlawful for a political donation to be made or received if the donor is not an individual who is on an electoral roll for Commonwealth, State or local government elections. The bill also will link the electoral communication expenditure of political parties with that of their affiliates to ensure that the effectiveness and fairness of campaign finance rules are not undermined. These reforms are a reasonable, measured and fair way to inject more transparency and accessibility into the State's political processes.<sup>42</sup>

- 2.72 The NSW Legislative Review Committee considered the bill, and in its report in October 2011 raised concerns about the cap on campaign expenditure as potentially limiting freedom of political communication.<sup>43</sup> At the date of writing, the bill had not been passed by the New South Wales Parliament.

## Queensland

- 2.73 In December 2010 the Queensland Government released the *Reforming Queensland's electoral system* report setting out proposed reforms to the state's electoral campaign financing and enrolment processes. The report stated that the proposed reforms were to give effect to the state government's commitment to undertake reforms, such as capping political donations, if political funding reforms at the federal level were not achieved by July 2010.<sup>44</sup>

---

42 Parliament of New South Wales, 'Agreement in Principle', Speech on the Election Funding, Expenditure and Disclosures Amendment Bill 2011, Premier Barry O'Farrell, 12 September 2011, p. 1, <[http://www.parliament.nsw.gov.au/prod/parlment/nswbills.nsf/0/ef0fa9bfab5141eeca2578b80024329d/\\$FILE/ELECTION%20FUNDING.pdf](http://www.parliament.nsw.gov.au/prod/parlment/nswbills.nsf/0/ef0fa9bfab5141eeca2578b80024329d/$FILE/ELECTION%20FUNDING.pdf)> viewed 21 October 2011.

43 New South Wales Parliament, Legislative Review Committee, *Legislation Review Digest No. 5 of 2011–11 October 2011*, pp. 10-11, <[http://www.parliament.nsw.gov.au/prod/parlment/committee.nsf/0/0b58a95400c19ff9ca257926001c91f1/\\$FILE/Digest%205.pdf](http://www.parliament.nsw.gov.au/prod/parlment/committee.nsf/0/0b58a95400c19ff9ca257926001c91f1/$FILE/Digest%205.pdf)> viewed 21 October 2011.

44 Queensland Government, *Reforming Queensland's electoral system*, December 2010, p. 5, <<http://www.premiers.qld.gov.au/community-issues/open-transparent-gov/assets/electoral-reform-whitepaper.pdf>>

2.74 The *Electoral Reform and Accountability Amendment Act 2011* subsequently gave effect to a number of the proposed reforms outlined in the report. The reforms relevant to the regulation of political funding and disclosure included:

- Capping amounts donated by donors for use in state election campaigns;
- Capping the amount political parties, candidates and third parties can spend on state election campaigns;
- Ensuring the public continue to receive information on issues raised in election campaigns by increasing public funding to political parties and candidates;
- Requiring political parties, candidates and third parties to establish and maintain dedicated state campaign accounts;
- Requiring third parties to register with the Electoral Commission Queensland (“commission”) if they spend more than \$10 000 campaigning during an election period (or \$2 000 in a single electorate); and
- Providing the commission with the powers to monitor the existing and new regulatory regime.<sup>45</sup>

2.75 The Explanatory Memorandum stated that the bill aimed:

...to improve the integrity and public accountability of state elections. The reforms aim to limit any potential for undue influence being exercised by any one donor or lobby group in relation to an election campaign – or any perception of such influence. To balance the effects of capping electoral donations and expenditure, the Bill provides for increased public funding to political parties and candidates for elections and administrative funding for political parties and independent members.<sup>46</sup>

2.76 In Queensland, public funding has been increased by providing for administrative expenditure funding and advance election funding payments.<sup>47</sup>

---

45 Queensland Government, Explanatory Memorandum, Electoral Reform and Accountability Amendment Bill 2011, pp. 1-2, <<http://www.legislation.qld.gov.au/Bills/53PDF/2011/ElecRefAccAmb11Exp.pdf>> viewed 28 October 2011.

46 Queensland Government, Explanatory Memorandum, Electoral Reform and Accountability Amendment Bill 2011, p. 1, <<http://www.legislation.qld.gov.au/Bills/53PDF/2011/ElecRefAccAmb11Exp.pdf>> viewed 28 October 2011.

47 *Electoral Reform and Accountability Amendment Act 2011*, Division 5 – Administrative expenditure funding.

## Victoria

- 2.77 The Victorian Electoral Matters Committee reported in April 2009 for its inquiry into political donations and disclosure. The Victorian committee considered whether the Victorian *Electoral Act 2002* should be amended to create a system of political donations disclosure and/or restrictions on political donations. It was noted in the report that while 'Victoria, along with the Commonwealth, is amongst the least regulated jurisdictions in the western world in terms of political finance law...political finance reform is a sound method of managing risk against political corruption'.<sup>48</sup>
- 2.78 The Victorian Electoral Matters Committee recommended that:
- Recommendation 1: The Victorian and Commonwealth Governments consider how best to harmonise political finance laws to ensure a uniform and consistent approach.
- Recommendation 2: The Victorian Government updates the caps on political donations contained in the *Electoral Act 2002 (Vic)* in light of forthcoming changes to the structure of licensing of electronic gaming machines.
- Recommendation 3: The Victorian Government amend the *Electoral Act 2002 (Vic)* to ensure that the reporting and disclosure provisions that apply federally to registered political parties, also apply to independent candidates and political parties registered in Victoria.<sup>49</sup>
- 2.79 The Victorian Government subsequently addressed the matter in recommendation two, amending the *Electoral Act 2002* to apply the cap on donations to all holders of gaming machine entitlements. However, in the Government Response, it indicated that rather than creating a separate state disclosure system it preferred to wait for reforms at the national level, and noted that it had participated in the development of the first Green Paper.<sup>50</sup>
- 2.80 In October 2011 the Victorian Premier Ted Baillieu, released a *Fundraising Code of Conduct* for Ministers, Parliamentary Secretaries and Government
- 

48 Parliament of Victoria, Electoral Matters Committee, *Inquiry into political donations and disclosure*, April 2009, p. vii.

49 Parliament of Victoria, Electoral Matters Committee, *Inquiry into political donations and disclosure*, April 2009, p. x.

50 State Government of Victoria, *Report on the inquiry into political donations and disclosure: Government Response*, 10 November 2009, <[http://www.parliament.vic.gov.au/archive/emc/Inquiry%20into%20Political%20Donations%20and%20Disclosure/government\\_response.pdf](http://www.parliament.vic.gov.au/archive/emc/Inquiry%20into%20Political%20Donations%20and%20Disclosure/government_response.pdf)> viewed 31 October 2011.



Members, to reform fundraising practices in the state.<sup>51</sup> The Premier indicated that the code sought to address a number of areas of community concern.

- 2.81 The elements of the new code that could affect political financing arrangements in Victoria include:
- A Minister or Parliamentary Secretary or Government Member will no longer be able to solicit or receive direct donations.
  - Ministers, Parliamentary Secretaries and Government Members will not be permitted to operate any bank accounts for the receipt and distribution of campaign or political fundraising proceeds.
  - Corporate fundraising events can no longer promote privileged access to decision makers or Ministers.
  - Neither ministerial offices nor department facilities can be used for political fundraising purposes.
  - Proceeds from fundraising events and activities of supporter groups will be required to be paid into an account with the central office of the Liberal or National Party organisations. Neither Members of Parliament nor Ministers will be able to manage these accounts.<sup>52</sup>
- 2.82 The new code also has implications for disclosure, with the introduction of the requirement for public disclosure to the AEC within one month of receipt of any donation of more than \$100 000, or when aggregate total receipts from a donor equal or exceed \$100 000 in a financial year.<sup>53</sup>
- 2.83 The code only covers the government – Ministers, Parliamentary Secretaries and Government Members. However, Premier Baillieu, has extended the invitation to the Opposition and other parties to ‘also adopt the new standards of the code and apply them to all fundraising activities’.<sup>54</sup>

---

51 State Government of Victoria, *Fundraising Code of Conduct*, <[http://www.premier.vic.gov.au/images/stories/documents/mediareleases/2011/00\\_Victorian\\_Government\\_Fundraising\\_Code\\_of\\_Conduct.pdf](http://www.premier.vic.gov.au/images/stories/documents/mediareleases/2011/00_Victorian_Government_Fundraising_Code_of_Conduct.pdf)> viewed 31 October 2011.

52 Premier of Victoria website, Media release, *Premier delivers tough new Code of Conduct to reform political fundraising and lobbying in Victoria*, 30 October 2011, <<http://www.premier.vic.gov.au/media-centre/media-releases/2367-premier-delivers-tough-new-code-of-conduct-to-reform-political-fundraising-and-lobbying-in-victoria.html>>

53 Premier of Victoria website, Media release, *Premier delivers tough new Code of Conduct to reform political fundraising and lobbying in Victoria*, 30 October 2011, <<http://www.premier.vic.gov.au/media-centre/media-releases/2367-premier-delivers-tough-new-code-of-conduct-to-reform-political-fundraising-and-lobbying-in-victoria.html>>

54 Premier of Victoria website, Media release, *Premier delivers tough new Code of Conduct to reform political fundraising and lobbying in Victoria*, 30 October 2011,

## Australian Capital Territory

- 2.84 The Australian Capital Territory has an Election Funding and Disclosure scheme under the ACT *Electoral Act 1992* that provides for election funding and financial disclosure arrangements. It is similar to the Commonwealth's funding and disclosure scheme.<sup>55</sup>
- 2.85 A recent relevant development in the Australian Capital Territory was the inquiry into campaign finance and electoral funding in the ACT. The Legislative Assembly Standing Committee on Justice and Community Safety released its report entitled *A Review of Campaign Financing Laws in the ACT* in September 2011.<sup>56</sup>
- 2.86 In its report that committee supported reform of the present system and recommended:
- caps on both political donations and electoral expenditure;
  - the ACT adopt an online reporting and disclosure system, together with shorter time-lines for reporting and disclosure, particularly during election periods;
  - increasing public funding to candidates and parties, and that this be expressed as a percentage of the amount per vote for the Senate; and
  - introducing administrative funding for parties.<sup>57</sup>
- 2.87 However, no subsequent legislative action has been taken to implement reforms along these lines.

---

<<http://www.premier.vic.gov.au/media-centre/media-releases/2367-premier-delivers-tough-new-code-of-conduct-to-reform-political-fundraising-and-lobbying-in-victoria.html>>

55 ACT Electoral Commission website, <<http://www.elections.act.gov.au/page/view/448/title/funding-and-disclosure>> viewed 4 November 2011.

56 Legislative Assembly for the Australian Capital Territory, Standing Committee on Justice and Community Safety, *A Review of Campaign Financing Laws in the ACT*, September 2011, <<http://www.parliament.act.gov.au/downloads/reports/Campaign%20Financing%20Report%202011.pdf>>

57 Legislative Assembly for the Australian Capital Territory, Standing Committee on Justice and Community Safety, *Media Release*, 22 September 2011, <<http://www.parliament.act.gov.au/downloads/media-releases/110922JACS.pdf>>

## International developments

2.88 A number of submitters argued that Australia's funding and disclosure system is lagging behind arrangements in comparable nations.<sup>58</sup> Nations such as Canada, the United States of America, New Zealand and the United Kingdom have undertaken considerable reform of the regulation of political funding, and have systems which include some restrictions on donations, donors and advertising. However, this is not in itself a reason to increase the regulation of funding and disclosure at the federal level in Australia.

2.89 In the roundtable discussion on the first Green Paper, Professor George Williams argued that while Australia's system had compared well internationally in previous decades that was no longer the case today. He asserted that:

It is second rate especially when you compare it against the reforms undertaken in other nations, such as New Zealand, Canada and the like. There have been great leaps forward in those other places looking at issues such as expenditure, donations and so on, and Australia simply has not grasped the need to deal with those same issues.<sup>59</sup>

2.90 The first Green Paper outlined some of the key features of the regulatory regimes of comparable nations, including New Zealand, Canada, the United States of America and the United Kingdom, noting that these nations had adopted quite different approaches to regulating political financing arrangements. It was stated that while there were strengths and weaknesses in each of the different regimes, Australia could 'draw on the experiences' and 'learn from the mistakes' of these regimes.<sup>60</sup>

2.91 Submitters to this inquiry similarly saw international practices in this area as a source from which Australia can draw in reforming – or refining<sup>61</sup> – its own system. The key features of the funding and disclosure systems in Canada, New Zealand, the United States and the United Kingdom are outlined in Appendix E. Specific issues are discussed in more detail in the relevant chapters of this report.

---

58 See, for example, Action on Smoking and Health Australia, *Submission 8*, p. 2.

59 Professor George Williams, Private capacity, *Committee Hansard*, 16 April 2009, p. 4.

60 Commonwealth of Australia, *Electoral Reform Green Paper – Donations, Funding and Expenditure*, December 2008, p. 32.

61 The Nationals, *Submission 24*, p. 6.

## Is further reform needed?

2.92 The Liberal Party of Australia stated in its submission that:

Australian democracy is best served if there is a legislative framework for political party funding that is fair to all parties, takes adequate account of the role of third parties and is not onerous for party administration.<sup>62</sup>

2.93 It is generally acknowledged there is little evidence of donors exerting influence on politicians, other than in a few extreme cases. The Australian Labor Party submitted that:

As has been demonstrated in academic studies, the Green Paper process and through previous hearings of this Committee, the incidence of political influence from a donor culture have been virtually non-existent.

Despite this, the perception remains and in a number of jurisdictions parliaments have taken steps to increase public financing for political parties and candidates, to lessen the impact of private or institution donations and contributions.<sup>63</sup>

2.94 The Democratic Audit of Australia described the current funding and disclosure arrangements as one of the two 'major black spots' in the current Australian electoral system.<sup>64</sup>

2.95 In a roundtable discussion in response to the first Green Paper, Professor George Williams argued that:

When I assess the current system against those three goals that I put on the table [increasing transparency by increasing disclosure, reducing the demand for money within the system, and reducing complexity] I think if we look at it through the eyes of 1983 it was a good system for more than a quarter of a century ago. It was a modern, good system that reflected international practice. But according to 2009 standards, the current system is frankly second rate...It means that our current system has some very large holes and also some major deficiencies when it comes to how the system regulates political finance.<sup>65</sup>

---

62 Liberal Party of Australia, *Submission 25*, p. 1.

63 Australian Labor Party, *Supplementary submission 21.1*, p. 2.

64 Professor Brian Costar, Democratic Audit of Australia, *Committee Hansard*, 16 April 2009, p. 4.

65 Professor George Williams, Private capacity, *Committee Hansard*, 16 April 2009, p. 4.

- 2.96 As the Democratic Audit of Australia observed at the JSCEM roundtable discussion on the first Green Paper, changes in many other countries that have led to a tightening of regulations have often been spurred by a serious scandal. He argued that this is not a pattern that Australia would want to emulate.<sup>66</sup>
- 2.97 The Australian Labor Party highlighted the importance of an effective disclosure scheme under the current approach to regulating political financing, stating that:
- ...a fundamental source of the strength of the Australian political system has been our strong party-based democracy with support for political activity from public funding and open and transparent accountability through political disclosure.<sup>67</sup>
- 2.98 The Liberal Party of Australia presented an alternative perspective. While indicating that it was willing to comply with all funding and disclosure requirements, it questioned whether reform in this area was actually warranted, stating that:
- ...no problems have been identified with the changes legislated in the last parliament. Our current electoral system is working well, and the case for change has not been demonstrated. We caution against reversing reforms that have, in our view, improved the operation and effectiveness of the Act.<sup>68</sup>
- 2.99 Despite fundamental differences on certain aspects of Australia's system of political funding and disclosure arrangements, there are points upon which there is general agreement between political parties over what they consider important to an effective regulatory system and areas in which improvements can be made. These include:
- Protecting and enhancing the integrity of, and public confidence in, Australia's electoral system;
  - Providing transparency and accountability;
  - Having a system that is fair and equitable to all political parties and does not unreasonably restrict a candidate or party's ability to communicate with voters;
  - Recognising the role of third party participants in the electoral process and including them in regulatory arrangements, where appropriate;

---

66 Professor Brian Costar, Democratic Audit of Australia, *Committee Hansard*, 16 April 2009, p. 5.

67 Australian Labor Party, *Supplementary submission 21.1*, p. 2.

68 Liberal Party of Australia, *Submission 25*, Attachment A, p. 2.

- Respecting the privacy of participants in the political process;
- Enhancing consistency across state and federal jurisdictions; and
- Ensuring the system is enforceable.

2.100 The Liberal Party of Australia stated:

To be viable over the longer term, any proposed changes must have wide support across the political spectrum and not be designed to benefit one party over another...[parties must] engage in genuine discussions about developing laws that are fair to all participants in the political process.<sup>69</sup>

2.101 In discussions during, and prior to, this inquiry advocates for reform have stressed that action must be taken to improve Australia's funding and disclosure arrangements. They argued that while there was no ideal system that would address all issues it is important to take concrete steps to reform the system.

## Conclusion

2.102 As was the case with the first committee report of the Joint Select Committee on Electoral Reform that led to the introduction of the public funding and disclosure system, there are basic philosophical differences between the major parties on how best to approach concerns about political financing and rising costs, and the extent to which public funding and regulation of donations and expenditure is needed.

2.103 While there are no perfect solutions or ideal models for the regulation of political financing arrangements, the committee agrees that it is important to take action to address the deficiencies of the current arrangements and improve the integrity and transparency of Australia's funding, expenditure and disclosure arrangements.

---

<sup>69</sup> Liberal Party of Australia, *Submission 25*, Attachment A, p. 4.

## Private funding

### Sources of private funding

- 3.1 A substantial amount of funding to political parties is obtained from private sources. Many advocates for reform argue that this, combined with the escalating costs of campaigning, could give rise to a situation in which political parties and candidates are increasingly dependent on private sources for their continued operation. This could render them potentially vulnerable to the perception of influence from major private donors. However, a balance must be struck between addressing these concerns and preserving the right of political expression of individuals and groups through making donations.
- 3.2 In this chapter the committee examined the regulation of private funding with these concerns in mind. It considered the effectiveness of the current arrangements and discussed options for improvement by revisiting disclosure threshold levels and its application, and the current reporting requirements. More substantial reform options for private donations are considered in Chapter 4.
- 3.3 All political parties, associated entities and third parties are able to receive privately sourced donations from individuals, corporations and other organisations. Candidates and Senate groups in a federal election may also receive donations.
- 3.4 The *Commonwealth Electoral Act 1918* (Electoral Act) does not impose any limits or restrictions on privately sourced donations to political parties or associated entities. The *Electoral Reform Green Paper – Donations, Funding and Expenditure* (first Green Paper) stated that the rationale for this was

that the making of political donations was seen to be a legitimate exercise of the freedom of political association and the freedom of expression.<sup>1</sup>

- 3.5 The first Green Paper, published in 2008, cited figures indicating that 80 per cent of the major political parties' funds come from private sources. It also stated that around three-quarters of the major political parties' funds from private sources come from fundraising activities, investments and debt.<sup>2</sup> This means that donations form one-quarter of the incoming finances from private sources of major political parties. In the first Green Paper it was noted that in the 2004-05 financial year, over 80 per cent of funds raised from donations included donations of \$10 000 or more.<sup>3</sup>
- 3.6 This suggests that large donations are an important component of private funding for the major parties. Instances of large donations to smaller political parties, such as the Australian Greens immediately prior to the 2010 federal election, indicate that large donations can also be important to the minor political parties.
- 3.7 While there are currently no limitations or restrictions on the amount and sources of donations to political parties, associated entities and candidates at the federal level, Part XX of the Electoral Act requires that the following must be disclosed by political parties to the AEC 16 weeks following the end of the financial year:
- total amount received by or on behalf of the party
    - ⇒ where amount from a person or organisation is more than the disclosure threshold for the financial year, the name and address of the person or organisation;
  - total amount paid by or on behalf of the party during the financial year; and
  - total outstanding amount as at the end of the financial year, of all debts incurred by or on behalf of the party
    - ⇒ where an amount from a person or organisation is more than the disclosure threshold for that financial year, the name and address of the person or organisation.<sup>4</sup>
- 

1 Commonwealth of Australia, *Electoral Reform Green Paper – Donations, Funding and Expenditure*, December 2008, p. 17.

2 Commonwealth of Australia, *Electoral Reform Green Paper – Donations, Funding and Expenditure*, December 2008, p. 41.

3 Commonwealth of Australia, *Electoral Reform Green Paper – Donations, Funding and Expenditure*, December 2008, p. 42.

4 Additional requirements exist if an amount is received or a debt is incurred from a trust fund, foundation or unincorporated association above the disclosure threshold. Details of loans



- 3.8 Associated entities must disclose the same information as political parties, but are required to disclose details of capital contributions that were used to generate funds to be provided to a political party.
- 3.9 The disclosure threshold for returns pertaining to the 2010-2011 financial year was \$11 500.
- 3.10 The first Green Paper highlighted the fact that only one quarter of major political parties' funds from private sources or only 20 per cent of total funds of major political parties from both public and private sources were covered by the Electoral Act. The effect is that 'major contributions' to a political party or candidate could remain undisclosed under the current disclosure requirements.
- 3.11 For example, money paid to attend or paid at political party or candidate fundraising events may remain undisclosed, as may the details of money paid to attend fundraisers held by associated entities. The higher disclosure thresholds also mean that a number of donations, some of which may arguably be in the public interest to be known, will not be disclosed.
- 3.12 When determining the appropriate degree of regulation in this area, a balance must be struck between making information of public significance available and allowing political parties and third parties to communicate with voters. Individuals and groups must also be able to freely participate in the political process through making donations without having an undue administrative burden imposed upon them. In this chapter, the committee considered options for achieving these goals through the refinement of the current system.

### Is change to the current scheme necessary?

- 3.13 Chapters 1 and 2 made reference to the different approaches to regulating political financing. The approach in Australia to date has been to focus on disclosure of financial transactions as the key mechanism for transparency and accountability of political actors, with little direct limitation on the amounts and sources of funds.
- 3.14 Despite the existence of a scheme for the disclosure of sources of funding of political parties in the Electoral Act, a number of submitters to this inquiry – and to previous processes – argued that the perception of undue

influence by political donors on the political parties to which they donate exists within the community.

3.15 There is general agreement between committee members that most parliamentarians work to serve their constituents and country. However, a number of submitters argued that the activities of all parliamentarians and candidates can still be coloured by a perception of the possibility of undue influence. This perception was identified in the first Green Paper as being ‘as damaging to democracy as undue influence itself’.<sup>5</sup>

3.16 A number of submitters argued that donations to political parties and their associated entities tend to be strategic business decisions rather than being motivated by benevolence or ideology. For example, the Public Health Association Australia commented that:

In modern politics party donations have the capacity to buy influence. Otherwise donations would be made to the one party that most closely aligned with the goals and aspirations of the donor...The overwhelmingly dominant reason for donors taking this approach is to purchase access and influence.<sup>6</sup>

3.17 The Public Health Association Australia also argued that the perception of undue influence can be as damaging as undue influence itself, as it colours people’s view of the legitimacy of the democratic process even if there are no inappropriate activities actually occurring. It commented that:

As the community becomes more aware of the influence of political donations on elected members and their parties, the situation is becoming more untenable for those members who, when making a decision based on the evidence as they see it, are accused of acting in one way or another because of financial influence.<sup>7</sup>

3.18 A number of submitters to the inquiry identified a potential link between the election spending ‘arms race’ and the ‘need’ by political parties and their associated entities to seek additional funding through private donations to ‘keep up with the other side’, and the effect that this was having on perceptions of undue influence and the perceived legitimacy of the democratic process. The Australian Labor Party (ALP), for example, stated:

---

5 Commonwealth of Australia, *Electoral Reform Green Paper – Donations, Funding and Expenditure*, 2008, p. 2.

6 Public Health Association Australia, *Submission 7*, p. 4.

7 Public Health Association Australia, *Submission 7*, p. 4.

In recent years...the size of political campaigns have grown at an alarming rate, with some in the community concerned that election spending has risen to unsustainable levels. An 'arms race' has emerged between political parties, with media buying reaching saturation point during the election campaign period. This has placed increased pressure on political parties to seek out further donations, with a concomitant impact on public credibility for political parties.<sup>8</sup>

- 3.19 To address the potentially damaging effect of the perception of undue influence, changes to the regulation of donations could involve:
- the inclusion of 'stronger' measures under the current system, such as a lower disclosure threshold; or
  - more substantial changes, such as the development of a scheme involving caps and bans, which is discussed in Chapter 4.
- 3.20 The Australian Electoral Commission (AEC) emphasised the importance of designing a scheme to minimise the perception of undue influence through political donations. While conceding that it had not done any specific research on the issue, the AEC commented:
- Whether it is a ban on donations from particular industries, whether it is tobacco, the hotel industry or whatever, the notion that large donations can actually buy influence is a common perception in the community. Whether that is the reality or not, that is the perception....If there is a general view in the community that this is happening, then you design a scheme to try and avoid that perception.<sup>9</sup>
- 3.21 However, in discussions during the inquiry, it was suggested that this link between the perception of undue influence and political donations may be overstated and that the existence of money in the political process was not necessarily a corrupting influence.
- 3.22 Some members of the committee queried the meaning of the concept of undue influence in the context of political funding, and argued that the votes and actions of Members, Senators and other political actors are not manipulated according to sources of funding for their political party. These members noted that politicians themselves do not actually see or handle the money donated to the party, and challenged whether there is

---

8 Australian Labor Party, *Submission 21*, p. 2.

9 Mr Ed Killesteyn, Electoral Commissioner, Australian Electoral Commission, *Committee Hansard*, 8 August 2011, pp. 2-3.

any direct or discernible link between money received by the party and the individual decisions of Members of Parliament and Senators.<sup>10</sup>

## Conclusion

- 3.23 When political donation and disclosure issues were examined in 1983 and subsequently, the major political parties in Australia have taken a different ideological stance on the risks that money poses to the political process and the degree of regulation required.
- 3.24 The committee believes that the current climate of high election spending and the need by political parties to seek additional funds through donations justifies a higher degree of regulation of Australia's funding and disclosure arrangements to help minimise the perception of, and potential for, corruption.
- 3.25 The 'principles informing the regulation of electoral funding and disclosure', as outlined in the first Green Paper, should be taken into account when designing a regulatory framework for funding and disclosure. The principles include:
- integrity;
  - fairness;
  - transparency;
  - privacy;
  - viability, that is, ensuring political parties and candidate are financially able to provide the electorate with a suitable choice of representatives;
  - participation;
  - freedom of political association and expression;
  - accountability and enforceability;
  - ensuring public costs in democratic processes are not unreasonable; and
  - ensuring regulation balances these principles against the costs of compliance and administration.<sup>11</sup>

---

10 *Committee Hansard*, 8 August 2011, p. 20.

11 Commonwealth of Australia, *Electoral Reform Green Paper – Donations, Funding and Expenditure*, 2008, p. 17.

## Setting the disclosure threshold

- 3.26 Australia's funding and disclosure system is primarily based on disclosure, which has been described as the 'cornerstone of political transparency'. The ALP argued that:
- Disclosure serves to inform the public, through the media, about the nature of each party or candidate and the type of support they receive. It also informs shareholders or stakeholders about the support that a company or institution offers to the political process. Further, disclosure effectively deters any tacit or secret attempt to influence decision making.<sup>12</sup>
- 3.27 Political parties and associated entities are subject to annual disclosure requirements under the Electoral Act. Similarly, candidates and Senate groups are subject to certain disclosure requirements in relation to a particular election or by-election they are contesting.
- 3.28 Sections 305A and 305B of the Electoral Act provide that persons making gifts totalling above the disclosure threshold applicable for that financial year to the same registered political party or the same state branch of a political party must furnish a financial disclosure return to the AEC. The return must be lodged within 20 weeks of the end of the financial year, showing all gifts the person made to the political party or branch during the financial year, where the total of those gifts exceeds the disclosure threshold.
- 3.29 In 2006, the Electoral Act was amended to increase the disclosure threshold from \$1 500 to \$10 000, indexed annually in line with the Consumer Price Index (CPI) figure. The disclosure threshold for returns relating to the 2007-2008 financial year was \$10 500 and it rose to \$11 200 for 2009-2010, and \$11 500 for the 2010-2011 financial year. A higher disclosure threshold results in the exclusion of a greater number of receipts by political parties from public disclosure.
- 3.30 A summary of the current annual disclosure requirements for political parties, associated entities, donors and third parties, as well as the obligations for each election for candidates, election donors and Senate Groups is included at Appendix C. The disclosure requirements for New Zealand, Canada, the United Kingdom and the United States of America are outlined in Appendix E.

---

12 Australian Labor Party, *Supplementary submission 21.1*, pp. 2-3.

- 3.31 A number of submissions advocated for reducing the disclosure threshold above which receipts must be disclosed by political parties and associated entities, as well as by donors and third parties.
- 3.32 The most common rationale underpinning support for a lower disclosure threshold was to increase transparency. Supporters of this measure argued that a lower threshold would give electors a clearer idea of who was funding political parties and the potential to which a political party might be influenced by those funding it.
- 3.33 The level of the disclosure threshold was also suggested to play a role in the practice of 'donation splitting' and the scope for some associated entities to raise significant amounts of money for parties, while only disclosing a small sum of that money.<sup>13</sup> 'Donation splitting' is a practice in which donors to political parties are alleged to 'split' large sums between their registered branches so that they individually come under the disclosure threshold to avoid disclosing the amounts received.
- 3.34 Action on Smoking and Health (ASH) expressed concerns about the scope for circumvention of disclosure obligations through 'donation splitting' when a higher threshold is in place. It also argued that Australia is 'lagging behind' other countries in terms of electoral funding reform. The ASH commented that:
- Rather than improving the transparency and accountability of the funding regime, political donations and their associated conflicts of interest have been made more secret with a tenfold increase in the disclosure limit for donations...and such limits can be bypassed when donations are dispersed across state branches.<sup>14</sup>
- 3.35 Similarly to ASH, the Australian Greens also noted in its submission the potential facilitative role that a higher disclosure threshold could play in the practice of 'donation splitting'. The Australian Greens argued that a lower threshold would help prevent donation splitting between different branches of political parties for the purpose of avoiding disclosure.<sup>15</sup>
- 3.36 The main options advocated by submitters as the appropriate level for the disclosure threshold include:
- no disclosure threshold – disclosure of all donations by political parties;
  - \$200;

---

13 The Australian Greens, *Submission 12*, p. 4.

14 Action on Smoking and Health Australia, *Submission 8*, p. 2

15 The Australian Greens, *Submission 12*, p. 4.

- \$1000; and
  - a threshold based on previous years returns.
- 3.37 The McCusker Centre for Action on Alcohol and Youth and the Cancer Council of Western Australia argued that all political donations should be disclosed, regardless of the amount, in furtherance of the principle of transparency.<sup>16</sup>
- 3.38 The NSW Greens Political Donation Research Project supports a disclosure threshold of \$200, in line with that which currently operates in Canada.<sup>17</sup> The Accountability Round Table also expressed support for a \$200 disclosure threshold. On the issue of selecting a disclosure amount, Associate Professor Ken Coghill of the Accountability Round Table stated:
- Any figure that is going to be chosen is going to be a subjectively set figure. There is not any objective case where you can say there is a magic about \$200 which does not apply at \$199 or any other figure. But we think that for the ordinary person – again using the 'ordinary person' test – a gift of a couple of hundred dollars is a significant amount of money. Certainly in my experience as a member of the Australian Labor Party there would not be a lot of members of my branch or any other branch I know who would hand over \$200 as a gift with any frequency at all.<sup>18</sup>
- 3.39 The Australian Greens supported a disclosure threshold of \$1 000.<sup>19</sup> Dr Joo-Cheong Tham also supported a \$1 000 disclosure threshold and cited the decline in detailed receipts being disclosed on financial disclosure returns with the high indexed figure as the major motivator for this.<sup>20</sup>

---

16 McCusker Centre for Action on Alcohol and Youth and Cancer Council of Western Australia, *Submission 15*, p. 2.

17 NSW Greens Political Donation Research Project, *Submission 17*, p. 3.

18 Associate Professor Ken Coghill, Accountability Round Table, *Committee Hansard*, 10 August 2011, p. 2.

19 The Australian Greens, *Submission 12*, p. 3.

20 Dr Joo-Cheong Tham, *Submission 90*, JSCEM inquiry into the 2010 federal election and matters related thereto, p. 52.

- 3.40 A paper prepared by the Parliamentary Library on the change of disclosure level indicated that under the \$1 500 (not CPI indexed) threshold, the major parties were disclosing three quarters – almost 75 per cent – of their total receipts in 2004-2005 and previous financial years.<sup>21</sup> Subsequently, in its advisory report on the Commonwealth Electoral Amendment (Political Donations and Other Measures) Bill 2008, the previous committee noted that under the \$10 300 disclosure threshold of 2006-2007, 52.6 per cent of the declared total receipts of the Australian Labor Party, the Liberal Party of Australia and The Nationals were itemised for that year.<sup>22</sup>
- 3.41 The Australian Labor Party supported a \$1 000 disclosure threshold. The ALP indicated that it has continued to voluntarily disclose donations it receives above \$1 000.<sup>23</sup> The AEC website includes disclosure by the ALP federal, ACT and Queensland branches for the 2009-2010 financial year of amounts under the \$11 500 threshold.<sup>24</sup>
- 3.42 FamilyVoice Australia conveyed an alternative perspective, placing a stronger emphasis on privacy and the notion of ‘protecting the donor’ when setting the disclosure threshold. The group suggested that the three criteria for determining an appropriate disclosure threshold were: preserving donor privacy, limiting compliance costs and safeguarding the public interest in knowing who the major financial supporters of political parties are. It recommended:
- The annual threshold for disclosure of political donations should be based on the previous year’s returns so as to ensure that a fixed percentage, between 90 and 95% of total donations are disclosed.<sup>25</sup>
- 3.43 Dr Norman Thompson from the NSW Greens Political Donation Research Project raised the concern that the higher disclosure threshold was one of the features of the current disclosure scheme that allowed some associated entities to raise significant amounts of money through fundraising

---

21 S Miskin and G Baker, ‘Political finance disclosure under current and proposed thresholds’, *Research Note no. 27, 2005-06*, 24 March 2006, Parliamentary Library, pp. 2, 4.

22 Joint Standing Committee on Electoral Matters, *Advisory Report on the Commonwealth Electoral Amendment (Political Donations and Other Measures) Bill 2008*, October 2008, Commonwealth Parliament of Australia, p. 33.

23 Australian Labor Party, *Supplementary submission 21.1*, p. 1-2.

24 See AEC website <<http://periodicdisclosures.aec.gov.au/>>

25 FamilyVoice Australia, *Submission 6*, p. 6.



activities for political parties and for only a small portion of the money raised to be disclosed to the AEC.<sup>26</sup>

3.44 Dr Thompson drew on the example of the Wentworth Forum, an associated entity of the Liberal Party. He noted that the reason that some information regarding funds raised were available through the NSW Election Funding Authority but not the AEC, was because of the lower disclosure threshold in NSW, coupled with its requirement that all money, whether federal or state, be reported.<sup>27</sup>

3.45 When questioned on the issue of the level of the disclosure threshold, the AEC did not propose a particular disclosure level, but observed that:

...the lower the level, the more that is disclosed. That is a question of fact and I think the evidence in the past bears that out.<sup>28</sup>

3.46 Mr Brett Constable of the Australian Greens was questioned about a \$1.6 million donation the party had received from Wotif founder Graeme Wood for their 2010 federal election campaign. He acknowledged the benefit this donation had provided the party, but stressed the Australian Greens' support for bans on certain donations and a lower disclosure threshold. He stated that:

The fact that you are making these claims about Mr Wood having influence on the Greens is a case in point as to why we think such donations should not be allowed...<sup>29</sup>

3.47 The Australian Greens expressed support in the context of a \$1 000 disclosure threshold for the disclosure of 'full contact details', as well as the nature of the donor's activities through the disclosure laws. For example, the type of company or industry in which a corporation operates. In the case of individuals, the Australian Greens stated that they should list their occupation.

3.48 The rationale behind proposals for lower disclosure thresholds such as \$1 000 is that it is most likely to allow for the industries that are seeking access and influence to be made public. The rationale in relation to individuals is likely to be to make evident cases where, for example, a director of a prominent company makes a political donation in their own

---

26 Dr Norman Thompson, NSW Greens Political Donation Research Project, *Committee Hansard*, 9 August 2011, pp. 8-9.

27 Dr Norman Thompson, NSW Greens Political Donation Research Project, *Committee Hansard*, 9 August 2011, pp. 8-9.

28 Mr Paul Pirani, Chief Legal Officer, Australian Electoral Commission, *Committee Hansard*, 8 August 2011, p. 5.

29 Mr Brett Constable, The Australian Greens, *Committee Hansard*, 8 August 2011, p. 40.

name with the aim of exercising some influence. However, it is likely that some individuals not connected to any company or industry and who are simply seeking to participate in the democratic process will be covered by such provisions if enacted.

- 3.49 A lower threshold would result in more donor and third party names and addresses being disclosed on the AEC website in accordance with Part XX of the Electoral Act, unless the individual informs the AEC when meeting their disclosure obligation that they are enrolled as a silent elector. Consequently, the name and addresses of many donors, who are arguably not garnering any influence with donations only just above \$1 000 would then be readily available on the AEC website.
- 3.50 The key argument against increased regulation through stricter disclosure rules in this context is the privacy rights of individuals that may be affected. However, in a discussion paper prepared for the Democratic Audit of Australia addressing campaign finance topics, it was argued that:
- ...in most other contexts privacy gives way to the public interest. Privacy rights, in general, have much less protection here than in the U.S...Whether or not a contribution is, or is not, potentially corrupting is something for voters to decide.<sup>30</sup>
- 3.51 Supporters of a higher threshold argue that it provides donors with the flexibility to make significant donations without their details needing to be disclosed through the AEC's website and without imposing an undue administrative burden on them for making what some would argue is a small donation. A higher disclosure threshold is argued to serve as an effective mechanism to shield donors from 'retribution' for the expression of political views through donations to parties, which are then made public on the AEC website.<sup>31</sup>
- 3.52 In its submission to the first Green Paper, the Office of the Privacy Commissioner highlighted privacy as a consideration in devising an effective scheme for the regulation of political financing.<sup>32</sup> While acknowledging that the right to privacy was not 'absolute', it stated that

---

30 K Mayer, *Sunlight as the best disinfectant: Campaign finance in Australia*, Discussion Paper 31/06 (October 2006), Democratic Audit of Australia, p. 4, <<http://democraticaudit.anu.edu.au/papers/20061026mayerfin.pdf>> viewed 15 September 2011.

31 See *Committee Hansard*, 9 August 2011, p. 18.

32 Office of the Privacy Commissioner, *Submission 23 to the Electoral Reform Green Paper – Donations, Funding and Expenditure*, p. 4.

‘personal information’ as defined in the *Privacy Act 1988* (including address details) needed to be appropriately protected.<sup>33</sup>

- 3.53 The Office of the Privacy Commissioner suggested that where disclosure of donations by individuals are being disclosed, sufficient transparency may be gained by only including an individual donor’s name, suburb, postcode, state and the amount donated.<sup>34</sup>

## Conclusion

- 3.54 An effective financial disclosure scheme is an important measure for transparency and accountability in the political financing process. In particular, the level of the disclosure threshold is central to the effectiveness and accountability obtained by the financial disclosure scheme.
- 3.55 However, determining the appropriate level of the disclosure threshold for Australia’s financial disclosure system has been a point of contention between the major parties.
- 3.56 The issues to be considered when setting the appropriate disclosure threshold are:
- The interests of the individual donor, including the freedom to participate in the Australian political system by making political donations and feeling safe in doing so;
  - The notions of transparency and accountability of political party (including associated entity) financing and the democratic system; and
  - The need for consistency in requirements.
- 3.57 To be effective, the disclosure threshold must strike a balance between placing a realistic administrative obligation on political parties, associated entities and donors and the need to maintain the integrity of the system. A threshold amount of \$1 000 as proposed in the Commonwealth Electoral Amendment (Political Donations and Other Measures) Bill 2010 will obtain the desired balance.

---

33 Office of the Privacy Commissioner, *Submission 23 to the Electoral Reform Green Paper – Donations, Funding and Expenditure*, p. 4.

34 Office of the Privacy Commissioner, *Submission 23 to the Electoral Reform Green Paper – Donations, Funding and Expenditure*, p. 5.

- 3.58 The committee maintains its view as stated in the *Advisory Report on the Commonwealth Electoral Amendment (Political Donations and Other Measures) Bill 2008* that the indexation of the disclosure threshold should be removed.

### **Recommendation 1**

- 3.59 **The committee recommends that the disclosure threshold be lowered to \$1 000, and CPI indexation be removed.**
- 3.60 In conjunction with the issues relating to an appropriate disclosure threshold, the need to safeguard the privacy and freedom of political expression of donors and third parties must be considered. A disclosure system should not discourage political participation through making donations by imposing unnecessary or onerous burdens in relation to financial disclosure. One immediate way in which privacy arrangements can be enhanced is to reduce the amount of personal details of individual donors made publically available on the AEC website.

### **Recommendation 2**

- 3.61 **The committee recommends that the *Commonwealth Electoral Act 1918* be amended to require that only the name, suburb, postcode, state and the amount donated by individual donors be released on the public website by the Australian Electoral Commission.**

## **Application of the disclosure threshold**

- 3.62 Section 305B of the Electoral Act provides that a person that makes gifts totalling more than \$10 000 (indexed, \$11 500 for the 2010-2011 financial year) to the same registered political party or the same state branch of a registered political party must submit a disclosure return to the AEC within 20 weeks of the end of the financial year. Section 314AB provides that each state branch of each registered political party must, within 16 weeks after the end of each financial year submit a disclosure return to the AEC. The effect of these sections is that the disclosure threshold applies separately to each branch of a political party.

3.63 The practice of ‘donation splitting’ was raised earlier in this chapter and mention was made that a high disclosure threshold may contribute to allowing larger donations marginally below the threshold to be made to different branches of political parties without having to be disclosed under the current laws. This results in a reduced level of transparency in relation to party finances and means that donations by which significant influence could potentially be obtained remain undisclosed. The Democratic Audit of Australia recommended that:

The current loophole whereby the federal, state and territory divisions of political parties are treated as separate legal identities for donation purposes should be closed.<sup>35</sup>

3.64 One method for addressing this practice is by applying the threshold collectively to ‘related parties’. Section 123(2) in Part XI of the Electoral Act defines ‘related parties’ as parties that are part of each other, or that are both part of the same political party. Subsections 129(1)(c) and (d) provide that ‘related parties’ may be registered even if the names are the same or similar to a political party that has already been registered.

3.65 The Queensland *Electoral Act 1992* applies this concept of ‘related parties’ to disclosure. This means that the donations cap in that jurisdiction applies to related parties as though they are one entity, and so can serve to restrain the practice of donation splitting.<sup>36</sup>

3.66 The Commonwealth Electoral Amendment (Political Donations and Other Measures) Bill 2010 utilises this definition outside the realm of political party registration by proposing that it be included in the general definitions section in section 4 of the Electoral Act, and provides that the \$1 000 disclosure threshold in the Bill applies to a registered political party and its branches as though they are a single entity.<sup>37</sup> Donors to political parties must aggregate donations made to the various branches of a political party, but the branches of the political party itself would still disclose to the AEC as though they are separate entities.<sup>38</sup>

3.67 While this measure goes some way towards alleviating concerns regarding ‘donation splitting’ practices, the AEC stated in a supplementary submission that there were a range of other measures that

---

35 Democratic Audit of Australia, *Submission 2*, p. 5.

36 *Electoral Act 1992 (QLD)*, s. 265(3).

37 Commonwealth Electoral Amendment (Political Donations and Other Measures) Bill 2010, item 48.

38 Australian Electoral Commission, *Supplementary submission 19.3*, p. 12.

would need to be utilised to ensure there were no loopholes for this practice to continue.<sup>39</sup>

- 3.68 The AEC cited the Canadian situation, where the national body of the relevant political party is responsible for all reporting of all branches, with a requirement to maintain separate electoral expenditure accounts. It is an offence to incur electoral expenditure from outside these accounts.<sup>40</sup> Thus the change in disclosure requirements for donors is simply one – albeit important – step in curtailing the potential for circumventing disclosure requirements.

## Conclusion

- 3.69 The way in which the Commonwealth Electoral Act currently applies the disclosure threshold separately to each branch of a political party may result in larger donations being ‘split’ among party branches and not being disclosed.
- 3.70 While a range of measures are necessary to effectively curtail donation splitting, the measures contained in the Commonwealth Electoral Amendment (Political Donations and Other Measures) Bill 2010 are a step in the right direction. In addressing this issue, the committee supports the measure which would require donors to political parties to aggregate all donations made to various branches of the same political party.
- 3.71 However, it is important to ensure that when applying this requirement the determination of which parties are ‘related political parties’ is consistent and does not unfairly disadvantage certain political parties. One case for which it is possible to anticipate complications in the Liberal National Party in Queensland, in determining whether it is ‘related’ to the Liberal Party, The Nationals, both or neither. Issues such as these will need to be clarified to ensure that the application of this requirement is clear and for special provisions to be made, where applicable, to obtain the desired disclosure, but do not unduly disadvantage parties like the Liberal National Party whose arrangements may be more complicated.

---

39 Australian Electoral Commission, *Supplementary submission 19.3*, p. 12.

40 Australian Electoral Commission, *Supplementary submission 19.3*, p. 12.

### Recommendation 3

- 3.72 **The committee recommends that donations to ‘related political parties’ be treated as donations to the same political party for the purposes of the disclosure threshold. Once the combined donations to related political parties from a single donor reaches the \$1 000 threshold, disclosure is required.**

## Fundraising events

- 3.73 The way in which fundraising events are treated under the current funding and disclosure system is unclear. A fee is usually paid to attend these political fundraisers and other contributions can be made at the event. Whether these payments can be regarded as a ‘fee for access to Ministers or Members’, a donation, or a ‘gift’ requires closer consideration.
- 3.74 A number of submitters to the inquiry argued that the attendance and non-disclosure of fundraising activities by political parties, associated entities and those providing finances or gaining access to politicians through these events contributes to the overall perception of undue influence.
- 3.75 The Electoral Act defines a ‘gift’ for its purposes as:
- ...any disposition of property made by a person to another person otherwise than by will, being a disposition made without consideration in money or money’s worth or with inadequate consideration, and includes the provision of a service (other than volunteer labour) for no consideration or for inadequate consideration...<sup>41</sup>
- 3.76 The provision also states that a payment of election funding or the payment of a subscription does not constitute a ‘gift’ for the purposes of the Electoral Act.
- 3.77 The lack of clarity surrounding fundraising events where attendees can pay a fee to gain access to ministers and shadow ministers is due largely to the references to consideration in ‘money or money’s worth’ in the legislative definition of ‘gift’.

---

41 *Commonwealth Electoral Act 1918*, s. 287(1).

3.78 The advice given by the AEC to clients regarding the disclosure of fundraising events is that if the amount paid for a ticket or meal is more than the value of what was received, the amount counts as a donation and should be classified as such on a political party or associated entity return. It should also be disclosed as such to the AEC by the donor. The AEC's *Funding and Disclosure Guide for Donors to Political Parties* stated:

- If a payment for attendance at a party function or conference is considered a donation, that is, the person making the payment did not receive services or adequate services equal to the value of the payment, the payment should be disclosed on the donor disclosure return.
- Payment for attendance at a party function, conference or luncheon for commercial reasons may not be considered a donation if the commercial value or benefit of attending is equal to or exceeds the amount paid.
- Payment for attendance at a function with the intention of contributing to the party, (that is, where the function is primarily a fundraiser), or where the amount paid is in excess of the value of the function, is a donation and must be disclosed.<sup>42</sup>

3.79 The way in which fundraisers should be treated in light of the definition of 'gift' in the Electoral Act is an issue that is seemingly central to the success of the disclosure scheme. The first Green Paper stated:

Although the Electoral Act requires disclosure by both the recipient of private funding and the provider of donations, there remains the scope for major contributions to a political party or candidate to remain undisclosed if contributions do not come within the scope of matters requiring disclosure under the legislation. If the public has no way of being aware of major contributions by way of, for example, purchases at fundraising events, there is an argument that one of the major purposes of the disclosure system established in 1984 has not been met.<sup>43</sup>

3.80 The main options proposed by submitters to address concerns around the lack of clarity of fundraising income were:

- To ban fundraisers and/or offers of access to Ministers; or
- To improve the disclosure scheme in relation to fundraisers by:

---

42 Australian Electoral Commission, *Funding and Disclosure Guide 2010-2011: Donors to Political Parties*, Commonwealth of Australia, p. 5.

43 Commonwealth of Australia, *Electoral Reform Green Paper – Donations, Funding and Expenditure*, December 2008, p. 43.



- ⇒ Including all fundraisers in the definition of 'gift' in section 287 of the Electoral Act, thus ensuring they would be disclosed as donations; or
- ⇒ Including fundraisers above 'reasonable costs' in the definition of 'gift' in the Electoral Act.

3.81 The Accountability Round Table was one of the submitters that expressed concern about fundraising events that involve access to ministers or other parliamentarians. Associate Professor Ken Coghill commented that:

It comes to what it is that a person is getting in return for actually paying a large sum of money to attend a function at which they expect to have access to a minister or a parliamentary secretary, or an ordinary member of parliament for that matter, so it might be an opposition member, for example. The argument goes that, because the amount of money which is being paid is far in excess of the actual costs of the function, the adequate consideration the person is receiving for this payment can only relate to the access which is being provided at the function.<sup>44</sup>

3.82 The Accountability Round Table also took their concerns a step further, arguing that:

...the current practice of raising funds by offering access to members of parliament, particularly ministers and shadow ministers, should be made illegal. It provides opportunities for corruption, damages the reputation of all politicians, and confidence in our democratic system. It gives unequal access to politicians based on the ability to pay for it. If, however, the committee decides not to make this practice illegal it is critical that it ensures that there be complete and prompt disclosure of each transaction.<sup>45</sup>

3.83 However, before any action can be taken to restrict engagement in the political process in this way, it is crucial to consider, and seek to strike a balance between protecting the right to political expression in this way and acknowledging that the ability to engage in this form of political expression is limited to those with sufficient funds.

---

44 Associate Professor Ken Coghill, Accountability Round Table, *Committee Hansard*, 10 August 2011, p. 1.

45 Accountability Round Table, *Submission 22*, p. 4.

- 3.84 Professor Anne Twomey, in her appearance before the committee, highlighted the importance that Australian courts were likely to place on maintaining individual freedom to make political donations, attend political fundraisers and similar forms of political participation.<sup>46</sup>
- 3.85 One way in which to minimise the potential for attendance by certain individuals and organisations at fundraising events of creating a perception of undue influence is to improve the quality of disclosure in relation to attendance at these events. The Democratic Audit of Australia recommended that:
- Income generated at party/candidate/associated entity 'fundraisers' should be treated as gifts above reasonable costs for venue hire, food and beverages etc.<sup>47</sup>
- 3.86 In its third supplementary submission to the inquiry, the AEC argued that the best way in which to negate some of the confusion regarding the disclosure of payments made to attend and while at political fundraisers was to ensure that disclosure regarding these events should be included 'irrespective of whether a profit was realised'. The AEC stated that:
- ...issues relating to disclosure and the attendance at fundraisers could be simplified by including gross amount of both payments to attend and all other payments made during the fundraiser events. This could include amounts such as winning auction bids, purchasing raffle tickets, and the like. Sponsorship arrangements should also be included in the definition. The AEC notes that some care would be needed in defining the scope of what is a 'fundraiser' to ensure that all events at which money is collected... are included.<sup>48</sup>
- 3.87 The AEC also raised the possibility of altering all references to 'gifts' in Part XX of the Electoral Act to 'contributions' or some similar term, to reflect the fact that a profit or benefit to the recipient in excess of market value is not necessary for the transaction to fall within disclosure laws.<sup>49</sup>
- 3.88 The NSW *Election Funding, Expenditure and Disclosures Act 1981* provides that 'an amount paid by a person as a contribution, entry fee or other payment to entitle that person to participate in or otherwise obtain any benefit from a fund-raising venture or function (being an amount that forms part of the proceeds of the venture or function)' is taken to be a gift.
- 

46 Professor Anne Twomey, Private capacity, *Committee Hansard*, 9 August 2011, p. 39.

47 Democratic Audit of Australia, *Submission 2*, p. 4.

48 Australian Electoral Commission, *Supplementary submission 19.3*, p. 13.

49 Australian Electoral Commission, *Supplementary submission 19.3*, p. 13.

- 3.89 This definition means that political parties, associated entities, Senate groups and candidates must disclose details of each fundraising activity or function. The definition also requires donors attending fundraising functions to disclose details of the purchases of entry tickets, raffle tickets, auction items or other memorabilia. The AEC advised that it was not aware of 'any issues or difficulties' that had arisen under the NSW legislation.<sup>50</sup>
- 3.90 Relevant discussion in the first Green Paper put an alternative view to arguments proposing that fundraising events be explicitly included in disclosure Commonwealth disclosure requirements. It was noted that fundraising events attract considerable publicity in many cases and so are not completely hidden from public awareness and scrutiny.<sup>51</sup>

## Conclusion

- 3.91 The freedom to participate in the political process by making political donations and attending political events is fundamental to our democratic system. The principle of participatory democracy should never be compromised beyond the extent which is essential to ensure the integrity of the system.
- 3.92 Access to politicians through attendance at fundraising events by those who can afford it do not necessarily garner any particular effect in terms of the way in which their votes were cast, or overall policy on any given issue. It is generally the case that rather than being inappropriate or dishonest, fundraisers are just another part of the political process that allows for the financial support of political parties.
- 3.93 However, the committee believes that the large sums of money that are sometimes exchanged at such events warrants increased measures to improve transparency and accountability in relation to these events through the disclosure system.
- 3.94 In light of the competing considerations involved in addressing the issue of access to parliamentarians through fundraising events, the most effective way to deal with concerns regarding the practice would be to improve the disclosure rules to cover such functions, rather than to ban the practice completely.

---

50 Australian Electoral Commission, *Supplementary submission 19.3*, p. 13.

51 Commonwealth of Australia, *Electoral Reform Green Paper – Donations, Funding and Expenditure*, December 2008, p. 43.

- 3.95 By expanding the definition of ‘gift’ in section 287 of the Electoral Act to explicitly include fundraisers, as in the *NSW Election Funding, Expenditure and Disclosures Act 1981*, an appropriate degree of transparency of fundraising events can be achieved to maintain the integrity of Australia’s democratic system. The definition should be sufficient to ensure that all relevant fundraising events are covered.

#### **Recommendation 4**

- 3.96 **The Committee recommends that the definition of ‘gift’ in the *Commonwealth Electoral Act 1918* be amended to include fundraising events.**

### **Classification of receipts**

- 3.97 At the federal level in Australia, political parties and associated entities are able to, and do, receive income from sources including membership fees, fundraising events and donations. Part XX of the Electoral Act provides that where amounts exceeding the disclosure threshold have been received by political parties and associated entities, certain particulars must be disclosed.
- 3.98 In addition to these legislative requirements regarding disclosure of receipts above the applicable disclosure threshold, the AEC requests that political parties and associated entities classify each of the sums exceeding the threshold as ‘donations’ or ‘other receipts’. Any receipt that meets the definition of ‘gift’ in the Electoral Act, including gifts-in-kind, should be classified as a donation. Some examples of receipts that are general classified as ‘other receipts’ on party returns include membership fees and levies on members of Parliament.
- 3.99 These two additional column headings on the AEC’s disclosure return form were added to the annual return form to assist members of the public to identify key elements contained in an annual return. They also assist the AEC to identify donors that may have a donor disclosure obligation under section 305B of the Electoral Act and to target any donors that may have failed to meet their disclosure obligation.
- 3.100 However, as the classification is not a legislative requirement, it cannot be enforced. The NSW Greens Political Donation Research Project representative observed that:

The political parties are encouraged to list gifts of cash as 'Donations' and money spent at fundraisers as 'Other Receipts'. However, even this categorisation isn't required, so some years one sees all the money reported by a division of a political party as 'Unspecified'.<sup>52</sup>

- 3.101 The classification request made by the AEC is particularly valuable in an environment in which a high disclosure threshold is in place, allowing the public to easily identify the donations. Likewise, where there is a lower threshold, the classification may assist electors to understand and interpret the larger amounts of information disbursed through the disclosure system.
- 3.102 The Australian Greens made the related recommendation that reporting classifications such as 'other receipt' 'public funding' and 'donation' should be more clearly defined. It also stated that the AEC should ensure that political parties and candidates use the terms consistently in meeting their disclosure obligations. This is also important for associated entities.
- 3.103 Notably, Australia is the only country that requests that political parties and associated entities classify their receipts. However, many nations have other measures in place to differentiate between donations and other receipts. For example, the United Kingdom requires weekly 'donation reports' during elections, which include details of only donations received during that week. These are immediately made public.
- 3.104 Thus there are a range of mechanisms by which information regarding specific donations or other forms of receipts by political parties can be obtained. Regardless of the method used, it seems that there is value in having some dichotomy between donations and other forms of political party and associated entity income.

## Conclusion

- 3.105 The classification of receipts on political party returns as 'donations' or 'other receipts' is important to the disclosure scheme. The committee believes that legislating to make this a requirement of disclosure should improve the quality of information received through Australia's federal disclosure scheme.
- 3.106 The possible incorrect classification of receipts on disclosure returns, in particular, as subscriptions when the receipt is 'more likely' to have been a donation, is cause for concern. One way to address this is to legislate to

---

52 NSW Greens Political Donation Research Project, *Submission 17*, p. 4.

allow the AEC to pursue the possible incorrect classification of receipts above the threshold as ‘false and misleading’ information on a disclosure return.

## **Recommendation 5**

3.107 **The committee recommends that the *Commonwealth Electoral Act 1918* be amended, as necessary, to include the following:**

- **to require political parties and associated entities to classify their receipts exceeding the disclosure threshold as ‘donations’ or ‘other receipts’;**
- **to include an adequate definition of ‘donation’ and ‘other receipt’; and**
- **to make the requisite changes to the enforcement and investigation provisions to allow the Australian Electoral Commission to investigate and enforce these classifications.**

## **Frequency of reporting**

3.108 The issue of the frequency of disclosure featured prominently in the submissions to the inquiry and subsequent discussion by the committee. There were four key themes that emerged from the submissions in relation to reporting obligations:

- The issue of contemporaneous or continuous disclosure, whereby parties disclose their receipts of donations as they are received;
- The possibility of requiring political parties to submit weekly ‘donation reports’ during election periods, disclosing all donations received that week;
- The possibility of requiring political parties to disclose on a six-monthly instead of annual basis; and
- Special reporting arrangements for large donations.

3.109 The Commonwealth disclosure scheme as it currently stands in Part XX of the Electoral Act, requires annual disclosure by political parties, associated entities, donors and third parties. Separate returns for candidates, Senate

groups and donors to these are also required for each federal election and by-election.

- 3.110 The current disclosure scheme is based on *ex post facto* reporting and electors do not know the sources of party finances until well after an election. For example, details of donations to political parties made during the period leading up to the 2010 federal election may not be publicly available until February 2012.

### Contemporaneous or continuous disclosure

- 3.111 The concept of contemporaneous disclosure involves compelling political parties to publicly disclose aspects of their finances continuously, including disclosing donations as they are received. The rationale underpinning such proposals is that it allows electors to be aware of sources of party funding immediately, and, importantly, before they must cast their vote. The AEC noted in its submission that a shift from *ex post facto* reporting to contemporaneous disclosure would require a 'fundamental shift in the philosophy underpinning the legislative approach to political funding'.<sup>53</sup>
- 3.112 Associate Professor Ken Coghill from the Accountability Round Table observed that in NSW, political parties were already required to keep most of the information required for an effective system of contemporaneous disclosure. He advised the committee that at a workshop in July 2011 on the Challenges of Electoral Democracy, the deputy director of the Liberal Party New South Wales branch indicated that their branch was required to do exactly that sort of record keeping for their own internal purposes for compliance with the provisions of the New South Wales legislation on disclosure of donations and expenditure of funds.<sup>54</sup> Associate Professor Coghill concluded that:

...we have now got the evidence that that is technically possible. It is not an administrative difficulty, at least not for the New South Wales branch of the Liberal Party, and presumably not for any other political party.<sup>55</sup>

---

53 Australian Electoral Commission, *Submission 19*, p. 4.

54 Associate Professor Ken Coghill, Accountability Round Table, *Committee Hansard*, 10 August 2011, p. 1.

55 Associate Professor Ken Coghill, Accountability Round Table, *Committee Hansard*, 10 August 2011, p. 2.

- 3.113 The Democratic Audit of Australia raised the example of the online system used by the New York City Campaign Finance Board as an example of a contemporaneous disclosure system that could be used as a guide at the Commonwealth level.<sup>56</sup> That system allows the user to search for donations by election cycle, candidate name and contributor first name or last name. The Democratic Audit also identified the desirability of contemporaneous disclosure systems operating alongside fixed election dates.<sup>57</sup>
- 3.114 The Australian Greens expressed support for the temporary maintenance of the current annual disclosure period, but stated that this should act as a measure to provide the AEC with time to develop software that would facilitate contemporaneous disclosure of donations of \$1 000 or more on the internet by political parties, donors, candidates, associated entities and third parties. The Australian Greens also recommended that all disclosure by political parties should be required to be made online.
- 3.115 When questioned about the time it would take to implement an electronic system to facilitate a shift to contemporaneous disclosure, the AEC advised that its existing e-returns portal had been designed to account for the potential for contemporaneous reporting. It stated that it may take approximately 12 months for the required work to be done to allow the current system to facilitate a legislative shift to contemporaneous disclosure.<sup>58</sup>
- 3.116 In relation to the costs to the AEC in building the system to facilitate the administration of a contemporaneous disclosure scheme and the cost to those with disclosure obligations, the AEC explained that:

There are the investment costs in building the system and then, assuming that system lasts for many years, ultimately the investment is defrayed over many years. That applies both to the AEC as well as to parties and other organisations that would have to adjust their systems to enable that online disclosure to occur.<sup>59</sup>

---

56 Democratic Audit of Australia, *Submission 2*, p. 7.

57 Democratic Audit of Australia, *Submission 2*, p. 7.

58 Mr Brad Edgman, Australian Electoral Commission, *Committee Hansard*, 21 September 2011, p. 10.

59 Mr Ed Killesteyn, Electoral Commissioner, Australian Electoral Commission, *Committee Hansard*, 1 November 2011, p. 8.



3.117 The AEC further stated in relation to the issue of the costs associated with such a system:

There will be a certain level of ongoing business costs and also ongoing staff costs. But certainly the significant costs would be the initial establishment of the system.<sup>60</sup>

3.118 On a related matter, the AEC raised the issue of the limitation period on prosecution for offences under Part XX of the Electoral Act. It argued that the current delay between a financial year or an electoral event gave rise to difficulties in instituting prosecution action in time, explaining that:

Under subsection 315(11) of the Act prosecutions for offences against the funding and disclosure provisions must be commenced within three years of the offence being committed. In practical terms (particularly due to the post event reporting of matters), this means, in some instances, that by the time the AEC becomes aware of a possible breach and/or conducts inquiries to accumulate sufficient evidence to warrant the preparation of a brief of evidence, there is no opportunity to pursue prosecution action. This can leave the AEC with no opportunity to enforce a correction to the public record.<sup>61</sup>

3.119 The reason for the lag in the commission of the offence and the AEC being able to take prosecution action is the delay in disclosure requirements. The AEC also noted the general provision in section 4H of the *Crimes Act 1914* for commencing criminal proceedings for a summary offence is 12 months. Contemporaneous disclosure, coupled with incidental changes to offences that are straightforward matters of fact to administrative ones (discussed in Chapter 8), should alleviate some of the issues in this area.

3.120 The AEC also indicated that in order for a contemporaneous disclosure system to operate effectively, it has to be complemented by a suitable enforcement scheme that operates proactively, or its effectiveness could be undermined if people did not meet their obligations, whether intentionally or through poor management.<sup>62</sup>

---

60 Mr Paul Pirani, Chief Legal Officer, Australian Electoral Commission, *Committee Hansard*, 1 November 2011, p. 8.

61 Australian Electoral Commission, *Supplementary submission 19.1*, p. 3.

62 Australian Electoral Commission, *Submission 19*, p. 4.

## Donation reports during elections

- 3.121 The concept of donation reports during elections is closely linked to that of contemporaneous disclosure. In fact, the only difference between each concept, depending of course on the precise model proposed, is that one involves weekly reporting during an election period, instead of continuous reporting as donations are received.
- 3.122 The United Kingdom disclosure scheme involves a requirement that political parties provide weekly disclosure in the form of donation reports. This requires parties to submit reports for all transactions considered to be donations which disclose the amount and date of such donations and identifies the status of the donor as an individual, trade union, company or other entity.
- 3.123 Individual candidates are not subject to this requirement, but they must report their donations to the Returning Officer in their constituency after the election. Third parties are also not subject to weekly donation reporting during an election period, and accordingly, this may provide a loophole for those seeking to avoid disclosure under weekly donations reporting obligations. Third parties do have separate reporting obligations depending on whether they are registered or unregistered and the amount of expenditure they incur.

## Six-monthly reporting

- 3.124 Currently, the Electoral Act provides in Part XX that political parties, associated entities, donors and third parties must report certain financial details to the AEC annually. Candidates, Senate groups and donors to each of these must submit returns following every election.
- 3.125 Some submitters to the inquiry recommended that the reporting timeframe be changed to six-monthly instead of annual or contemporaneous disclosure. This is the measure that is contained in the Commonwealth Electoral Amendment (Political Donations and Other Measures) Bill 2010. For example, Mr Andrew Norton expressed the view that 'six monthly reporting should be enough'.<sup>63</sup>
- 3.126 However, others commented that 'bi-annual returns [did] improve the frequency of disclosure', but still failed to provide the 'real time disclosure' required for informed voting.<sup>64</sup>

---

63 Mr Andrew Norton, Private capacity, *Committee Hansard*, 10 August 2011, p. 19.

64 Dr Joo-Cheong Tham, *Submission 90*, JSCEM inquiry into the 2010 federal election and matters related thereto, p. 111.

## Special reporting of large donations

- 3.127 Under the Commonwealth funding and disclosure scheme, political parties and associated entities report annually. Candidates and Senate groups report following every election.
- 3.128 Recent measures implemented in Queensland saw a requirement inserted into the *Electoral Act 1992* whereby a large donation or a series of donations from the same source adding up to an amount greater than \$100 000, gives rise to an obligation to report the details by both the political party and the person making the donation within a prescribed time.<sup>65</sup>
- 3.129 Mr Andrew Norton supported this measure, commenting that:
- [Large donations] are actually the donations we are the most concerned about. Most of the smaller donations, even though they are disclosed, never get much attention. It is really the big donors we are interested in.<sup>66</sup>

## Conclusion

- 3.130 The current reporting obligations on political parties, associated entities, candidates and Senate groups result in the details surrounding sources of funding not being revealed until after polling day, thus preventing electors from using the information to help determine how they cast their votes.
- 3.131 Due to comparably weak penalties and enforcement provisions that accompany the Commonwealth disclosure scheme, this *ex post facto* approach to reporting and enforcement is not conducive to the transparency and accountability that the funding and disclosure regime is intended to facilitate.
- 3.132 The committee supports an immediate move to six monthly reporting, which should result in at least some information regarding political party sources of funding being available before polling day in a given election. This move must be accompanied by measures to encourage or even compel political parties to lodge their disclosure returns using the AEC's online system.

---

65 *Electoral Act 1992 (QLD)*, s. 266.

66 Mr Andrew Norton, Private capacity, *Committee Hansard*, 10 August 2011, p. 19.

- 3.133 A move to six-monthly reporting must also be accompanied by an effective enforcement scheme to act as a deterrent to non-compliance with disclosure obligations. The issue of compliance is addressed in detail in Chapter 8.

### **Recommendation 6**

- 3.134 **The committee recommends that the Australian Government introduce a six-monthly disclosure reporting timeframe, as outlined in the Commonwealth Electoral Amendment (Political Donations and Other Measures) Bill 2010.**
- 3.135 The committee noted comments from submitters indicating that larger donations are the ones in which there is significant public interest in releasing. The disclosure rules regarding these donations must be made more robust and conducive to the transparency and accountability aims of the scheme.
- 3.136 There is significant value in having special reporting of large donations in excess of a prescribed amount. Such a mechanism would improve the visibility of large donations. At the Commonwealth level, such a requirement would best operate in relation to a single donation above the special reporting amount. In addition, the requirement to aggregate donations to political party branches would not apply regarding Special Reporting Events, as it could result in an undue administrative burden on political donors.

### **Recommendation 7**

3.137 **The committee recommends that if a single donation above \$100 000 is made to a political party, associated entity, third party, candidate or Senate group, then a 'Special Reporting Event' return must be lodged with the Australian Electoral Commission by the political party, associated entity, third party, candidate or Senate group and the donor within 14 days of receipt of the donation. The Australian Electoral Commission must publish details of these returns within 10 business days of lodgement.**

3.138 Moving to a system of contemporaneous disclosure is a feasible and desirable option, and will not cause an undue administrative burden on political parties provided there is sufficient electronic lodgement capability provided by the AEC. Accordingly, research into such systems and issues regarding their implementation and administration, and their potential for application in the Australian context is warranted.

3.139 A contemporaneous disclosure system would facilitate the implementation of requirements relating to immediate public release of donation reports and special reporting of large donations, if such a requirement was deemed feasible.

### **Recommendation 8**

3.140 **The committee recommends that the Australian Electoral Commission investigate the feasibility and requirements necessary to implement and administer a system of contemporaneous disclosure and report back to the Special Minister of State by 31 March 2012.**

## **Different reporting obligations for donors and political parties**

3.141 The reporting obligations for donors and political parties under the Electoral Act contain a number of key differences. While political parties are only required to aggregate individual receipts that exceed the disclosure threshold, donors must aggregate donations of any value. The

AEC explained that this difference between the precise disclosure requirements of political parties and donors was a key reason that disclosure returns by each often do not reconcile, stating that:

The most obvious point of difference has come about since legislative amendments in 1995 that introduced a 'transaction threshold' for political parties when aggregating receipts from individuals. Currently, political parties only need to aggregate individual receipts above the threshold (sums above \$11,900 for the 2011/12 financial year) when compiling their disclosure returns. Donors, however, continue to be required to aggregate donations of any value made to political parties. This can mean that a donor will lodge a return but not appear on a party's return or a donor will disclose a larger total of donations than the party discloses.<sup>67</sup>

- 3.142 The AEC suggested that to overcome some of the discrepancies between donor and party returns, the disclosure requirements for each could be brought 'back into alignment'.<sup>68</sup> It suggested removing the 'transaction threshold' from political party disclosures because the introduction of such a requirement for donors would result in a 'loophole' allowing donors to make multiple donations to different branches of a political party below the threshold without needing to disclose.
- 3.143 The AEC also identified a number of other issues with the current disclosure obligations for political parties and donors to political parties, following further questioning from the committee. One of these related to the issue addressed earlier in the chapter in relation to the inclusion of 'fundraising events' in the definition of 'gift'.
- 3.144 The AEC stated that the absence of fundraisers from the definition of 'gift' meant that some companies may consider that a payment for access to a minister at an event a genuine transaction and would not conceive it as a donation, but it may be listed as such by the political party on its disclosure return. The AEC stated that it does not feel it is in a position to demand that a donor return be lodged, given that the definition of 'gift' in section 287 does not include payments at fundraisers.<sup>69</sup> Accordingly, the inclusion of fundraising events in the definition of gift would give the AEC a basis on which to initiate enquiries of relevant donors.

---

67 Australian Electoral Commission, *Supplementary submission 19.1*, p. 5.

68 Australian Electoral Commission, *Supplementary submission 19.1*, p. 6.

69 Australian Electoral Commission, *Supplementary Submission 19.1*, pp. 4-5.

## Conclusion

- 3.145 The lack of consistency between the disclosure requirements for donors and political parties makes the current scheme more difficult to administer and inhibits its potential to meet its ends.

### Recommendation 9

- 3.146 **The committee recommends that the *Commonwealth Electoral Act 1918* be amended, as necessary, to require political parties to aggregate all individual donation receipts, not just those individual receipts that exceed the disclosure threshold, in line with the current disclosure requirement for donors.**





## Options for private funding reform

- 4.1 The current Australian funding and disclosure scheme relies on a disclosure based approach to regulation. An examination of the issues with the current political financing regime as discussed in Chapter 3 raises the question of whether moves to increase limitations on the sources of funding for political parties are warranted.
- 4.2 There are two key proposals that have arisen regarding a move to a broader funding and disclosure scheme: the implementation of caps on contributions to political parties, and bans on contributions from particular sectors of the community, such as corporations or particular industry groups. This chapter contains a discussion of options for limiting donation amounts and types of donors.

### Donation caps

- 4.3 The concept of a cap on donations to political parties involves the implementation of a legislative limit on the amount that a single contributor, whether an individual or organisation, can make to a single political party, associated entity, candidate or Senate group. Such proposals generally provide that associated entities are considered 'part of' a political party for the purposes of the cap otherwise a clear opportunity for circumvention arises.<sup>1</sup>

---

<sup>1</sup> See further *Electoral Act 1992* (QLD), s. 204; and *Election Funding, Expenditure and Disclosures Act 1981* (NSW), s. 35(1)(d).

- 4.4 At the federal level, there is currently no limitation on the amount that an individual, corporation or other organisation is able to donate to a political party or associated entity. Similarly, there is no limit on the amount of contributions a political party or associated entity may receive. The only proviso is that donors that give amounts totalling above the applicable threshold must meet their disclosure obligations under Part XX of the *Commonwealth Electoral Act 1918* (Electoral Act), as do all registered political parties and their branches, as well as associated entities.
- 4.5 Political financing regulatory schemes involving caps on donations to political parties have recently been implemented at the state level in New South Wales and Queensland. Canada also currently has a regime in operation that includes donation caps of an indexed figure of \$1 000.
- 4.6 In NSW, donations to registered political parties are capped at \$5 000, while donations to unregistered political parties are capped at \$2 000.<sup>2</sup> In Queensland, contributions to political parties were initially capped at the same level as NSW, but from 1 July 2011, the applicable cap on donations is calculated according to a legislated formula.<sup>3</sup>
- 4.7 While donations to political parties have a legitimate place in the Australian political system, some submitters advocated that capping the amount that a political party and its associated entities can receive from a single source could go some way to addressing concerns about the perception of undue influence as a result of political donations.
- 4.8 The Australian Greens also support the introduction of donation caps, stating that:
- ...efforts that we can take to improve the standing in the eyes of the voters is the goal. To put caps on donations to remove the ability for organisations and corporations to make donations to political parties will go a significant way towards improving that perception of voters.<sup>4</sup>
- 4.9 The particular model proposed by the Australian Greens involved a strict cap on donations from individuals (operating against a backdrop of a complete ban on all other donations to political parties and candidates apart from those from bequests) with two key features:
- Tithes imposed on a parliamentarian's salary or parliamentary pension should be exempt from the donations cap applying to parties; and
- 

2 See *Election Funding, Expenditure and Disclosures Act 1981* (NSW), s. 95A.

3 See *Electoral Act 1992* (Qld), s. 252.

4 Mr Brett Constable, *The Australian Greens, Committee Hansard*, 8 August 2011, p. 41.

- Political parties should not be restricted from donating to their own candidates.<sup>5</sup>
- 4.10 The reason for the exception regarding political parties donating to candidates is the Australian Greens' view that if a party receives all the donations then its candidates may have little to spend unless the party can donate to its candidates.
- 4.11 It was noted during a public hearing for the inquiry that the Australian Greens had received a significant donation of \$1.6 million from a single donor in the lead up to the 2010 federal election. The ensuing discussion revealed that despite the Australian Greens' current policy to '[m]aintain transparency in donor identity by making public at the end of each three month period all donors and the cumulative total of their donations...over the previous twelve month period, where those cumulative totals amount to \$1 500',<sup>6</sup> it had delayed the disclosure of this donation until after the election 'out of respect to the donor'.<sup>7</sup>
- 4.12 The Australian Greens indicated that their disclosure of the donation had still been in advance of the date at which political party returns covering the period of the 2010 federal election were due.<sup>8</sup> Mr Maltby stressed the Australian Greens support for donation caps and stated that the donation from Mr Woods had been much discussed within the party.<sup>9</sup>
- 4.13 A number of submitters raised concerns regarding the potential for circumvention of laws imposing caps. For example, Emeritus Professor Colin Hughes commented in his submission that 'options which are usually mentioned are flawed, seriously so and sometimes fundamentally'.<sup>10</sup>
- 4.14 Further, the Australian Electoral Commission (AEC) raised a number of issues relating to donation caps and their effectiveness in practice, including the potential for circumvention that exists and the need to design a scheme that minimises that potential.<sup>11</sup> The potential for these to cause difficulties depends on the precise design of the cap model in place. The issues highlighted by the AEC were:

---

5 See generally The Australian Greens, *Submission 12*.

6 The Australian Greens, *Australian Greens Internal Policy on Donations*, <[http://greens.org.au/donations\\_policy](http://greens.org.au/donations_policy)> viewed 31 October 2011.

7 Mr Brett Constable, The Australian Greens, *Committee Hansard*, 8 August 2011, p. 42.

8 Mr Chris Maltby, The Greens NSW, *Committee Hansard*, 9 August 2011, p. 6.

9 Mr Chris Maltby, The Greens NSW, *Committee Hansard*, 9 August 2011, p. 6.

10 Emeritus Professor Colin Hughes, *Submission 16*, p. 3.

11 See Australian Electoral Commission, *Submission 19*.

- The need to effectively and appropriately regulate third parties to prevent them from overwhelming the political sphere in a system of donation or expenditure caps;
  - ⇒ The difficulties with regulating third parties, including devising a registration scheme were noted;
- The existence of overseas third parties and internet and social media – these make enforcement of all caps difficult;
- The ability to self-fund campaign expenditure – this complicates the issue of determining the true source of funds;
- The potential for the enactment of coordinated campaigns to circumvent caps between political parties, candidates and third parties. These were said to be difficult to prove, even where they were suspected to exist; and
- The need for a more timely disclosure system to ensure electors are aware of any breaches of caps before election day.<sup>12</sup>

4.15 In relation to circumvention of applicable caps, the Australian Greens identified the potential for party membership fees to be used as a mechanism to avoid donation caps. To address this issue, the Australian Greens recommended that political party membership fees be capped at a strict level, with \$500 the suggested amount.

4.16 The Australian Greens also stressed the need for organisation affiliation fees paid to political parties to be capped at approximately \$2 000 for a similar reason. The Australian Greens argued that this was a fair amount in light of the fact that organisations could still campaign as third parties.

4.17 The Australian Greens believe that individual donations should be subject to caps for donations to each political party, including that party's candidates. This will prevent a donor from circumventing caps by donating to many candidates from a single party.

4.18 The AEC stressed the importance of any donation cap scheme being accompanied by an effective enforcement scheme.

4.19 Other submitters focused on the effect that the implied freedom of political communication that exists in the Australian Constitution would have on proposals for caps on donations made by individuals to political parties. Professor Anne Twomey observed that:

---

12 See generally Australian Electoral Commission, *Submission 19*.

When it comes to individuals, there are issues about putting your money where your mouth is – your use of money as a form of political expression.<sup>13</sup>

4.20 In contrast, the United States has an explicit right to free speech, which has affected its ability at the federal level to impose limits on campaign expenditure.<sup>14</sup> However, strict donations caps are in place, with bans on donations from corporations, banks, unions and federal government contractors. The political circumstances in the United States appear to mean that the expenditure for the expression of views bears a greater relationship with free speech than the making of donations, which is seen in Australia as a method of free speech itself.

4.21 In addition to the complex question of whether the Commonwealth possesses sufficient constitutional power to legislate to implement bans on donations from particular sectors, Professor Anne Twomey raised federalism issues in the context of both donation caps and bans on donations from particular sources. She stated:

I note that in the tobacco bill the proposal does not require particular Commonwealth political campaigns to be set up. So the ban in this proposed [tobacco] bill would apply to all the states and state political party branches with respect to their funding of state campaigns. That is when you start getting into trouble when your Commonwealth legislation is impinging on state elections...<sup>15</sup>

4.22 Accordingly there are a number of pertinent issues that require detailed consideration when assessing the necessity, feasibility and possibility of capping donations as part of wider reforms.

## Conclusion

4.23 Any move to a system of donation caps must follow a holistic consideration of options for public funding and caps on expenditure.

4.24 The use of donations as a form of political expression is an essential element of participatory democracy.

4.25 A system of donation caps must be accompanied by changes to the timing of disclosure, effective penalties that will act as a deterrent to breach of the laws, increased investigative powers for the AEC, and consideration of a

---

13 Professor Anne Twomey, Private capacity, *Committee Hansard*, 9 August 2011, p. 39.

14 See further *Citizens United v Federal Election Commission* 558 US 08-205 (2010).

15 Professor Anne Twomey, Private capacity, *Committee Hansard*, 9 August 2011, p. 38.

move to a proactive enforcement scheme (as discussed in detail in Chapter 8).

- 4.26 The committee does not believe that the difficulties associated with implementing and monitoring donation caps are insurmountable. The level of caps can be appropriately set to effectively maintain the freedom of political communication and act as a measure to curtail election spending (in concert with caps on expenditure discussed in Chapter 5).
- 4.27 However, the committee does not support caps on donations to political parties at the current time, given the potential that exists for circumvention. A disclosure scheme – with a lower disclosure threshold and detailed disclosure – provides an effective forum through which information about the movement of funds in the political system can be made public.

## **Bans on types of donations**

- 4.28 The introduction of bans as part of a disclosure scheme is not a matter to be taken lightly. A key consideration is whether it is a necessary and effective means by which the integrity of the democratic process can be maintained.
- 4.29 The Electoral Act already places limited financing restrictions on political parties, candidates and Senate groups, in that they are not permitted to receive anonymous donations above the applicable disclosure threshold.
- 4.30 Aside from this, individuals and corporations are able to freely make political donations in Australia. However, once they do, they must meet their disclosure obligations under Part XX of the Electoral Act. For administrative purposes, the AEC provides separate approved forms for organisational and individual donors but there is no legislative distinction between the two. Organisational (including corporate) and individual donors are both subject to the same disclosure rules and both corporations and individuals from all industries and sectors of the community are able to freely make political donations.
- 4.31 Some jurisdictions have much stricter controls on individuals. For example, under the *Canada Elections Act* individuals must be Canadian citizens or permanent residents to make donations to political parties. The *NSW Election Funding, Expenditure and Disclosures Act 1981* also states that people that wish to make political donations must appear on the state or federal electoral roll and prevents certain sectors such as the tobacco

industry and property developers from making political donations. The Victorian *Electoral Act 2002* bans donations above a prescribed amount from the for-profit alcohol industry.

- 4.32 A number of countries have banned categories of donations. The *Canadian Elections Act* bans all corporations (and anyone apart from individuals that are citizens or permanent residents of Canada) from donating to political parties. The United States banned anonymous and overseas donations and donations from corporations, banks and unions. The United Kingdom bans anonymous donations. The Australian Greens expressed support for the implementation of this measure in Australia.<sup>16</sup>
- 4.33 In her appearance before the committee, constitutional lawyer Professor Anne Twomey explained the test that must be satisfied to prevent a successful constitutional challenge of legislation to ban donations from particular sectors. The questions to be asked are:
- ...is there a legitimate interest involved and is the law reasonably appropriate and adapted to achieve that legitimate interest in a manner that is consistent with the system of representative and responsible government?<sup>17</sup>
- 4.34 Any attempts to legislate in this area must take the constitutional validity test into account as a prime consideration.

## Corporate donations

- 4.35 The issue of donations to political parties and associated entities from corporations has historically been at the centre of discussions regarding undue influence on the political process and actors in the process.
- 4.36 The *Electoral Reform Green Paper – Donations, Funding and Expenditure* (first Green Paper) made reference to a study conducted in 2001 that claimed that during the period it was conducted approximately ten years ago, the total corporate donations were \$29 million.<sup>18</sup> The study found that:
- ...although the figure of \$29 million over three years seems relatively small in contrast to the value of the corporate sector, it

---

16 The Australian Greens, *Submission 12*, p. 4.

17 Professor Anne Twomey, *Private capacity*, *Committee Hansard*, 9 August 2011, p. 41.

18 I Ramsay, G Stapledon and J Vernon, *Political Donations by Australian Companies*, in *Federal Law Review*, Vol. 29, 2001, pp. 201 – 202, cited in Commonwealth of Australia, *Electoral Reform Green Paper – Donations, Funding and Expenditure*, December 2008, p. 42.

would be considered a much more significant sum when compared to the budget of the political parties.<sup>19</sup>

4.37 The concern underlying the issues raised with corporations donating to political parties appears to relate to their motivations for doing so. The first Green Paper also made reference to comments in the study identifying a gap in evidence on the issue.<sup>20</sup>

4.38 Associate Professor Ken Coghill from the Accountability Round Table queried the link between the well-being of corporations and the making of political donations, thus raising the question of the precise motivations for corporations making political donations. He stated that:

My understanding of how directors' duties operate is that they must take action which is in the best interests of the corporation of which they are directors. To my mind, it is drawing an extraordinarily long bow to suggest that the welfare of an individual corporation is a product of the financial wellbeing of a political party, in terms of its campaign funding.<sup>21</sup>

4.39 A further complication is that many measures to address the issue of perceived or actual undue influence by corporations on political parties can potentially give rise to complex issues in relation to individual rights. The reason for this is that effectively regulating in relation to corporations and their role in the democratic process can impact on individuals.

4.40 There are three proposals that arose in relation to corporations in the context of discussions regarding bans and each is addressed separately:

- complete bans on corporations;
- bans on 'foreign' corporations making political donations; and
- bans on particular industry groups making political donations.

---

19 I Ramsay, G Stapledon and J Vernon, *Political Donations by Australian Companies*, in *Federal Law Review*, Vol. 29, 2001, p. 202, cited in Commonwealth of Australia, *Electoral Reform Green Paper – Donations, Funding and Expenditure*, December 2008, p. 43.

20 I Ramsay, G Stapledon and J Vernon, *Political Donations by Australian Companies*, in *Federal Law Review*, Vol. 29, 2001, cited in Commonwealth of Australia, *Electoral Reform Green Paper – Donations, Funding and Expenditure*, December 2008, p. 42.

21 Associate Professor Ken Coghill, Accountability Round Table, *Committee Hansard*, 10 August 2011, p. 3.



## Complete ban on corporate donations

4.41 In its submission to the first Green Paper, the Australian Greens drew on the figures cited therein to express support for a complete ban on donations from corporations to political parties. The Australian Greens concluded that:

There is general acknowledgement of the serious problems of corruption and undue influence caused to the Australian electoral process by the current system of reliance on private funding through donations and other measures. The evidence provided in the Green paper illustrates clearly the extensive amount of corporate donations received by the major parties, and note that this accounts for 20 per cent of the private funding they receive. To address this in part, the Australian Greens support a ban on donations from corporations.<sup>22</sup>

4.42 As above, this may present even further issues at the Commonwealth level in relation to impinging on individual rights which are likely to be afforded significance by Australian courts.

4.43 Professor Anne Twomey highlighted the fact that while implied constitutional freedoms such as the freedom of political communication and the freedom of expression are likely to be afforded less value by courts where participation by corporations in the political process was concerned, the 'rights' of individuals were still likely to be treated with great importance. Professor Twomey concluded that:

You would be far more vulnerable to a successful constitutional challenge if you took away the rights of individuals, especially if they were Australian people who were on the electoral roll, people who have a right to vote. If you removed their right to donate to political parties, I think you would have real problems. If it is... removing the capacity of corporations, unions or associations to [donate], I think it would be a much more diminished risk.<sup>23</sup>

4.44 In a context where bans on donations from corporations are in place, the potential for circumvention through the use of individuals and setting up third party interest groups is evident. This situation is said to have occurred in the US. The practice, commonly referred to as 'smurfing', involves the set-up of third party groups to make donations in order to avert a ban or circumvent a cap.

---

22 The Australian Greens, *Submission 32 to the Electoral Reform Green Paper – Donations, Funding and Expenditure*, p. 1.

23 Professor Anne Twomey, *Private capacity, Committee Hansard*, 9 August 2011, p. 41.

- 4.45 An additional area that would need to be considered to prevent circumvention of any bans, including those on corporations, is loans from non financial institutions. Primarily these are loans made mostly to small and medium sized parties and the usual arrangement is the provision of funds that they then do not charge interest on and do not demand repayment of either until election funding comes through or when the party is in a strong enough financial position to repay.
- 4.46 While, strictly speaking, only the interest foregone is a donation under the current scheme (unless and until the loan is forgiven), as these 'loans' can remain unpaid for many years, consideration should be given to whether these should be treated as donations to close a potential loophole in a system that involves bans on particular donations. In the context of caps, perhaps such arrangements would need to be considered as being subject to a separate cap.
- 4.47 Section 96GC of the NSW *Election Funding, Expenditure and Disclosures Act 1981* attempts to overcome this potential loophole by providing that loans other than those from a financial institution that would have been 'political donations' if they were gifts, are to be treated as political donations for the purposes of the legislation and thus must be disclosed in accordance with the legislation. The potential for circumvention remains to be seen as the legislation has only recently come into operation.
- 4.48 In the United Kingdom when revised political financing laws were passed, the major parties took out loans to circumvent the new disclosure obligations for the 2005 election. Accordingly, an amendment was passed so that the same reporting obligations apply to loans as to donations.<sup>24</sup>
- 4.49 Similarly, attempts to ban corporate donations in the United States have resulted in an uprising of Political Action Committees funded and run by corporations as a means of exerting influence on the political process.
- 4.50 The task of comprehensively legislating to minimise and eliminate the potential for loopholes and opportunities for circumvention of bans in the area of political financing is challenging, with possible constitutional issues and the need to minimise opportunities to circumvent any laws being prime considerations.

---

24 See further Law Library of Congress website, <<http://www.loc.gov/law/help/campaign-finance/uk.php>> viewed 7 October 2011.

## Ban on donations from 'foreign' corporations

- 4.51 There are currently no limitations in the Electoral Act that prevent corporations or individuals located overseas or whose primary business location is overseas from making donations to political parties in Australia. Some jurisdictions, such as Queensland, have already implemented a ban on gifts of foreign property.<sup>25</sup>
- 4.52 The Commonwealth Electoral Amendment (Political Donations and Other Measures) Bill 2010 (the Bill) which is currently before Parliament defines 'foreign property' as:
- (a) Money standing to the credit of an account kept outside Australia; or
  - (b) Other money (for example cash) that is located outside Australia; or
  - (c) Property, other than money, that is located outside Australia.<sup>26</sup>
- 4.53 The appropriateness of foreign corporations making donations to Australian political parties was raised by the Democratic Audit of Australia as an area of concern and in need of further regulation. However, the difficulties of legislating to implement such a ban were also acknowledged, with the Democratic Audit stating that:
- Consideration could be given, on sovereignty grounds, to banning donations from foreign 'state-owned' corporations, though problems of definition would need to be carefully addressed.<sup>27</sup>
- 4.54 The Australian Greens also expressed support for this measure.<sup>28</sup> The Democratic Audit indicated that devising an appropriate definition of 'foreign' posed a significant difficulty when attempting to legislate in this area.<sup>29</sup> The definition of 'foreign property' that is used in the Bill is able to be circumvented by corporations with primary business overseas having Australian bank accounts and property.
- 4.55 The counter argument to this position is that there is no benefit to a corporation maintaining an Australian bank account if it does not have legitimate interests in Australia. Thus, the aims of the legislation seem to be met by defining foreign property in the manner attempted in the Bill.
- 

25 See *Electoral Act 1992 (QLD)*, s. 267.

26 Commonwealth Electoral Amendment (Political Donations and Other Measures) Bill 2010, item 51.

27 Democratic Audit of Australia, *Submission 2*, p. 6.

28 The Australian Greens, *Submission 12*, p. 4.

29 Democratic Audit of Australia, *Submission 2*, p. 6.

- 4.56 Some members of the committee expressed concerns in this regard that businesses with legitimate interests in Australia and its political processes would effectively be prevented from participating in the democratic process by giving political donations.

### Bans on donations from particular industries

- 4.57 The implementation of bans on donations from particular industries is geared towards minimising the capacity of specified industries to exert influence or appear to exert influence over the political process and its key actors. A number of jurisdictions have taken this step, with NSW banning donations from the tobacco industry and property developers. Victoria also has bans in place on donations from the 'for-profit' alcohol industry.
- 4.58 Discourse surrounding bans on donations from particular industry sectors generally involved significant focus on the tobacco industry. Some political parties have already implemented self-imposed bans on receiving funding from, specifically, the tobacco industry.
- 4.59 The Australian Labor Party has had a policy in place since 2004 not to accept donations from the tobacco industry. The ALP Constitution provides that:
- Under no circumstances will the Labor Party or any of its endorsed candidates accept donations from the tobacco industry.<sup>30</sup>
- 4.60 Similarly, the Australian Greens do not accept donations from the tobacco industry. However, the Australian Greens are now seeking to go further, with the introduction by Greens Senator Bob Brown on 15 June 2011, of the Commonwealth Electoral Amendment (Tobacco Industry Donations) Bill 2011. This bill proposes to amend the Electoral Act to create offences to prohibit political parties or candidates from receiving donations from manufacturers or wholesalers of tobacco products.
- 4.61 The issue of industry bans, focussing on banning the tobacco industry from making political donations, was addressed in a number of submissions to the inquiry. Major arguments in this respect were premised on three elements:
- Tobacco has negative effects on public health and is responsible for a significant number of deaths, even when used as directed;

---

30 Australian Labor Party, 'ALP Code of Conduct for Fundraising (decision of the 1994 Conference)' in the *National Platform and Constitution 2009*, p. 30.

- Due to this negative societal effect, tobacco companies are held in low esteem among Australians; and
  - The negative impact tobacco has had on society coupled with its low regard by electors renders any attempts by tobacco companies to gain influence in the political spectrum ‘inappropriate’ and detrimental to the integrity of the democratic process.
- 4.62 The primary arguments that arose against imposing bans on particular industries related to potential problems with banning companies conducting activities that are currently legal from participating in the political process. Issues also arose regarding the implied constitutional freedoms to political communication that have been found to exist in the Australian Constitution, particularly the scope for a resulting impingement on individual rights.
- 4.63 In addition to the federalism issues discussed in Chapter 9, Professor Twomey pointed out that the current bill proposing to ban donations from tobacco companies does not apply to Independent members of parliament. The terminology of ‘candidate’ that is used does not cover the situation because ‘candidacy’ is only for a defined period of time.
- 4.64 The AEC indicated in its fourth supplementary submission to the inquiry that administrative issues may arise regarding the definitional issues in the tobacco bill that were also raised by Professor Twomey. It stated:
- ...the AEC anticipates that there may be some administrative issues in establishing how far the term ‘agent of a manufacturer or wholesaler of tobacco products’ would extend...The AEC is of the view that it would be much clearer if a definition of ‘agent of a manufacturer or wholesaler of tobacco products’ was included in the bill.<sup>31</sup>
- 4.65 During hearings, the committee queried whether laws imposing bans would extend to preventing members of Parliament from speaking to representatives of a tobacco company, highlighting the difficulties with legislating clearly and appropriately in the area.<sup>32</sup>
- 4.66 Professor Twomey identified the overlap between the regulation of corporations and individuals in the context of legislating to implement bans on tobacco companies, stating that:

---

31 Australian Electoral Commission, *Supplementary submission 19.4*, pp. 1-2.

32 Joint Standing Committee on Electoral Matters, *Committee Hansard*, 8 August 2011, p. 32.

If [legislation] goes so far as to mean that a director of a tobacco company using his or her own money cannot then pay money to attend a fundraiser or something, then potentially you are heading into that land of unconstitutionality.<sup>33</sup>

4.67 The NSW *Election Funding, Expenditure and Disclosures Act 1981* contains provisions stating that ‘close associates’ of corporations banned from making political donations. A ‘close associate’ is defined to include a director or officer of the corporation, or the spouse of a director of officer.<sup>34</sup>

4.68 To date, there has not been a constitutional challenge to these provisions, but the potential issues were noted by some constitutional lawyers, as above. It has also been stated that bans on corporations only are less likely to be constitutionally invalid, given that implied constitutional freedoms are afforded less value in this context.<sup>35</sup>

## Conclusion

4.69 In Australia individuals donating to political parties is seen to be a genuine expression of freedom of political communication, expression and association.

4.70 Banning certain categories of donors or donations could potentially be an infringement of individual rights to use political donations as a means of participating in the democratic process, as it may affect the rights of individuals working for corporations.

4.71 Legislating to implement bans on donations from particular sources and adequately addressing the potential for circumvention of any laws presents considerable difficulties.

4.72 There may be a number of factors motivating corporations to make political donations. Corporations may not necessarily only donate to political parties to obtain an ‘advantage’. It can be in their interests to more generally support democracy that provides for a safe and profitable trading environment. Accordingly, the committee does not believe there is enough evidence to warrant the implementation of a blanket ban on donations from corporations.

---

33 Professor Anne Twomey, Private capacity, *Committee Hansard*, 9 August 2011, p. 39.

34 *Election Funding, Expenditure and Disclosures Act 1981* (NSW), s. 96GB(3).

35 Professor Anne Twomey, Private capacity, *Committee Hansard*, 9 August 2011, p. 41.

- 4.73 However, corporations that are primarily located overseas being permitted to make political donations is likely to add to the perception of undue influence and negatively impact on the integrity of the Australian electoral and democratic system.

### **Recommendation 10**

- 4.74 **The committee recommends that the *Commonwealth Electoral Act 1918* be amended to ban political parties, Independent candidates, associated entities and third parties from receiving 'gifts of foreign property'.**

- 4.75 A number of arguments were made regarding the negative effect tobacco has had on society. Some political parties already have policies and practices in place that prohibit the acceptance of any donations from the tobacco industry.

- 4.76 However, legislative attempts to ban political parties from receiving donations from the tobacco industry may also impact on individuals that work for tobacco companies. There is a risk that such laws may be interpreted by Australian courts as an unwarranted encroachment on individual rights.

- 4.77 The committee does not support imposing bans on donations from the tobacco industry. Concerns regarding the acceptance of political donations from the tobacco industry can be addressed through the self-regulation mechanisms currently employed by political parties. However, if such a ban is to be pursued, appropriate legal advice should be sought on how best to frame the legislation to minimise potential constitutional issues.

### **Anonymous donations**

- 4.78 Sections 306 and 306B of the Electoral Act ban anonymous donations and loans that exceed the applicable disclosure threshold to political parties, candidates, Senate groups, or persons acting on their behalf.
- 4.79 The Commonwealth Electoral Amendment (Political Donations and Other Measures) Bill 2010 (2010 bill) proposes to prohibit all anonymous donations of more than \$50 to political parties, candidates and Senate groups, as well as to prevent the use of anonymous donations to incur political expenditure.

- 4.80 Where an anonymous donation is returned, or paid to the Commonwealth within six weeks where return is not possible or practicable, the provisions seeking to govern anonymous donations will not apply. This is the approach taken in the 2010 bill in relation to foreign donations.
- 4.81 Anonymous donations of \$50 or less made are allowed if they were received at a 'general public activity' or 'private event'. Political expenditure that has been enabled by permitted anonymous donations is allowable. Disclosure obligations are imposed regarding permitted anonymous donations received during the disclosure period and the associated activities or events.
- 4.82 GetUp expressed its support for the notion of banning anonymous donations in certain circumstances. The group envisaged a scheme for donation reporting of:
- Small anonymous donations;
  - Donations above the anonymous threshold but below the transparency threshold (transparency threshold is the normally applicable disclosure threshold for that financial year); and
  - Donations above the transparency threshold up to the top of the donations cap.<sup>36</sup>
- 4.83 GetUp argued that it should be unlawful for anonymous donations to be made or received above the low threshold of \$50. Recipients should keep records of the number of donations received and the amount collected by anonymous donations. GetUp stated that these figures must be regularly reported to the national campaign finance authority.<sup>37</sup>
- 4.84 GetUp proposed that where donations are received between the anonymous donations threshold (\$50) and the transparency threshold (which GetUp believes should be set at \$500 or \$1000), recipients should be forced to collect and retain donor details to ensure the integrity of the donations cap is not breached, and for audit purposes.<sup>38</sup>
- 4.85 GetUp argued that donations at this level should be reported individually by value to the national campaign finance authority, but donor names need not be disclosed.
- 4.86 The NSW *Election Funding, Expenditure and Disclosures Act 1981* prohibits 'reportable political donations' being received from an unknown source.
- 

36 GetUp!, *Submission 23*, p. 2.

37 GetUp!, *Submission 23*, p. 2.

38 GetUp!, *Submission 23*, p. 2.



Reportable political donations are donations about the \$1000 threshold to political parties, members, groups, candidates or third party campaigners. In Queensland, under section 271 of the *Electoral Act 1992*, anonymous donations of \$200 or more are prohibited. The prohibition of anonymous donations, including for third parties incurring political expenditure, is thus an emerging trend in political financing.

## Conclusion

- 4.87 It is important to pursue transparency and accountability in the political financing regime by ensuring details of donors are retained, and that political parties and third parties themselves are aware of their sources of funding.
- 4.88 The measures proposed in the Commonwealth Electoral Amendment (Political Donations and Other Measures) Bill 2010 and those employed in NSW and Queensland are reasonably clear and straightforward. The approach proposed by GetUp, while containing certain merits, adds an additional level of complexity, which may impact on the capacity of people affected to comply.
- 4.89 The committee supports the implementation of a ban on anonymous donations above \$50, except in the circumstances at general public activities or private events as outlined in the Commonwealth Electoral Amendment (Political Donations and Other Measures) Bill 2010.

## Recommendation 11

- 4.90 **The committee recommends that a ban be imposed on anonymous donations above \$50 to political parties, associated entities, third parties, Independent candidates and Senate groups.**

## Limits on donations from individuals

- 4.91 There are currently no limits on individuals making political donations. The only legal requirement is that where the donations made reaches the disclosure threshold the individual must meet their disclosure obligation.
- 4.92 A number of other jurisdictions do impose limits on the individuals that are able to make political donations. The Canadian scheme bans donations from all sources apart from Canadian citizens and permanent

residents. Under the NSW scheme, individuals must appear on the federal, state or local government electoral rolls to be able to make donations.<sup>39</sup>

- 4.93 Calls for changes to the disclosure scheme where individuals making political donations are concerned generally focus on banning those that are outside the country from participating through the financing regime. This is based on a view that those outside the country could not have a legitimate interest in participating in the Australian political process and thus should not be afforded any degree of the Australian Constitution's freedom of political communication.
- 4.94 There are three ways in which a ban on donations from individuals that are not resident in Australia could operate:
- a ban on donations from non-citizens, such as permanent residents, of Australia that are located abroad;
  - a ban on donations from Australian citizens living abroad; or
  - a ban on donations from both these sources.
- 4.95 Professor George Williams suggested that individuals also should be resident in Australia to be able to make donations to political parties.<sup>40</sup> This means that Australians living overseas would be prohibited from making political donations. He wrote:
- When it comes to donations, non-residents should not be entitled to make monetary contributions to Australian political parties. Their involvement in this way has the capacity to distort the Australian electoral system and to provide an inappropriate outside influence on democratic decision making in Australia.<sup>41</sup>
- 4.96 The Commonwealth Electoral Amendment (Political Donations and Other Measures) Bill 2010 proposes to ban all gifts of foreign property, which would impact on non-residents donating to Australian political parties, unless they had an Australian bank account from which they could continue to donate.
- 4.97 The Democratic Audit of Australia identified this clear loophole in laws purporting to ban donations from non-residents to Australian political parties, stating that:

---

39 *Election Funding, Expenditure and Disclosures Act 1981* (NSW), s. 96D.

40 Professor George Williams, *Submission 3*, p. 2.

41 Professor George Williams, *Submission 3*, p. 2.

There appears to be public support for not allowing non-citizens who are resident abroad to make campaign donations (as is the case in the US), but it should be recognised that any such prohibition could be easily circumvented by the use of local agents.<sup>42</sup>

- 4.98 As above, there is an argument that the potential for circumvention of the ban through use of a 'local agent' or Australian bank account still ensures the aims of maintaining the integrity of the system are achieved because only those with legitimate 'links' to Australia would maintain a bank account within the country.

## Conclusion

- 4.99 In Australia individuals donating to political parties is seen to be a genuine expression of freedom of political communication, expression and association. However, donations from individuals outside of Australia have the capacity to negatively impact on the integrity of the Australian political spectrum.
- 4.100 As indicated by Professor Anne Twomey, legislation that may potentially infringe the implied constitutional freedoms is likely to be afforded less significance where non-residents of Australia are concerned.
- 4.101 The committee supports the measure in the Commonwealth Electoral Amendment (Political Donations and Other Measures) Bill 2010 to impose a blanket prohibition on gifts of foreign property. Further, because such a ban can be circumvented consideration should be given to administrative and/or legislative measures to curtail the potential for this to occur.

## Recommendation 12

- 4.102 **The committee recommends that in addition to the measure to prohibit gifts of foreign property being implemented, methods to curb the potential for circumvention be examined and solutions devised.**

---

42 Democratic Audit of Australia, *Submission 2*, p. 6.



## Expenditure

### Background

- 5.1 An increase in expenditure has been a feature of election campaigning since the introduction of the funding and disclosure scheme in 1984.<sup>1</sup> While parties once campaigned only in the period immediately prior to an election, they now engage in continuous campaigning between elections, with a significant increase in campaign activity in the year before an election.<sup>2</sup> Increased campaigning activity has been accompanied by an increase in overall amounts of expenditure by political parties and candidates.
- 5.2 Curtailing these rising costs – slowing what has been termed the campaigning ‘arms race’ – has been one of the motivating factors for those seeking reform of political financing arrangements. This chapter examined options for addressing concerns about costs by directly regulating expenditure under the current system, or moving to a system that involves imposing caps or restrictions on areas of high expenditure such as electronic advertising.

---

1 Commonwealth of Australia, *Electoral Reform Green Paper – Donations, Funding and Expenditure*, December 2008, p. 67.

2 P Van Onselen and W Errington, ‘The Democratic State as a Marketing Tool: The Permanent Campaign in Australia’, *Commonwealth & Comparative Politics*, vol. 45, no. 1, 2007, p. 78, cited in Commonwealth of Australia, *Electoral Reform Green Paper – Donations, Funding and Expenditure*, December 2008, p. 9.

5.3 While political parties' expenditure details are not readily disclosed or accessible under the current scheme, estimates may be made based on the information that is required to be provided. The *Electoral Reform Green Paper – Donations, Funding and Expenditure* (first Green Paper) cited figures based on the difference in the reported total yearly expenditures for the ALP and the Liberal Party for the years 2003-04 (a non-election year) and 2004-05 (an election year), indicating estimates of electoral expenditure at approximately \$19.4 million and approximately \$22 million respectively.

5.4 A number of submitters expressed concern about the increasing costs of political campaigning. In his submission to the first Green Paper, Mr Stephen Mills articulated the concerns of many proponents for reform of political financing arrangements, stating that:

Very high levels of campaign expenditure are unfair: they limit participation in important campaign arenas such as television advertising to the large parties, and exclude smaller parties with fewer financial resources. They are perverse: they favour groups and individuals with existing wealth and/or fundraising skills over those skilled in, for example, policy or government affairs. And they are dangerous: high levels of campaign spending require high levels of fundraising, and party reliance on private donors creates the potential for real or perceived influence on decision making, degrading public confidence in the integrity of the political process.<sup>3</sup>

5.5 The first Green Paper also highlighted the mechanisms by which political parties aim to maximise the audiences for their messages during the parliamentary cycle. A range of media is now employed, including print, radio, internet, social networking and the most expensive, television. This has had a drastic impact on the costs of elections. The first Green Paper articulated the link between 'new media' forms of campaigning and the spiralling levels of election spending, stating that:

The modern phenomenon of permanent campaigning is expensive and increasingly so. Media advertising remains a major cost, and the major political parties' expenditure on campaigning, principally through advertising, is increasing at rates far in excess of inflation.<sup>4</sup>

---

3 Mr Stephen Mills, *Submission 29* to the Electoral Reform Green Paper – Donations, Funding and Expenditure, December 2008 p. 2.

4 Commonwealth of Australia, *Electoral Reform Green Paper – Donations, Funding and Expenditure*, December 2008, p. 10.

- 5.6 The expansion of the means by which campaigning can take place has been one key factor contributing to spiralling election costs.

## Current arrangements

- 5.7 Part XX of the *Commonwealth Electoral Act 1918* (Electoral Act) requires political parties and associated entities to disclose specific details of receipts and debts that exceed the applicable disclosure threshold, which was \$11 500 for the 2010-2011 financial year. The current disclosure requirements contained in Part XX of the Electoral Act do not compel parties to disclose specific details of their expenditure, electoral or otherwise, above the disclosure threshold.
- 5.8 Candidates and joint and unendorsed Senate groups in each election and by-election are required to lodge returns that include details of 'electoral expenditure' as well as donations. 'Electoral expenditure' is defined in the Electoral Act as expenditure incurred, whether or not incurred during the election period, on:
- the broadcasting, during the election period, of an advertisement relating to the election; or
  - the publishing in a journal, during the election period, of an advertisement relating to the election; or
  - the display, during the election period, at a theatre or other place of entertainment, of an advertisement relating to the election; or
  - the production of an advertisement relating to the election, being an advertisement that is broadcast, published or displayed as mentioned in paragraph (a), (b) or (c); or
  - the production of any material (not being material referred to in paragraph (a), (b) or (c)) that is required under section 328, 328A or 328B to include the name and address of the author of the material or of the person authorizing the material and that is used during the election period; or
  - the production and distribution of electoral matter that is addressed to particular persons or organisations and is distributed during the election period; or
  - the carrying out, during the election period, of an opinion poll, or other research, relating to the election.<sup>5</sup>

---

5 *Commonwealth Electoral Act 1918*, s. 308.

- 5.9 The Commonwealth Electoral Amendment (Political Donations and Other Measures) Bill 2010 seeks to expand the definition of 'electoral expenditure' to include additional costs such as payment of staff employed for an election campaign and travel during an election campaign.<sup>6</sup>
- 5.10 A survey of the candidate returns for each election on the Australian Electoral Commission (AEC) website indicates that candidates endorsed by political parties, with a few exceptions,<sup>7</sup> generally lodge 'nil' returns. This is because, apart from where they use their own money or receive donations directly, all expenditure is incurred through the endorsing political party. There is thus no way in which information regarding this expenditure is made public.
- 5.11 The requirement for political parties to provide details of expenditure was in the Electoral Act from 1984 to 1996, with the exception of the 1993 election. The relevant provision was repealed prior to the 1993 federal election once more comprehensive annual disclosure laws were introduced. The requirement was reintroduced for the 1996 election and removed again.
- 5.12 The Joint Standing Committee on Electoral Matters (JSCEM) report on the conduct of the 1996 federal election recommended that section 314AD of the Electoral Act, which required the disclosure of details pertaining to amounts paid (over the \$1 500 threshold at the time, excluding amounts below \$500) annually, be repealed. This was based on recommendations to this effect made by the Australian Labor Party, the Liberal Party and supported by the AEC.<sup>8</sup> The recommendation to remove the requirement stemmed from a view that the administrative burden on parties in disclosing this information outweighed the resultant benefits of the disclosure of these details.
- 5.13 However, the lack of disclosure of expenditure by political parties was raised in submissions as an issue that erodes the quality of disclosure that is obtained through the current scheme. The Commonwealth disclosure scheme has changed significantly since the requirement for political parties to disclose expenditure details was removed in 1996. For example, there is now a much higher disclosure threshold in place.
- 

6 Commonwealth Electoral Amendment (Political Donations and Other Measures) Bill 2010, item 7.

7 See further AEC website, <<http://electiondisclosures.aec.gov.au/CandidateSearch.aspx?SubmissionId=15508>> viewed 9 November 2011.

8 Joint Standing Committee on Electoral Matters, *Report on the conduct of the 1996 federal election and matters related thereto*, Commonwealth Parliament of Australia, p. 103.



5.14 The AEC noted in its submission that '[a]mendments to the original annual disclosure scheme have seen less detail required to be disclosed in the relevant returns than originally was the case'.<sup>9</sup>

5.15 One argument that arises in this area is that the current obligations are more onerous on Independent candidates than endorsed candidates, because Independent candidates reveal details of their expenditure that are never revealed by endorsed candidates. The AEC stated:

Since 1996, the AEC has not obtained – and there was no requirement in the legislation for us to obtain – amounts of electoral expenditure that had been incurred by the political parties and endorsed candidates. So the Act, as it stands at the moment, has a different requirement that applies to independent candidates from that that applies to endorsed candidates. We were merely raising that for the committee's consideration, and just raising: is that the policy that the committee would still wish to adopt? But that is clearly the position that is currently in the Act.<sup>10</sup>

5.16 In its third supplementary submission, the AEC also referred to comments made by the Member for Lyne during the second reading debate for the Commonwealth Electoral Amendment (Political Donations and Other Measures) Bill 2009:

The fact that the declaration of your expenditure happens separately for non-aligned candidates versus candidates who are members of major political parties is an issue that I would hope this government strongly considers. Surely it should be the same rule for all, and that includes the major political parties as well as Independent and unaligned candidates. The fact that the major parties can bury their figures in some sort of global expenditure at the end of the year, separate from by-election figures, which have to be declared by people such as me within a certain time frame, is an anomaly. I hope it can be corrected through what I hope is the start of a reform process.<sup>11</sup>

5.17 The NSW Greens Political Donations Research Project expressed some concerns about what they described as a 'loophole' regarding disclosure by endorsed candidates following an election. The group stated that:

---

9 Australian Electoral Commission, *Submission 19*, p. 2.

10 Mr Paul Pirani, Chief Legal Officer, Australian Electoral Commission, *Committee Hansard*, 1 November 2011, p. 6.

11 House of Representatives Hansard 16 March 2009 at page 2684, cited in Australian Electoral Commission, *Supplementary submission 19.3*, p. 6.

...all money can be funnelled through the head office for all MPs and other candidates running for the lower house in federal parliament.<sup>12</sup>

5.18 The importance of the disclosure of expenditure has also been noted in the context of a more complex regulatory framework. Dr Norman Thompson has commented in reference to the NSW system that:

Without a legal requirement for parties to disclose all expenditure in individual electorates, it could be difficult and perhaps impossible to ascertain if a party has breached its electorate expenditure cap. In order for it to be adequately monitored, there must be reporting of party expenditure by each electorate.<sup>13</sup>

5.19 Under the current disclosure scheme there are no measures in place to curtail or limit spending on elections. Concordantly with other aspects of reform of the political financing regime, the options for change can be separated into two categories:

- the implementation of changes to the current system; or
- adopt a broader approach involving restrictions on amounts or types of expenditure.

## Improving the current system

### Disclosure of expenditure

5.20 The key proposal for improvement to the current system relates to enhancing the disclosure measures of political parties, associated entities (where relevant) and third parties with respect to their expenditure.

5.21 As mentioned in previous chapters, the various components of political financing arrangements are intertwined. In the context of political expenditure, the arrangements in place for regulating public funding help set the parameters within which the feasibility of expenditure reform options can be explored.

---

12 Dr Norman Thompson, NSW Greens Political Donations Research Project, *Committee Hansard*, 9 August 2011, p. 9.

13 Dr Norman Thompson, Democracy4sale website, <[http://www.democracy4sale.org/index.php?option=com\\_content&view=article&id=548:nsw-electoral-funding-reform-democratic-or-enforceable&catid=1:general&Itemid=6](http://www.democracy4sale.org/index.php?option=com_content&view=article&id=548:nsw-electoral-funding-reform-democratic-or-enforceable&catid=1:general&Itemid=6)> viewed 25 October 2011.

- 5.22 A key determining factor in relation to the desirability of inserting requirements into the Electoral Act whereby political parties and associated entities, where relevant, disclose details of their expenditure will be whether a reimbursement scheme for claiming public funding is in place.
- 5.23 Under reimbursement schemes, parties or candidates typically lodge claims that detail their expenditure to the administering body – at the federal level it would be the Australian Electoral Commission (AEC). The information contained in these reports is made publically available under section 320(1) of the Electoral Act. Accordingly, expenditure details are in effect being disclosed, and a distinct detailed disclosure obligation regarding expenditure may not be necessary.
- 5.24 However, in the absence of a reimbursement scheme, an alternative means of obtaining disclosure of details of expenditure by political parties and associated entities may be warranted.
- 5.25 The benefits to transparency and accountability in the current scheme by requiring political parties (and associated entities) to disclose details of their expenditure have been raised. However, some consideration must be given to the way in which further breakdown of the information could occur to obtain the types of information that some people may be interested in, such as the amounts that political parties spent on campaigns in particular electorates.
- 5.26 In a discussion paper prepared for the Democratic Audit of Australia, Kenneth R. Mayer identified the following run-off effect of the absence of this requirement from the Australian campaign finance regime. He argued that:
- Because parties disclose so little information, we have little understanding of how parties allocate their money, which seats they consider most important, and what the relationship is between what they spend and how their candidates do. Because so little information is revealed, the media give the annual and election disclosures only a perfunctory treatment.<sup>14</sup>
- 5.27 The AEC questioned the value that would arise from having political parties disclosing this information:

---

14 K Mayer, *Sunlight as the best disinfectant: Campaign finance in Australia*, Discussion Paper 31/06 (October 2006), Democratic Audit of Australia, p. 4, <<http://democraticaudit.anu.edu.au/papers/20061026mayerfin.pdf>> viewed 15 September 2011.

...when you have expenditure that covers a whole state or, indeed, a whole country, I suspect how you apportion that according to electorates would be quite difficult...

The question would be if you took overall expenditure by a party on a particular item would you divide it by 150 and, if you did, is that a particularly meaningful figure to record for expenditure in a particular seat?<sup>15</sup>

5.28 The AEC also highlighted an additional difficulty that arises in this area, noting that:

...you have the additional issue about what to do with the Senate, when that is not done on a divisional basis. It is done on a whole state basis, so are we going to aggregate that information or disaggregate it? How is that to be recorded?<sup>16</sup>

5.29 A primary consideration in the examination of the detailed disclosure of expenditure by political parties then is the type of information that would be useful to obtain. While political party expenditure on electorate basis may be of interest, it is unlikely to be an issue that will influence an elector's vote as much as knowledge of donations received by the political party. Accordingly, the issue is one for consideration, but is not crucial to transparency and accountability of the movement of funds within the political system.

5.30 There are three ways in which the disclosure of expenditure of political parties and endorsed candidates could be changed to require detailed disclosure of expenditure within a disclosure-based system:

- insert a requirement that details of all expenditure in excess of the disclosure threshold by political parties and associated entities must be disclosed in annual returns;
- political parties could be required to lodge election returns disclosing their 'electoral expenditure'; or
- political parties and associated entities could be required to lodge details of their 'electoral expenditure' in their annual returns;
  - ⇒ The definition of 'electoral expenditure' in section 308 of the Electoral Act, provides that 'electoral expenditure' need not be 'incurred' during the election period, but also states that it must relate to

15 Mr Ed Killesteyn, Electoral Commissioner, Australian Electoral Commission, *Committee Hansard*, 1 November 2011, pp. 6-7.

16 Mr Paul Pirani, Chief Legal Officer, Australian Electoral Commission, *Committee Hansard*, 1 November 2011, p. 7.

activities undertaken during the election period or 'relating to' an election. A revised definition may be necessary if political parties are to disclose details of 'electoral expenditure' in annual returns, omitting the limitation on the time period.

### Detailed disclosure of expenditure by parties and entities

- 5.31 The insertion of a requirement into the Electoral Act requiring political parties and associated entities to disclose details of all expenditure above the threshold would be particularly beneficial in a system where there is no reimbursement scheme in place and with a high disclosure threshold. In this scenario, the absence of claims as a source of expenditure details and the high disclosure threshold – reducing the items of expenditure that need to be disclosed – means that less information about the general expenditure of political parties and endorsed candidates is available. A requirement for the detailed disclosure of expenditure would enhance transparency by providing a source of information on relevant spending.
- 5.32 Associated entities must also be subject to this requirement, so as not to provide a loophole allowing circumvention of the requirement by political parties.
- 5.33 At the time this requirement was deemed 'too onerous' in 1996, the disclosure threshold was at a much lower level than \$11 500 for the 2010-2011 financial year and parties did not receive any additional funding or support to ease the burden. The argument is thus less persuasive in reference to a post-2006 disclosure scheme.
- 5.34 As above, if full disclosure of expenditure was implemented where a high disclosure threshold was in place, the disclosure of expenditure by political parties and associated entities could form part of the annual return. However, the current situation whereby disclosure takes place 'after the fact' would also need to be considered. It may be that the value of disclosure of expenditure would be heightened where a contemporaneous disclosure system is in place.

### Frequency of disclosure

- 5.35 Alternatively, introducing the option to require political parties to lodge specific 'election returns' disclosing expenditure pertaining to a specific election and/or to include electoral expenditure details in their annual returns submitted in relation to election years, are best suited to a system with no reimbursement scheme and a low threshold. In a system with a low disclosure threshold, a detailed disclosure requirement regarding all

expenditure may be seen as too administratively onerous without any additional support for political parties, as was the case in the past, as too many details would need to be recorded and reported.

- 5.36 Consideration would need to be given as to whether this requirement should be implemented in addition to, or instead of, the annual disclosure requirement for the financial year in which the election was held.
- 5.37 Regardless of the nature of the obligation, in this scenario, a requirement for the reporting of electoral expenditure in an election return or as part of an annual return for the relevant financial year strikes a better balance between making this pertinent expenditure information available without unduly burdening those with reporting obligations, as the requirement would only arise in years during which a federal election had been held
- 5.38 As with alternative models, other elements such as the timing of disclosure – whether it is ‘after the fact’ or contemporaneous reporting – will also influence the selection of a preferred approach.
- 5.39 The NSW Greens Political Donation Research Project recommended that political parties make detailed disclosure of all ‘electoral expenditure’ – as defined in section 308 – to the AEC, as opposed to all expenditure.<sup>17</sup> It also recommended that the definition of ‘electoral expenditure’ be continually updated to include new and emerging forms of electronic campaigning. The justification for the implementation of provisions requiring disclosure of expenditure above the threshold is that given that such a large amount of taxpayer funds are spent on electoral expenditure, the public has a right to know about how it is being spent.<sup>18</sup>
- 5.40 The administrative burden imposed through the disclosure of only ‘electoral expenditure’ is significantly less than that connected to disclosing all payments made in a financial year that exceed the threshold.
- 5.41 If a lower disclosure threshold is in place, it may be more feasible in order to reduce the administrative burden on political parties and associated entities, to provide for the disclosure of ‘electoral expenditure’ only in each annual return, regardless of whether or not an election was held. This would be a useful move in the context of continuous campaigning. The definition of electoral expenditure would need to be amended, or an alternative definition inserted, so as not to limit the time period during which expenditure of the types defined in section 308 can be incurred and has to be disclosed.
- 

17 NSW Greens Political Donation Research Project, *Submission 17*, p. 2.

18 NSW Greens Political Donation Research Project, *Submission 17*, p. 4.

## Relevant considerations

- 5.42 In the United States, political parties must provide certain details regarding their expenditure exceeding the threshold of \$200 as a part of their disclosure obligations. In Canada, political parties must also provide a Statement of General Election Expenses for each election in which the total amount paid in specified categories, any discount received and any remaining unpaid portion of the transaction must be provided.<sup>19</sup>
- 5.43 Consideration could be given to applying a similar approach in Australia to that applied in Canada. Such a model would involve political parties disclosing detailed information in the legislative categories of 'electoral expenditure', with details of discounts and unpaid portions in their annual returns. It may be that this information will be of greater use to the public in identifying the potential for influence, than a general disclosure of all expenditure.
- 5.44 In Australia, if there are privacy concerns in the context of expenditure disclosure, similar arrangements to those proposed in Chapter 3 regarding only publishing the name, suburb and post code of individuals where relevant could apply in relation to disclosure of expenditure.
- 5.45 In addition, political parties must be sufficiently funded and resourced to meet any additional administrative burden imposed through the imposition of additional disclosure obligations.

## Conclusion

- 5.46 Comparable jurisdictions require that details of expenditure be disclosed. The disclosure of certain details of electoral expenditure above the applicable disclosure threshold enhances the transparency and accountability of the political financing scheme and the integrity of the broader democratic process. The committee believes this will be the case regardless of the level of the disclosure threshold that is in place.
- 5.47 Arguments relating to the administrative burden on political parties and associated entities in disclosing details of expenditure above a high threshold of \$11 500 are not persuasive.
- 5.48 In the case of lower thresholds, it is worth noting that in the past it was argued that the detailed disclosure requirement for expenditure was too administratively onerous for those with reporting obligations, which led to the removal of the requirement for detailed disclosure of expenditure in

---

19 See generally *Canada Elections Act*, division 3.

1996 when the threshold was \$1 500. However, given that making these details publically available is crucial to enhancing transparency and accountability in this area, it is worthwhile exploring ways to assist those responsible to meet this requirement.

- 5.49 Providing additional resources such as increased guidance from the AEC on what is required, and funding from the Commonwealth targeted at supporting the increased administrative burden will help to support the transition to, and ongoing provision of expenditure details. One way in which assistance could be provided is through targeted funding to support the additional administrative workload. Options for administrative funding are discussed in Chapter 6.
- 5.50 Reform along these lines to the disclosure scheme may necessitate changes to the AEC's current online lodgement scheme to increase the efficiency with which processing of returns can take place. Accordingly, the AEC must educate political parties, candidates, associated entities and any other group that may be affected by the changes.

### **Recommendation 13**

- 5.51 **The committee recommends that the *Commonwealth Electoral Act 1918* be amended, as necessary, to require political parties and associated entities to disclose details of their expenditure above the applicable disclosure threshold in their six-monthly returns.**

### **Recommendation 14**

- 5.52 **The committee recommends that to complement the requirement for political parties and associated entities to disclose details of expenditure above the disclosure threshold, the Australian Electoral Commission should provide guidance and enhance its online lodgement system to help ensure that those with reporting obligations have a clear understanding of, and the administrative means by which, to meet this obligation.**
- 5.53 If a high disclosure threshold remains in place, the requirement for political parties to disclose their expenditure details in annual returns should be reinstated. While detailed disclosure of expenditure is the



ultimate goal, at a minimum, political parties should be required to disclose certain details regarding electoral expenditure as defined in section 308 of the *Commonwealth Electoral Act 1918* in their annual returns. The committee sees this as a logical step in an era of continuous campaigning.

## Campaign committees lodging returns

- 5.54 One of the issues raised in political financing discourse is the absence of political party disclosure on expenditure and the effect of this on transparency and accountability.
- 5.55 The AEC noted the difficulties that would arise with attempting to design a scheme that would achieve the desired ends of increasing the transparency of political party expenditure on an electorate basis, but also indicated that there would be value in the information being required to be disclosed.<sup>20</sup>
- 5.56 The AEC comments were made in the context of political parties recording and disclosing the information, as opposed to each distinct campaign committee having a disclosure obligation for an election. In that context the AEC stated that they did not believe that the resolution to such an issue was 'too hard' so as not to be worth considering.<sup>21</sup>
- 5.57 A further option to improve the quality of disclosure regarding donations and expenditure of endorsed candidates is to require campaign committees for candidates and Senate groups to lodge separate disclosure returns.
- 5.58 A 'campaign committee' is defined in section 287A of the Electoral Act as 'a body of persons appointed or engaged to form a committee to assist the campaign of a candidate or group in an election'.
- 5.59 While the implementation of separate disclosure obligations in relation to endorsed candidates would potentially improve the amount and quality of information available in relation to individual candidates' expenditure, the benefits of this must be weighed against the administrative burden on those that work on and run campaign committees. The additional burden on the AEC during elections would also need to be considered. In

---

20 Mr Ed Killesteyn, Electoral Commissioner, Australian Electoral Commission, *Committee Hansard*, 1 November 2011, p. 7.

21 Mr Ed Killesteyn, Electoral Commissioner, Australian Electoral Commission, *Committee Hansard*, 1 November 2011, pp. 6-7.

particular, the AEC must have adequate resources to administer such a system.

- 5.60 An additional consideration is the precise person that would be responsible for meeting the obligation. In a political party the party agent is responsible for the disclosure obligation, and within an associated entity it is the financial controller. An equivalent position, if one exists, would have to be designated the responsibility within a campaign committee for an endorsed candidate.

## Conclusion

- 5.61 Volunteers play important roles in the political process and care should be taken to ensure that changes to funding and disclosure arrangements do not discourage participation through imposing onerous obligations on those that wish to contribute in this manner.
- 5.62 The committee has recommended that detailed disclosure of expenditure be introduced. While the agent for the relevant party will be responsible for lodging this information, the campaign committees will also have a role to play in being aware of these obligations and maintaining accurate records of relevant expenditure that will need to be provided to the political parties.
- 5.63 As discussed earlier, political parties and the AEC will need to be adequately resourced to ensure this system works effectively and to minimise the potential for inadvertent or purposeful breaches. Parties and the AEC can then assist campaign committees to better understand their role in the process. Options for administration funding to political parties to help address and meet increased reporting obligations are discussed in Chapter 6.

## Further reform options

### Caps on general expenditure

- 5.64 There are currently no limitations on the amounts that political parties can spend either generally or specifically in relation to election campaigns. Third parties are also not subject to limitations on their expenditure. Proposals for reform in this area generally involve the implementation of measures limiting levels of election spending. The most commonly raised measure to address high levels of expenditure is the imposition of caps on

expenditure by political parties and third parties. The precise definition of 'third party' is central to the success of such schemes, but caps on expenditure generally extend to those that incur expenditure in defined categories or in advocating a vote.

- 5.65 This section deals with caps on expenditure by political parties only. An incidental matter to capping political party expenditure is the capping of third party expenditure so as to prevent circumvention of the laws. Caps on third party expenditure are addressed in detail in Chapter 7.
- 5.66 Suggestions for the implementation of caps on expenditure by political parties and third parties have permeated discussions regarding the need to curb election spending. Proponents for this reform often argue that direct entitlement public funding amounts had been included in party financial modelling as an additional stream of funding.<sup>22</sup> The apparent failure of public funding to curb levels of election spending tends to be presented as at least one justification for caps on expenditure.
- 5.67 The first Green Paper outlined the general arguments for and against capping expenditure. The arguments for capping expenditure included:
- caps mean there is no real advantage in one candidate or party having access to greater financial resources as there is a limit on how much they can spend;
  - caps create a level of financial equality between candidates at an election;
  - caps reduce the level of election finance needed, meaning that more candidates (including less wealthy candidates) may compete at elections;
  - caps help to contain overall election costs which, in turn, reduces reliance on donations and the associated problem of private donors using donations to influence candidates or parties' policies;
  - the absence of caps encourages excessive television and other advertising; and
  - many overseas jurisdictions place limits on election expenditure.<sup>23</sup>
- 5.68 The arguments against the implementation of expenditure caps were also outlined in the first Green Paper:
- expenditure caps are too difficult to enforce;

---

22 Commonwealth of Australia, *Electoral Reform Green Paper – Donations, Funding and Expenditure*, December 2008, p. 13.

23 Commonwealth of Australia, *Electoral Reform Green Paper – Donations, Funding and Expenditure*, December 2008, p. 64.

- candidates should be free to campaign in whatever manner they see fit (so long as they comply with bribery and corruption laws);
- modern electioneering practices mean that individual candidate spending is not as relevant as the spending incurred by centralised party organisations;
- caps on party expenditure need to extend to third parties, which may cause problems; and
- it is difficult to set realistic spending caps due to the changing costs of media access and electioneering techniques as well as inflation and the need to keep closing administrative loopholes once these are discovered.<sup>24</sup>

5.69 In its submission to this inquiry, the Australian Labor Party indicated its support for the implementation of caps on expenditure as a measure to limit the increasing levels of election spending, commenting that:

In recent years...the size of political campaigns have grown at an alarming rate, with some in the community concerned that election spending has risen to unsustainable levels...

The ALP believes that it is now time for Australia to introduce effective expenditure caps on campaign spending which will limit the amount that parties at national level, and candidates at local level, can spend on electioneering.<sup>25</sup>

5.70 The Australian Labor Party listed a number of underlying principles for the design of an effective expenditure cap, including that:

- Spending caps should apply for a set period, calculated from the last possible date for a federal election. This will give certainty to any expenditure cap given that there are not fixed terms for the Commonwealth.
- Any cap should be set at a level that provides equality between the two major grouping [sic] in Australian politics, the Australian Labor Party and the Liberal-National Coalition.
- A national expenditure cap should be set at a level that ensures no Third Party can distort the legitimate political campaign of candidates or political parties.
- Separate expenditure caps for local electorate level spending as well as national spending should be set.<sup>26</sup>

---

24 S. Young, 'Party Expenditure' in S. Young and J-C Tham, *Political Finance in Australia: a skewed and secret system*, Democratic Audit of Australia, Report No. 7, Australian National University Canberra, 2006, p. 95, cited in Commonwealth of Australia, *Electoral Reform Green Paper – Donations, Funding and Expenditure*, December 2008, p. 64.

25 Australian Labor Party, *Submission 21*, p. 2.

26 Australian Labor Party, *Submission 21*, p. 3.

- 5.71 The Australian Greens also supported expenditure caps and suggested that lower house candidates be able to self-fund their campaign up to half the amount of the expenditure cap. They argued that candidates that form a Senate group should be able to donate collectively to the Senate campaign up to 20 per cent of the amount of the expenditure cap.
- 5.72 The first Green Paper pointed out that in the United States, political parties and candidates can undertake to cap their expenditure in exchange for the receipt of public funding.
- 5.73 The interaction between public funding and a potential expenditure cap scheme was also raised by the Accountability Round Table which indicated its support for a system of expenditure caps and argued that the level of the cap should correspond to the level of public funding to which a political party was entitled.<sup>27</sup>
- 5.74 The Australian Greens believe expenditure caps should apply for a six month period to political parties, candidates, third parties and associated entities, and that they should not apply to volunteer labour. The Australian Greens argued that compliance with expenditure caps should be a condition of public funding with penalties, such as loss of public funding, large fines and in extreme cases, disqualification as a candidate or Member of Parliament, if the cap is exceeded.
- 5.75 While support for the concept of expenditure caps was evident in the submissions, there are a number of details in relation to a precise operational model for capping expenditure that need to be discerned. The first Green Paper stated that one of the difficulties in establishing effective caps on expenditure is that a clear and broadly accepted definition of 'election' and 'campaign' spending would need to be developed.
- 5.76 The first Green Paper raises the United Kingdom, Canada and New Zealand as possible starting points for this task.<sup>28</sup> The NSW and Queensland approaches could also be considered for guidance. An examination of the selected jurisdictions indicates that three primary areas need to be defined:
- the activities that are subject to the cap;
  - the period during which the activities will be regulated; and
  - the level of the applicable cap.

---

27 Accountability Round Table, *Submission 22*, p. 3.

28 Commonwealth of Australia, *Electoral Reform Green Paper – Donations, Funding and Expenditure*, December 2008, p. 67.

- 5.77 The Australian Greens propose a solution covering each of these categories. They suggest that a cap on expenditure should apply to defined electoral campaigning expenses, including electronic campaigning. In relation to the precise operation of a cap on expenditure, the Australian Greens recommended that a cap on election expenditure should apply on a state basis for political parties; to individual House of Representatives candidates; and to parties in respect of each House of Representatives electorate. They proposed that the party state wide cap should be based on the number of voters on the roll to prevent comparatively large sums being spent in small states.
- 5.78 The importance of effectively resolving definitional issues is evident when the United Kingdom situation is examined. There it was found by the UK Ministry of Justice that measures taken to reduce election spending had not been entirely successful. One of the reasons for this was that the definition of 'campaign' expenditure in their legislation was not wide enough.<sup>29</sup>
- 5.79 Additionally, the potential for circumvention of any cap and how this could be addressed was one of the key arguments that submitters made against the implementation of caps on expenditure. The AEC raised concerns regarding the potential for political parties to endorse multiple candidates (under the model proposed by the Australian Greens, this could occur in the lower house) across electorates with the aim of maximising the allowable amount under the cap.
- 5.80 The AEC observed that provisions in the Electoral Act for unlimited registration of 'related parties' add to this potential loophole.<sup>30</sup>
- 5.81 The simplicity of a cap scheme was also stated to be a key issue in its effectiveness. The AEC highlighted the general rule that:
- ...the more complex the design is for a scheme, and particularly the more exceptions to general rules that are catered for, the greater the potential for circumvention.<sup>31</sup>
- 5.82 For example, where certain categories of expenditure are excluded from caps, the AEC indicated that there was potential for other types to be 'repackaged under an exempt category'.<sup>32</sup> The exemption of membership fees from disclosure laws upon their introduction in 1984 was cited as an
- 

29 Commonwealth of Australia, *Electoral Reform Green Paper – Donations, Funding and Expenditure*, December 2008, p. 65.

30 Australian Electoral Commission, *Submission 19*, p. 14.

31 Australian Electoral Commission, *Submission 19*, p. 8.

32 Australian Electoral Commission, *Submission 19*, p. 8.

example of some ‘quarters’ acting to create ‘tiered’ levels of membership as a mechanism to obtain private funds without being caught by disclosure laws.<sup>33</sup>

5.83 In addition, mechanisms by which a cap scheme can be enforced lie at the heart of conceptual opposition to the idea. Enforcement and compliance issues in the context of political financing are addressed in detail in Chapter 8. However, on the issue of enforcing compliance with caps specifically under the current *ex post facto* approach to compliance, the AEC stated that:

...post-event strategy of enforcement through a penalty regime is perhaps best targeted at compliance behaviour that requires something to be done (i.e. make disclosures) rather than behaviour that requires something not be done (i.e. not exceed donation or expenditure caps).<sup>34</sup>

5.84 A further general argument raised in the first Green Paper related to the potential for the restraint imposed by caps on well-resourced political parties to be considered an unwarranted and excessive interference with free speech.<sup>35</sup> The constitutional dimension of this argument is considered in detail later in this chapter. The first Green Paper also considered the effect that expenditure caps might have on new parties. It referenced the Canadian experience, stating:

After the introduction of spending caps in Canada, electoral volatility remains high, indicating that spending caps do not act as a barrier to new entrants in the political process. Instead, it is argued that incumbents are prevented from exploiting their fundraising advantages. While undoubtedly an imperfect instrument, spending caps in Canada are seen as having achieved significant successes in controlling costs and levelling the campaign playing field.<sup>36</sup>

5.85 The variance in international experiences provides some indication of matters for consideration in the Australian context.

---

33 Australian Electoral Commission, *Submission 19*, p. 8.

34 Australian Electoral Commission, *Submission 19*, p. 4.

35 Commonwealth of Australia, *Electoral Reform Green Paper – Donations, Funding and Expenditure*, December 2008, p. 67.

36 Commonwealth of Australia, *Electoral Reform Green Paper – Donations, Funding and Expenditure*, December 2008, p. 67.

## Broadcast advertising expenditure

- 5.86 The first Green Paper canvassed the notion that the most expensive element of campaign expenditure was the component that was spent on advertising.<sup>37</sup> In his submission to the first Green Paper, Stephen Mills argued that within the broad category of advertising, television advertising was the 'largest single component of spending'.<sup>38</sup>
- 5.87 Mr Mills proposes targeting the cost of electronic campaign advertising as a mechanism for reducing election spending. This is an alternative to capping overall expenditure. Mr Mills' proposal contained seven key elements:
- the amount of allowable broadcast advertising (i.e., advocating a vote for parties or candidates) would be capped at a dollar limit and allocated among all eligible political parties;
  - the cap would be set by reference to a target relating broadcast advertising costs to public funding receipts;
  - parties would be able to use their allocation as they see fit, both as to content and broadcast schedules, up to their allocated entitlement but not beyond;
  - broadcast advertising by groups other than parties would be permitted but not if it advocated a vote for or against parties or candidates;
  - commercial broadcasters would be required as a condition of their licence to broadcast the advertising and other broadcasts at no cost;
  - commercial broadcasters would be eligible for part-reimbursement through the public funding mechanism;
  - 'free time' would be expanded and shared among all broadcasters.<sup>39</sup>
- 5.88 Mr Mills' proposal essentially recommended that campaign spending limits be a condition of receipt of public funding. He stated that:
- ...parties in receipt of public funding should be required to limit their campaign expenditure to a predetermined proportion of their expected public-funding receipts; that is, campaign spending limits should be made a condition of public funding.<sup>40</sup>
- 

37 Commonwealth of Australia, *Electoral Reform Green Paper – Donations, Funding and Expenditure*, December 2008 p. 10.

38 Stephen Mills, *Submission 29* to the Electoral Reform Green Paper – Donations, Funding and Expenditure, pp. 2-3.

39 Stephen Mills, *Submission 29* to the Electoral Reform Green Paper – Donations, Funding and Expenditure, p. 3.

40 Mr Stephen Mills, Private capacity, *Committee Hansard*, 9 August 2011, p. 30.



5.89 Mr Mills elaborated on his proposal in his appearance before the committee and distinguished the approach from the concept of a general cap on expenditure, commenting that:

The approach, I believe, is potentially a better and more effective way of capping spending than by imposing blanket or global caps a la the recent New South Wales election. That is because such caps are essentially set in light of demand-side factors – for example, the reported costs of campaigning – and they are complex to design and enforce, with plenty of scope for loopholes and ambiguity. With public funding, on the other hand, dollars follow votes, which is a powerful principle, and the spending caps process could be designed to give parties themselves an incentive to comply, mainly by discouraging overspending through punitive reductions in their public funding receipts.<sup>41</sup>

5.90 Mr Mills suggested, while acknowledging that the precise details of such an arrangement required consideration that the AEC administer the system through using vouchers and reimbursing broadcasters for campaign advertising they undertake on behalf of political parties during the campaign.<sup>42</sup>

5.91 One issue that was raised during Mr Mills' appearance was that imposing the task of allocating broadcast time to the AEC ran the risk of politicising its role. In response to questioning by the committee on this potential effect, Mr Mills responded that:

It is not any part of this proposal to politicise [the AEC], but it is certainly part of it to give it a much more difficult and central role. This is a tough job.<sup>43</sup>

5.92 GetUp also proposed a detailed model for the capping of expenditure that involved a significant focus on broadcast advertising. The group proposed two alternative models:

- A 'broadcast communication expenditure cap', which would operate by capping the amount that each individual campaign organisation (political party or third party) is permitted to spend on this activity within the controlled period; or
- An expenditure cap that operates at an aggregate level by capping the total amount that can be spent by publicly funded political parties on

---

41 Mr Stephen Mills, Private capacity, *Committee Hansard*, 9 August 2011, p. 30.

42 Mr Stephen Mills, Private capacity, *Committee Hansard*, 9 August 2011, p. 33.

43 Mr Stephen Mills, Private capacity, *Committee Hansard*, 9 August 2011, p. 33.

electronic broadcasting (whilst leaving those political parties who are not receiving public funding and third party campaigners subject to a proportionate cap).<sup>44</sup> This second option is similar to the proposal by Mr Mills.

- 5.93 In the first Green Paper the merits of capping certain types of expenditure were considered. It was canvassed as a possible solution to the absence of other features in the current political financing scheme, such as fixed election dates, that may render a cap scheme difficult to administer.<sup>45</sup>
- 5.94 The concept of imposing a cap on components of expenditure is arguably a logical solution to some of the shortfalls identified with the general blanket cap on expenditure. For example, there is seemingly less scope for circumvention of caps through, for example, third parties, where public funding is tied to expenditure limits on broadcast advertising.
- 5.95 Similarly to the blanket cap, in order to operate effectively, the scheme must be complemented by effective and workable mechanisms for enforcement. These are discussed in detail in Chapter 8, but it should be flagged as an issue from the outset.
- 5.96 In relation to the similar system that is currently in operation in New Zealand whereby broadcast time is allocated to political parties by reference to opinion polls and various other external mechanisms, Mr Mills stated that New Zealand did initially encounter some issues with their legislation, but that these were soon rectified.<sup>46</sup> For example, in relation to the 2005 election in New Zealand, the National Party did not account for GST when booking its election broadcast time, which led to the party spending approximately \$112 000 more in campaign advertising than was allowed under the law. Further, Andrew Geddis explained in a paper prepared for the Democratic Audit of Australia:

...because parties may only spend as much on election broadcasting as they are allocated by the Electoral Commission before the election, there is a large discrepancy between the ability of smaller and larger parties to access this medium. In 2005, for instance, Labour was entitled to spend \$1.1 million on broadcasting its campaign advertisements, while the ACT, Green, New Zealand First and United Future Parties could spend only

---

44 GetUp!, *Submission 23*, p. 4.

45 Commonwealth of Australia, *Electoral Reform Green Paper – Donations, Funding and Expenditure*, December 2008, p. 67.

46 Mr Stephen Mills, Private capacity, *Committee Hansard*, 9 August 2011, p. 35.

\$200 000 each. It is simply not legitimate for one party to be allowed five times more direct exposure than its competitors.<sup>47</sup>

5.97 It is difficult to undertake a detailed critique of such proposals without fundamental details such as the way in which the scheme would be administered and the method by which the amount of airtime is calculated. It is evident that these issues themselves may cause significant difficulties. However, the first Green Paper identified the following potential results of a cap on broadcast expenditure:

- there may be an increase in expenditure on non-television advertising, or a shift in expenditure from television advertising to other media, including an increased emphasis on internet campaigning which may not be accessible by all parts of the electorate;
- an increased cost to government and hence the taxpayer (if Government funding or support was provided for television commercials);
- political parties and individual candidates could consider it unfair if their freedom to advertise was restrained, but funds were not provided to them for advertising; and
- potential constitutional difficulties in relation to the maintenance of the constitutionally prescribed system of representative and responsible government, although again it is possible these could be avoided depending on the exact nature of the scheme.<sup>48</sup>

5.98 Further, the precise measures would need to be examined in detail to determine whether there is potential for their circumvention. The Nationals expressed their general view regarding expenditure cap schemes in this respect, submitting that:

...any system of restrictions on political expenditure in election campaigns must be approached cautiously and take into account the real cost of communicating with voters, the range of factors contributing to the cost of campaigning and the varying structures of Australia's political parties.<sup>49</sup>

---

47 A. Geddis, *The Funding of New Zealand's Elections: Current problems and prospects for change*, <[http://democraticaudit.anu.edu.au/papers/20070302\\_geddis\\_fundnzselect.pdf](http://democraticaudit.anu.edu.au/papers/20070302_geddis_fundnzselect.pdf)> viewed 17 October 2011.

48 Commonwealth of Australia, *Electoral Reform Green Paper – Donations, Funding and Expenditure*, December 2008, p. 76.

49 The Nationals, *Submission 24*, p. 4.

## Constitutional issues

- 5.99 Similar constitutional issues exist in relation to the capping of expenditure as those discussed in Chapter 4 regarding the capping of donations. One argument may be that expenditure caps may not directly burden the freedom of political communication because the political parties' spending money is distinct from individuals contributing money as a form of support.<sup>50</sup>
- 5.100 An alternative argument is that an expenditure cap does restrict political communication because most expenditure is in relation to communicating political matters.<sup>51</sup> It would appear then that the level of the cap and whether it would allow for an appropriate level of communication would be primary in any assessment of its constitutional validity. This may cause difficulties with an expenditure cap meeting its aim of curbing levels of election spending.
- 5.101 The AEC also outlined the role constitutional issues could play regarding the level at which the cap should be set. It argued that:
- An expenditure cap will only be effective in reducing the 'arms race' if set significantly below historic campaign spending levels. However, reduction of costs in this manner and the oft-associated limitation on political communications carries with it certain risks of a constitutional challenge as was shown by the experience in Canada in 2004.<sup>52</sup>
- 5.102 The key constitutional requirement for a law that imposes a burden on the implied freedom of communication is that it must be reasonable and appropriate and adapted to meet a legitimate need.<sup>53</sup> Professor Anne Twomey stated in relation to the capping of donations that it appears that the need to reduce corruption is accepted by Australian courts as being a legitimate one.<sup>54</sup> A similar argument could be applied to the capping of expenditure.
- 

50 D Cass and S Burrows, 'Commonwealth Regulation of Campaign Finance – Public Funding, Disclosure and Expenditure Limits', *Sydney Law Review*, vol. 22, 2000, p. 490, cited in Commonwealth of Australia, *Electoral Reform Green Paper – Donations, Funding and Expenditure*, December 2008, p. 64.

51 D Cass and S Burrows, 'Commonwealth Regulation of Campaign Finance – Public Funding, Disclosure and Expenditure Limits', *Sydney Law Review*, vol. 22, 2000, p. 490, cited in Commonwealth of Australia, *Electoral Reform Green Paper – Donations, Funding and Expenditure*, December 2008, p. 64.

52 Australian Electoral Commission, *Submission 19*, p. 3.

53 See *Australian Capital Television v Commonwealth* (1992) 177 CLR 106 and *Lange v Australian Broadcasting Corporation* (1997) CLR 520.

54 Professor Anne Twomey, Private capacity, *Committee Hansard*, 9 August 2011, p. 41.

5.103 The first Green Paper pointed out that the United States, Canada and the United Kingdom all enacted legislation to cap campaign expenditure. The legislation in each of these countries has been the subject of judicial analysis and consideration.<sup>55</sup> In relation to the validity of the legislation in Canada and the United Kingdom, the first Green Paper stated that:

The legislation in Canada and the United Kingdom was found valid, on the basis that though the legislation was an infringement of the right to freedom of political expression, the legislation was for the legitimate purpose of establishing a level playing field for elections.<sup>56</sup>

5.104 However, Professor Anne Twomey expressed some reservations regarding the approach to the concept of 'equality' or 'levelling the playing field' that was likely to be applied by Australian courts. While acknowledging that her view in this respect differed from that of other constitutional lawyers, she stated in her appearance before the committee that:

I do not think that at the moment the High Court would place as much emphasis on the equality issues as some of the other constitutional lawyers do...Again, part of this is looking at what the Americans said. The point was made that in politics there is no equality. Political parties are essentially different. Some parties will have better policies, better candidates, better leadership and better management than others. Taking everybody down to a common denominator and this whole idea of using a level playing field I have some concerns about. Having said that, the other side of it is what the High Court said in the Australian Capital Television case where they were concerned about laws that favoured incumbents and limited the communications of outsiders. I think it is very difficult to say how the High Court would go on that sort of approach.<sup>57</sup>

5.105 Professor Twomey also indicated that the level of any expenditure cap as well as its approach to the separate issue of government advertising would also have an effect on its constitutional validity. She advised that:

---

55 Commonwealth of Australia, *Electoral Reform Green Paper – Donations, Funding and Expenditure*, December 2008, p. 65.

56 KD Ewing, 'Promoting Political Equality: Spending Limits in British Electoral Law', *Election Law Journal*, vol. 2, no. 4, 2003, pp. 499-524, cited in Commonwealth of Australia, *Electoral Reform Green Paper – Donations, Funding and Expenditure*, December 2008, p. 65.

57 Professor Anne Twomey, Private capacity, *Committee Hansard*, 9 August 2011, pp. 40-41.

If you were going to impose expenditure caps on political parties but whoever was in government had the advantage of the use of government advertising, that may be a trigger for unconstitutionality. If you start imposing expenditure caps you also have to think about the way that you deal with government advertising, otherwise you potentially have a problem.<sup>58</sup>

- 5.106 Naturally, details regarding the precise expenditure cap, such as its level, would have an effect on its constitutional validity. There is no doubt that taking some of these constitutional issues into account in the design of the cap should result in a greater chance of it being found to be constitutionally valid if a challenge was launched.
- 5.107 The preceding constitutional issues are of relevance in considerations regarding the more limited concept of imposing a cap on only broadcast expenditure.
- 5.108 In the *Australian Capital Television v Commonwealth* (1992) 177 CLR 106 (ACTV Case), the High Court considered the constitutional validity of Part IIID of the *Broadcasting Act 1942* (Broadcasting Act). Part IIID imposed strict limitations on political advertising during an election campaign and required broadcasters to allocate 'free-time' for political advertising during non-election periods.
- 5.109 In finding that the legislation was invalid and that it breached the implied freedom of political communication found in the Australian Constitution, Justice McHugh made the following additional points:
- There were less drastic means to address the need to prevent the potential corruption and undue influence on the political process, rather than banning political advertising during an election campaign and requiring free advertisements at other times;
  - The laws in Part IID in practice favoured incumbent members and their political parties through the way in which the scheme sought to allocate free-time for political advertising; and
  - There was no evidence that the measures sought to be implemented in Part IIID would have the desired effect of reducing the potential for corruption and undue influence.<sup>59</sup>
- 5.110 On this reasoning, in designing a scheme that involves caps on broadcast advertising, as opposed to bans, as in Part IIID of the Broadcasting Act, it
- 

58 Professor Anne Twomey, Private capacity, *Committee Hansard*, 9 August 2011, p. 39.

59 *Australian Capital Television & NSW v Commonwealth* (1992) 177 CLR 106 per McHugh J.

may be more likely to be constitutionally valid if, in addition to taking into account the implied freedom of political communication, the following are considered:

- The precise design of the scheme and all its details render it ‘appropriate and adapted’ to meet its aim;
- The mechanisms that are implemented as part of the scheme do not result in favouring incumbent Parliamentarians or their political parties; and
- The presentation of convincing evidence that the measures sought to be implemented will meet their aim.

5.111 While a proponent of the notion of imposing caps on broadcast advertising, Mr Mills conceded that there were a number of issues with the concept requiring expansion, definition and consideration.<sup>60</sup> It appears that a more effective final model that holds up under the Australian Constitution can be designed if the lessons learned from judicial consideration of previous iterations of similar concepts are taken into account.

## Conclusion

5.112 The successful operation of any expenditure cap lies in the details of its design. In the implementation of a cap on expenditure, steps should be taken to ensure its constitutional validity and to minimise the potential for either inadvertent or purposeful circumvention.

5.113 None of the selected jurisdictions appear to have comprehensively designed a cap scheme that involves minimal potential for circumvention and many have had difficulties regarding compliance with their schemes. Accordingly, there does not appear to be sufficient evidence at the current time to demonstrate that a cap scheme would be effective at the Commonwealth level in curbing election spending and reducing the perception of undue influence.

5.114 There is merit in proposals relating to caps on broadcast advertising and tying public funding to certain undertakings to limit election campaign spending. However, there are a number of administrative matters and issues regarding the precise design of a workable model to be resolved before any such proposal can progress further.

---

<sup>60</sup> Mr Stephen Mills, Private capacity, *Committee Hansard*, 9 August 2011, p. 31.





## Public funding

### Background and current arrangements

- 6.1 The introduction of a Commonwealth public funding scheme was intended to contribute to creating a more 'level playing field' and to reduce the potential for both real and perceived undue influence and corruption.<sup>1</sup> It was also aimed at assisting parties to meet increasing election campaigning costs and relieve parties of the need to continually engage in fundraising activities.<sup>2</sup>
- 6.2 However, some argue that these objectives have not been realised, and that public funding now simply serves as an additional stream of income factored into political campaign budgets.<sup>3</sup>
- 6.3 This chapter considered arguments about the effectiveness of the current public funding arrangements and whether there should be a public funding system at all. The chapter also examined the various models available for public funding and the issues to be considered in ascertaining their suitability for implementation at the federal level in Australia.
- 6.4 Political parties that are registered under the *Commonwealth Electoral Act 1918* (Electoral Act) and their state branches and candidates that obtain at least four per cent of the formal first preference vote are eligible to receive

---

1 Commonwealth of Australia, *Electoral Reform Green Paper – Donations, Funding and Expenditure*, December 2008, p. 34.

2 Joint Select Committee on Electoral Reform, *First Report*, September 1983, Commonwealth Parliament of Australia, pp. 153-155, cited in Commonwealth of Australia, *Electoral Reform Green Paper – Donations, Funding and Expenditure*, December 2008, p. 34.

3 Commonwealth of Australia, *Electoral Reform Green Paper – Donations, Funding and Expenditure*, December 2008, p. 13.

public funding. The current election funding rate for the period of 1 July 2011 to 31 December 2011 is 238.880 cents per eligible vote.

- 6.5 Some states and territories also provide public funding for state elections. Each has its own separate funding rate.
- 6.6 The initial federal public funding scheme that was introduced in 1984 operated as a capped reimbursement scheme. Funding was limited to reimbursing political parties, candidates and Senate groups for actual proven expenditure up to the maximum entitlement.
- 6.7 The current direct entitlement scheme for public funding was introduced in 1995. Political parties and candidates no longer need to substantiate campaign expenditure to receive public funding; rather the public funding entitlement is calculated purely on the number of first preference votes received, once the minimum of four per cent of first preference votes has been obtained.
- 6.8 Where a disclosure based scheme is in place there are generally two key options for public funding:
- a reimbursement scheme whereby actual expenditure or expenditure incurred (depending on the precise scheme in place) is reimbursed; or
  - payment of public funding according to a per vote formula, with either a low or high threshold for entitlement.
- 6.9 Under the current public funding model in operation at the federal level, there are some options providing flexibility in the way in which public funding is divided between political parties with branches.<sup>4</sup> However, the amount of public funding that a political party may obtain is not capped or limited in any manner.
- 6.10 Public funding issues are intertwined with private funding and expenditure issues in the consideration of electoral reform. Accordingly, this aspect of the political financing regime may be better determined incidentally to the broader scheme itself. Similar arguments are raised in Chapter 7 regarding the regulation of third parties. For example, donation and expenditure cap schemes in other jurisdictions invariably offset the resulting loss of income to parties through the provision of additional ongoing public funding.
- 6.11 In the context of a broader system for regulating political financing, the public funding system plays a revised role, in that it serves to offset the loss in income to political parties that results from limitations on the
- 

4 See of the *Commonwealth Electoral Act 1918*, division 3, part XX.

sources and amounts of donations that are able to be received. An examination of jurisdictions that currently involve a varied range of regulatory mechanisms indicate that, in general, there is the potential for three streams of public funding:

- election funding – normally administered through a reimbursement scheme;
- administrative funding – sum paid periodically based on certain variables, such as the number of elected members a political party has or a legislative formula; and
- policy development funding – funding for newer parties that will not qualify for administrative funding, particularly where it is calculated on the basis of an amount per member.

6.12 Aside from discourse regarding the precise model of public funding that is in operation, a broader debate exists in relation to whether there should be a public funding scheme at all. Some argue there should be no public funding scheme and that political parties should completely rely on private donations, rather than the taxpayer having to fund political parties.

6.13 The alternative is for full public funding of political parties. Proponents of this perspective focus on minimising the perception of undue influence and opportunities for corruption through private donations. A detailed examination of these arguments is undertaken below.

## The effectiveness of a public funding scheme

6.14 The overall issue of whether there should be full public funding of political parties and candidates, no public funding or a hybrid of public and private funding hinges on whether the current regime is achieving its aims and operating effectively.

### Full public funding

6.15 As well as issues regarding its claimed ineffectiveness in curbing election spending, arguments supporting a move to a system of complete public funding are premised on the notion that the existence of unrestricted private funding, donations and fundraising activities by political parties and candidates takes focus away from solving policy issues and problems.

6.16 The presence of private funding as an option, whether unrestricted or otherwise, is also argued to potentially add to real or perceived undue influence from private funding sources or opportunities for corruption.

The Australian Democrats expressed support for complete public funding, stating that 'the ultimate way to remove the distortions of private funding might be to publicly fund all established political parties'. It acknowledged the difficulties that could emerge with defining which political parties were 'established'.<sup>5</sup>

6.17 Some arguments in support of a complete public funding scheme stem from innate issues with the system that is in place. Proponents of complete public funding generally justify their position by referring to the unfairness the current system in Australia can potentially involve.

6.18 The Australian Labor Party (ALP) observed that it has been argued that public funding 'constitutes a public good' for the following reasons:

- it removes necessity or temptation to seek funds that may come with conditions imposed or implied;
- it helps parties to meet the increasing cost of election campaigning;
- it helps new parties or interest groups to compete effectively in elections;
- it may relieve parties from the 'constant round of fund raising' so that they can concentrate on policy problems and solutions; and
- it ensures that no participant in the political process is 'hindered in its appeal to electors nor influenced in its subsequent actions by lack of access to adequate funds'.<sup>6</sup>

6.19 The Accountability Round Table argued in its submission that its starting premise was that the 'cost of election campaigns should be borne entirely by the state'.<sup>7</sup> One of its justifications for this position was that the per vote formula under the current system unfairly advantaged the major parties. It noted that:

Major parties...would receive disproportionate funding which has the effect of giving the incumbent government parties an unfair advantage at the following election.<sup>8</sup>

6.20 The arguments from the Accountability Round Table in support of complete public funding of political parties are based in the need to create a level playing field.

---

5 Australian Democrats, *Submission 10*, p. 1.

6 S Young and J Tham (2006): *Political finance in Australia: a skewed and secret system*, School of Social Sciences ANU, pp. 30-34.

7 Accountability Round Table, *Submission 22*, p. 2.

8 Accountability Round Table, *Submission 22*, p. 3.

- 6.21 Discussions regarding the existence of a complete public funding scheme in which private donations are banned are also related to the broader political financing scheme that is in place.
- 6.22 The Democratic Audit of Australia identified the link between proposals for complete public funding and the broader political financing scheme that is in practice, adding further to arguments that perhaps the nature of public funding is best determined incidentally to the broader scheme:
- It is doubtful if the suggestion of total state funding of election campaigns would attract majority public support unless other measures were adopted to reduce overall campaign expenditure on campaigns.<sup>9</sup>
- 6.23 The submitters to the inquiry generally indicated support for some form of public funding of political parties at the Commonwealth level.
- 6.24 For example, the Australian Labor Party expressed strong support for the public funding scheme in principle in its submission. It suggested that the current system should be ‘improved’, but also stated that the public funding scheme was vital in protecting the integrity of the democratic process.<sup>10</sup>

### No public funding

- 6.25 One of the principles governing the public funding scheme that is currently in operation in Australia is the need to promote fairness between all candidates and political parties contesting elections.<sup>11</sup> As with the arguments supporting a system of full public funding, arguments to remove all public funding are often intertwined with the criticisms of the specific system of public funding that is in place.
- 6.26 The *Electoral Reform Green Paper – Donations, Funding and Expenditure* (first Green Paper) identified the following as features of the current ‘per vote’ system of public funding that rendered it unfair:
- the methodology favours existing over new contestants, because funding is paid on the basis of past electoral support; and
  - the methodology favours major parties in comparison with minor parties and independent candidates, because minor parties and independent candidates can attract significant

---

9 Democratic Audit of Australia, *Submission 2*, p. 3.

10 Australian Labor Party, *Submission 21*, p. 4.

11 Commonwealth of Australia, *Electoral Reform Green Paper – Donations, Funding and Expenditure*, December 2008, p. 36.

electoral support without passing the 4 per cent threshold for receiving public funding.<sup>12</sup>

6.27 The first Green Paper canvassed the notion of public funding creating an 'un-level' playing field, despite its intentions to the contrary. It indicated that the aims of the introduction of a public funding scheme had not been met. The first Green Paper suggested that:

...consideration could be given to whether public funding has made established political parties any less dependent on private funding and whether the position of new and small parties has been made more difficult by the advent of public funding.<sup>13</sup>

6.28 As a further counter to arguments suggesting that a public funding scheme assists in creating a level playing field, reducing the parties' need to consistently fundraise and allowing for concentration on policy ideas and problems and similar arguments, critics of public funding have identified the following risks:

- it can undermine the independence of the parties and make them dependent upon the state
- it can lead [political parties] to ignore their members and broader civil society
- decisions about the amount and allocation of funding may be unfair to smaller, newer and/or opposition parties
- it can entrench the position of the major parties and ossify the party system
- opinion polls indicate that public funding can be very unpopular with ordinary citizens who may view it as a political hand-out or rort
- citizens may not agree that political parties are a high priority in terms of public expenditure.<sup>14</sup>

6.29 Likewise, the Australian Democrats stated that if public funding was merely to act as a 'top-up' to private funding then it should be discontinued. Further, in his submission to the inquiry into the conduct of the 2010 federal election, Mr Andrew Murray, a former Australian Democrats Senator, argued that in light of the fact that a public funding

---

12 Commonwealth of Australia, *Electoral Reform Green Paper – Donations, Funding and Expenditure*, December 2008, p. 36.

13 Commonwealth of Australia, *Electoral Reform Green Paper – Donations, Funding and Expenditure*, December 2008, p. 35.

14 S. Young 'Public funding of political parties' in S. Young and J-C Tham, *Political finance in Australia: a skewed and secret system*, Democratic Audit of Australia, Report No. 7, Australian National University, Canberra, 2006, p. 47, cited in Commonwealth of Australia, *Electoral Reform Green Paper – Donations, Funding and Expenditure*, December 2008, p. 35.

scheme had proven to be ineffective in reducing the levels of election spending, it should be discontinued, unless further limitations on party funds, such as caps, were introduced. He argued that:

Reducing the reliance of political participants on private funding has not occurred to any significant degree [following the introduction of public funding]. If there is to be no change to the present system, public funding for elections should be ended. There is simply no point in taxpayer money being given to the political sector as an extra funding source over and above unrestricted private funding.<sup>15</sup>

6.30 Similarly, GetUp argued in its submission that increased costs was not a justification for increasing public funding. The group observed that:

A system of public campaign finance should not be called upon to meet exponential growth in costs. Failure to meet increasing cost demands is not in and of itself a reason for increased public funding.<sup>16</sup>

6.31 GetUp proposed a move away from public funding and argued that there should be a 'five-year phase-out period' to allow for other models to be explored. A primary reason for this was their views regarding the way in which new political parties are dealt with under the current public funding scheme. GetUp suggested a phase-out of public funding and exploration of alternative options. Mr Sam McLean, GetUp's Deputy Director, explained the group's perspective, commenting that:

It is clear that the public funding has been increased three times in the last 20 years and there has still been an increase in the amount of donations coming through the door and expenditure going out the door. We are of the opinion that public funding does not help prevent the arms race of political expenditure and therefore should be phased out and a new model should be explored. That is the idea of a five-year phase out period.<sup>17</sup>

6.32 FamilyVoice Australia also argued for the abolition of public funding. It stated that there was no evidence that the initial aims of the public funding scheme, to reduce undue influence and corruption, had been met. FamilyVoice claimed that the 'main effect of public funding has been to increase the amount available for election campaigning by all parties'.

---

15 Mr Andrew Murray, *Submission 3*, JSCEM inquiry into the conduct of the 2010 federal election and related matters thereto, p. 5.

16 GetUp!, *Submission 23*, p. 3.

17 Mr Sam McLean, Deputy Director, GetUp!, *Committee Hansard*, 2 November 2011, p. 10.

On these grounds in part, it was recommended that the Commonwealth public funding scheme be discontinued.<sup>18</sup>

6.33 Another significant issue in any discussions regarding a full private funding scheme with no public funding is the effect that complete withdrawal of public funding would have on actors in the political and democratic system.

6.34 The first Green Paper noted that public funding 'represents a significant proportion of the money received by political parties during election years'.<sup>19</sup> Accordingly, it was observed that:

If public funding were to be withdrawn, it would have a significant impact on the conduct of election campaigns, especially for the major political parties.<sup>20</sup>

6.35 The Democratic Audit of Australia presented an alternative perspective in its submission. While acknowledging that the spiralling costs of elections was having a 'pull' effect on the public funding rate, it argued that to remove public funding after 25 years would have a negative impact on small parties.<sup>21</sup> Further, the Democratic Audit claimed that like the introduction of public funding, the abolition of public funding may not meet the ends that are sought and may not reduce election spending. It commented that:

Given that public funding accounts for less than 20 per cent of the big parties' campaign expenditure, its abolition would have a negligible impact on overall campaign spending.<sup>22</sup>

6.36 A majority of submitters supported the existence of some form of public funding. Those that argued for significant reform in this area generally supported an expansion of the public funding scheme.<sup>23</sup> Those that support the current scheme tended to support public funding in principle, but suggested amending the way in which the entitlement is calculated.

---

18 FamilyVoice Australia, *Submission 6*, p. 4.

19 Commonwealth of Australia, *Electoral Reform Green Paper – Donations, Funding and Expenditure*, December 2008, p. 35.

20 Commonwealth of Australia, *Electoral Reform Green Paper – Donations, Funding and Expenditure*, December 2008, p. 35.

21 Democratic Audit of Australia, *Submission 2*, p. 2.

22 Democratic Audit of Australia, *Submission 2*, p. 3.

23 For example, see Accountability Roundtable, *Submission 22*.



## Conclusion

- 6.37 The public funding of political parties plays a significant role within the current scheme of reducing the perception of undue influence and corruption in the political system.
- 6.38 The bulk of submissions to the inquiry saw a place for a public funding system in the Australian political financing scheme. However views differ on the precise scheme that was thought to be the most appropriate for the Commonwealth.
- 6.39 There may be some merit in the proposals that the appropriate role for public funding and the method by which entitlements are calculated should be contingent on the design of the broader funding and disclosure scheme. Substantial reform of political financing arrangements may result in the public funding scheme needing to be expanded to offset the potential income loss to parties through the implementation of caps and bans on their sources of funding.
- 6.40 The public funding scheme introduced in 1984 has not been effective in curbing the increase in election spending. The first Green Paper noted that public funding has most likely been integrated into campaign budgets as an additional stream of funding and has played a role in supporting, expanding and lengthening election campaigns.
- 6.41 The effectiveness of the Commonwealth public funding scheme requires further examination, as stated in the first Green Paper. However, to eradicate the public funding regime at this point would have a detrimental effect on the minor political parties, and potentially on the major political parties.

The committee believes that one of the key aims of the funding scheme should be to curb election spending. The Commonwealth Electoral Amendment (Political Donations and Other Measures) Bill 2010 seeks to provide for penalties and entitlement to the lesser amount of the application of two different systems, which may be more effective in minimising the potential for candidates to obtain a financial windfall.

**Recommendation 15**

6.42 The committee recommends that public funding to political parties and candidates be allocated on the basis of the lesser of:

- the application of the per vote formula to the first preference votes won; or
- reimbursement for proven expenditure following the lodgement of a claim,

provided they obtain four per cent of the first preference vote, as proposed in the Commonwealth Electoral Amendment (Political Donations and Other Measures) Bill 2010.

**Election funding**

6.43 The arguments surrounding a change to the current public funding scheme are generally premised on a need to improve the fairness of the scheme and to seek to restrain the spiralling costs of elections. As when it was originally enacted, arguments pertaining to creating a 'level playing field' also serve as justification by some submitters to change the system.

6.44 The first Green Paper also canvassed the idea of tying eligibility for public funding to 'desired political behaviours such as options for voluntary limitation of election spending'.<sup>24</sup> This would need to be assessed in the context of the broader scheme.

6.45 As previously discussed, the options for the design of a public funding scheme are intertwined with, or incidental to, the design of the broader political financing regime. However the models proposed to meet each aim of the public funding scheme were assessed individually.

**Increasing the fairness of the public funding system**

6.46 The first Green Paper canvassed a range of options for public funding schemes that were geared towards increasing the fairness of the scheme and assisting smaller political parties. These included:

---

24 Commonwealth of Australia, *Electoral Reform Green Paper – Donations, Funding and Expenditure*, December 2008, p. 39.

- Replacing the four per cent threshold with a lower threshold, such as two per cent;
- Replacing the four per cent threshold with pro-rata public funding;
- Introducing a sliding scale of public funding, with the payment rate per vote decreasing according to the number of first preference votes; or
- Setting the threshold level for public funding at a level where such funding only supports parties that have a reasonable level of support in the community.<sup>25</sup>

6.47 The rationale behind each suggestion is that a lower voting threshold places smaller and minor parties on a more 'equal' footing with the larger and major parties and increases their chances of qualifying for election funding. All measures are intended to move the current system towards a more level playing field for political parties.

6.48 The Australian Greens expressed support for the continuation of calculating funding entitlements for candidates and Senate groups by reference to the number of votes or the percentage of the vote won. It argued that no candidate or Senate group should receive more than half the total pool of potential funding available for the electorate contested. It also argued that Parliamentary representation and party membership subscriptions should not be factors relevant in determining public funding entitlements. The latter is a measure aimed at increasing fairness in public funding distribution.

6.49 In his submission to the inquiry, Dr Joo-Cheong Tham proposed a public funding system that drew on a number of the features identified in the first Green Paper and some features applied in other jurisdictions. He recommended that there should be a 'Party and Candidate Support Fund' comprising three components:

- election funding payments (calculated according to a tapered scale based on the number of first preference votes with 20% of electoral expenditure floor);
- annual allowances (calculated according to number of first preference votes and membership);
- policy development grants (calculated according to number of first preference votes and membership).<sup>26</sup>

---

25 J-C Tham and D Grove, 'Public Funding and Expenditure Regulation of Australian Political Parties: Some Reflections,' *Federal Law Review*, vol. 32, no. 3, 2004, p. 411, cited in Commonwealth of Australia, *Electoral Reform Green Paper – Donations, Funding and Expenditure*, December 2008, p. 36.

26 Dr Joo-Cheong Tham, *Submission 1*, p. 3.

- 6.50 Dr Tham argued that his proposed scheme was geared towards 'fairness'. Payment of public funding according to a tapered scale is the third dot point in the first Green Paper mentioned above. The '20 per cent floor' recommended by Dr Tham is intended to increase fairness by guaranteeing reimbursement of a portion of election costs. The reasoning behind including factors other than the vote also stems from this aim.
- 6.51 One of the key features of the funding model proposed by Dr Tham is his recommendation to consider membership in the calculation of entitlements to administrative funding and policy development funding by new parties.
- 6.52 The Democratic Audit of Australia raised in general the possibility of using broader factors in determining the public funding entitlements of political parties and candidates. While acknowledging the difficulties inherent in changing to a scheme that considers factors outside the number of votes obtained may prove 'problematic', it commented that:
- Consideration could be given to transforming the [public funding] scheme by adopting some features of the similar scheme operating in New Zealand, whereby additional indicators of support – for example, party membership, number of parliamentary candidates, number of MPs and, for emerging parties, even opinion polls – contribute to determining the level of public funding.<sup>27</sup>
- 6.53 When questioned on the issue of taking broader factors into account when determining public funding entitlements, the AEC acknowledged that it was a complex and difficult issue.<sup>28</sup> The scheme currently in operation in New Zealand uses factors other than the vote to determine public funding entitlements and accordingly, this could be used as a guide if such a measure was sought to be implemented.

## A higher threshold

- 6.54 The logic behind arguments supporting an increase in the threshold for public funding qualification is that if it is harder to qualify, less election funding will be paid, reducing the burden on the taxpayer through less public expenditure.
- 6.55 The first Green Paper cited advice from the AEC indicating that if a five per cent threshold for public funding had applied in the 2007 federal

---

27 Democratic Audit of Australia, *Submission 2*, pp. 2-3.

28 Mr Brad Edgman, Australian Electoral Commission, *Committee Hansard*, 8 August 2011, p. 2.

election, 34 fewer candidates would have qualified for public funding.<sup>29</sup> The first Green Paper also referenced AEC figures indicating that total public funding entitlements would have decreased by approximately \$482 000.<sup>30</sup>

- 6.56 A common-sense analysis indicates that regardless of the higher threshold, the major parties are likely to obtain the minimum requirement to qualify for direct entitlement election funding, even if the threshold is increased. The AEC pointed out in its submission that ‘around 98% of election funding entitlements at the last two general elections were paid to the Labor, Coalition and Green parties’.<sup>31</sup>
- 6.57 In its report following the inquiry into the conduct of the 2004 federal election, the Joint Standing Committee on Electoral Matters (JSCEM) recognised the potential for ‘profiteering’ under the current public funding model. While the option to revert back to a reimbursement scheme was not supported due to the administrative burden, and the argument that profiteering could still be undertaken was not supported, there was support for implementing a higher threshold for public funding to be paid.<sup>32</sup>

## Conclusion

- 6.58 Increasing the threshold for public funding could be perceived as unfair, as it will reduce the chances of smaller and newer political parties of qualifying for public funding of their election campaigns. There are ongoing issues pertaining to the funding of new and emerging political parties that require particular consideration in the design of an appropriate public funding scheme for the Commonwealth.

## A reimbursement scheme

- 6.59 Public funding at the Commonwealth level is currently paid to parties following an election if they obtain four per cent of the formal first preference vote.

---

29 Commonwealth of Australia, *Electoral Reform Green Paper – Donations, Funding and Expenditure*, December 2008, p. 36.

30 Commonwealth of Australia, *Electoral Reform Green Paper – Donations, Funding and Expenditure*, December 2008, p. 36.

31 Australian Electoral Commission, *Submission 19*, p. 10.

32 Parliamentary Library, ‘Commonwealth Electoral Amendment (Political Donations and Other Measures) Bill 2010’, *Bills Digest No. 43, 2010-2011*, 17 November 2010, p. 11.

- 6.60 Election funding at the Commonwealth level previously operated as a reimbursement scheme whereby parties lodged claims for expenditure with the AEC which were then able to be reimbursed. The first Green Paper stated that the scheme was changed to a direct entitlement scheme in an attempt to guarantee more timely payments.<sup>33</sup>
- 6.61 The revised public funding scheme proposed in the Commonwealth Electoral Amendment (Political Donations and Other Measures) Bill 2010 (2010 bill) includes a reimbursement scheme for actual 'electoral expenditure'.
- 6.62 The 2010 bill proposes that a definition for electoral expenditure be included in section 287(1) of the Electoral Act.<sup>34</sup> It includes matters such as broadcast during the election period of advertisements relating to the election and the display in cinemas and theatres during the election period of advertisements relating to the election. The revised definition also incorporates suggestions made in the first Green Paper that additional staffing or travel costs be included.<sup>35</sup>
- 6.63 The rationale for returning to a reimbursement for actual expenditure is that it is less likely to result in a continual increase in spending than the application of a 'per vote' formula that has no linkage to actual, proven expenditure.
- 6.64 Emeritus Professor Colin Hughes expressed support for a return to a reimbursement scheme if the public funding system is to be retained. He argued that 'the present situation brings discredit to the wider process by allowing the occasional abuse'.<sup>36</sup> The NSW and Australian Greens also supported having a reimbursement component in the public funding system provided there is also adequate public funding for party administration expenditure. The payment of funding through a reimbursement scheme thus appears to be a key feature of frameworks with a range of mechanisms in addition to disclosure.
- 6.65 The AEC stated that 'long-standing calls' to return to a reimbursement scheme also stem from the need to prevent 'profiteering' from the payment of public funding. However, the AEC noted that:

---

33 Commonwealth of Australia, *Electoral Reform Green Paper – Donations, Funding and Expenditure*, December 2008, p. 38.

34 Commonwealth Electoral Amendment (Political Donations and Other Measures) Bill 2010, item 7.

35 Commonwealth of Australia, *Electoral Reform Green Paper – Donations, Funding and Expenditure*, December 2008, p. 34.

36 Emeritus Professor Colin Hughes, *Submission 16*, p. 7.

Election campaign expenditure reimbursement schemes can be opened up to manipulation by various means, not least from the necessity that expenditure need only be incurred, not paid, allowing invoices to be submitted to support a claim, reimbursed, but then never settled.<sup>37</sup>

- 6.66 While acknowledging there was some appeal in a move back to a reimbursement scheme, the AEC questioned the role such a move would feasibly play in reducing election costs, stating that:

The AEC's experience of the previous reimbursement scheme was that less than 1% of election public funding entitlements were not paid, with only \$413, or 0.004% of total entitlements, not paid at the 1987 election.<sup>38</sup>

- 6.67 It is noted that at the Commonwealth level, as well as in Queensland before the implementation of a cap scheme, reimbursement schemes have operated effectively as a feature of disclosure based systems.

- 6.68 The Canadian political financing scheme involves a public funding scheme that draws on a combination of features from a reimbursement scheme and a per vote formula. Under that scheme, candidates winning at least 10 per cent of the popular vote are reimbursed for 60 per cent of their election expenses and registered parties winning two per cent of the national vote or five per cent of the vote in the districts where the party ran candidates are entitled to 50 per cent reimbursement of election campaign expenses.<sup>39</sup>

- 6.69 Criticisms of reimbursement schemes often stem from the precise reimbursement model that is in operation. In this respect, arguments regarding reimbursement schemes accord with those regarding public funding generally.

- 6.70 The reimbursement scheme proposed in the 2010 bill provides reimbursement for 'electoral expenditure'. It seeks to level the playing field by preventing 'double dipping' by those that receive parliamentary entitlements, allowances (except remuneration) or benefits. The explanatory memorandum stated:

As sitting members of Parliament may be able to meet some electoral expenditure by way of allowances, entitlements or benefits paid by the Commonwealth in some circumstances, it is

---

37 Australian Electoral Commission, *Submission 19*, p. 11.

38 Australian Electoral Commission, *Submission 19*, p. 10.

39 See in general *Canada Elections Act*, ss. 464-468.

not appropriate that his electoral expenditure is claimed for public election funding purposes.<sup>40</sup>

## Conclusion

- 6.71 A reimbursement scheme is not necessarily immune to the practice of profiteering. However, in the context of the current system, there is significant appeal in the notion of a reimbursement scheme for minimising the perception of misuse or abuse.
- 6.72 Flexibility is an important feature of a public funding scheme. However, this needs to be balanced with broader considerations such as limiting election spending levels and the integrity of the democratic process.
- 6.73 The committee supports the measures in the Commonwealth Electoral Amendment (Political Donations and Other Measures) Bill 2010 that propose payment of election funding based on the lesser of reimbursement for actual expenditure and payment per vote once a minimum of four per cent of the first preference vote has been made.

## Funding for new political parties

- 6.74 New political parties do not receive funding from the Commonwealth unless they qualify by receiving a minimum of four per cent of the first preference vote at a federal election. This threshold can be very difficult to obtain for new entrants to the political process.
- 6.75 The key justification for ongoing funding of newer parties is to level the playing field for new entrants to the political and democratic process.
- 6.76 In its first appearance before the committee for this inquiry, the AEC commented on the issues that arose for new parties in tying the public funding eligibility requirements to a per vote formula, noting that:

The current process is tied to the voting threshold of four per cent, so it would make it difficult for a new party to come in and obtain funding at that stage. It also has to be remembered that public funding is post the event. So part of the issue is making commitments to enter into incurring costs; if you are a smaller

---

40 Explanatory memorandum, Commonwealth Electoral Amendment (Political Donations and Other Measures) Bill 2010, p. 4.



party or a new player, you have no guarantee of actually receiving public funding.<sup>41</sup>

6.77 Similar arguments would apply where a reimbursement scheme for public funding is in place. Smaller parties logically have less money to spend on election expenses, and will therefore be reimbursed for a lesser amount than larger parties with large amounts of their budget dedicated to election expenses.

6.78 There are two ways by which new parties could be additionally funded:

- through the payment of election funding 'up-front'; and
- through the payment of additional ongoing funding.

6.79 The AEC raised the concept of payment of election funding up-front as a means to negate the clear advantage that larger parties have in relation to qualifying for public funding. It indicated that:

We have received feedback from a couple of parties in the past where they have made a comment to us in effect saying that if they receive public funding up-front they would be able to run a good enough campaign to achieve the four per cent which is then the qualifier for them to get public funding.<sup>42</sup>

6.80 The AEC acknowledged there were complexities involved with the criteria and means by which election funding would be paid up-front.<sup>43</sup>

6.81 NSW has a funding scheme in place for newer political parties. The state's legislation allows for the provision of 'policy development funding'. The NSW policy development fund was established as a response to concerns that capping donations could potentially hamper the development of new political parties seeking to contest elections.

6.82 A political party is only eligible to receive policy development funding under the NSW scheme if it is not eligible to receive administrative funding. This funding is paid annually, and the amount paid is that which was actually expended on policy development up to a maximum amount. That is, the policy development fund operates as a capped reimbursement scheme. A new political party would be eligible for policy development funding of at least \$5 000 for the first eight years.<sup>44</sup>

---

41 Mr Paul Pirani, Chief Legal Officer, Australian Electoral Commission, *Committee Hansard*, 8 August 2011, p. 1.

42 Mr Brad Edgman, Australian Electoral Commission, *Committee Hansard*, 8 August 2011, p. 2.

43 Mr Brad Edgman, Australian Electoral Commission, *Committee Hansard*, 8 August 2011, p. 2.

44 *Election Funding, Expenditure and Disclosures Act 1981* (NSW), s. 97I(5).

6.83 The Greens NSW proposed that newly registered and very small political parties and state divisions be able to obtain funding as follows:

..the greater amount of \$10,000 per annum indexed, or 50 cents per vote received in a state or territory plus 10 cents per vote nationwide for the federal division of the party.<sup>45</sup>

6.84 However, additional funding for new entrants to the political process may prove difficult to obtain support for in the context of the current system involving direct entitlement to public funding.

## Conclusion

6.85 There is a risk that if election funding was paid prior to the election based on factors that may include the number of MPs and opinion polls, for example, there is likely to be greater disparity in the amount of public funding paid between larger political parties, smaller and emerging political parties, and Independents, than if funding was based on the actual vote.

## Elected candidates and funding

6.86 Another issue raised with the committee is the case where a member is elected who has not gained four per cent of the first preference vote. At the 2010 federal election, the Democratic Labor Party (DLP) candidate John Madigan received 2.33 per cent of the first preference vote, and following the distribution of preferences obtained the full quota and was elected a Senator for Victoria.

6.87 Senator Madigan noted that while other unsuccessful candidates, such as Family First in South Australia received 4.08 per cent of the vote and were eligible for public funding, he as an elected Senator only received a refund of his \$1 000 nomination fee.<sup>46</sup> An earlier example was the 2004 federal election, in which Senator Steve Fielding was elected as a Senator for South Australia with 1.88 per cent of the primary vote plus preferences.<sup>47</sup>

6.88 In his submission to the inquiry, Senator Madigan argued that:

...the criteria for funding [should] be altered to include the circumstances when a candidate receives less than 4% of the primary vote but is elected after distribution of preferences. This

---

45 The Greens NSW, *Supplementary submission 18.1*, p. 1.

46 Senator John Madigan, Commonwealth Senator for Victoria, *Submission 26*, p. 1.

47 Senator John Madigan, Commonwealth Senator for Victoria, *Submission 26*, p. 1.

would confirm the importance we give to the preferential system by demonstrating that parliamentarians elected on preferences other than first preferences are as validly elected as those elected only on first preferences.<sup>48</sup>

- 6.89 In Canada, the reimbursement of election expenses extends to both candidates that are simply elected, and those that achieve at least 10 per cent of the vote. A move towards paying election funding to those who are elected would bring Australia into line with international approaches in the area.

## Conclusion

- 6.90 In cases where members are elected with less than four per cent of the first preference vote, they should be eligible for reimbursement of their expenditure. It can be hard for newer entrants to the political arena to secure four per cent of the first preference vote, but their election to the seat is sufficient evidence of community support to justify receiving some public funding support.
- 6.91 Election to Parliament should serve as a threshold for election funding entitlement. However, by applying reimbursement up to the level of the per vote entitlement for the number of first preference votes received, should assist in providing some financial support for this category of candidate but not serve as a financial windfall for those with lower spending levels.
- 6.92 The committee believes this is a worthwhile change to ensure that this category of persons receives appropriate financial support, even if a wider reimbursement scheme is not adopted.

---

48 Senator John Madigan, Commonwealth Senator for Victoria, *Submission 26*, p. 1.

## Recommendation 16

6.93 **The committee recommends that members elected with less than four per cent of the first preference vote be eligible for election funding. These members should be entitled to the lesser of:**

- **the application of the ‘per vote’ rate to the first preference votes won; or**
- **reimbursement for proven expenditure following the lodgement of a claim.**

## Payment of election funding

- 6.94 In its report on funding and disclosure in relation to the 2010 federal election, the AEC raised an issue regarding the operation of provisions governing the payment of election funding for parties that are formally recognised in more than one, but not all states. The AEC cited the example of the Family First party as being formally recognised as having state branches in Victoria, Queensland and South Australia.
- 6.95 Section 299(1)(d) of the Electoral Act states that election funding for a candidate in a particular state is paid to the state branch of a political party agent of that state branch. Section 287(4A) provides that in relation to a political party that does not have state branches, or only carries on activities in one state or territory, a reference to the state branch of the party is a reference to the party itself. However, where a party carries on activities in more than one, but not all states, it is not covered in the terms of the legislation.
- 6.96 The AEC listed the relevant of the formal recognition process, and stated that it was required in order to identify:
- branches of registered political parties with an obligation to lodge their own financial disclosure returns under ss.314AB(1) and be paid election funding,
  - entitlement to elector information which is made available to a registered political party under s.90B, and

- entitlement to electronic lists of postal vote applications which are made available to a registered political party under s189A.<sup>49</sup>
- 6.97 The AEC stated that the operation of section 287(4A) in conjunction with section 299 cast doubt over its ability to pay election funding to parties that carry on activities in more than one, but not all states, should they qualify.<sup>50</sup>
- 6.98 The AEC provided an example to demonstrate the problem:
- At the 2010 federal election, the Family First Party endorsed candidates in New South Wales, Western Australia and Tasmania as well as the three states in which the party's branches are formally recognised. If the Family First Party was entitled to receive election funding in any state where the party is not recognised as having a branch established there is some doubt as to whether the AEC could pay election funding to the party for that state due to the operation of s. 299(1)(d) of the [Electoral] Act. The Democratic Labor Party (DLP) of Australia also endorsed candidates in a state where they are not formally recognised and therefore could also have been affected in regard to election funding entitlements for its endorsed candidates in that state.<sup>51</sup>
- 6.99 To rectify the issue, the AEC recommended that the Electoral Act be amended to ensure that 'the payment of election funding entitlements for eligible candidates and Senate groups can be made to the party whether or not the party is organised on the basis of a particular state or territory'.<sup>52</sup>

## Conclusion

- 6.100 The committee recognises the importance of ensuring that the provisions for the payment of election funding are easy to administer and clear. It is imperative that all candidates and parties that qualify for election funding are able to be paid their entitlement.

---

49 Australian Electoral Commission, *Election Funding and Disclosure Report: Federal Election 2010*, Commonwealth of Australia, p.13.

50 Australian Electoral Commission, *Election Funding and Disclosure Report: Federal Election 2010*, Commonwealth of Australia, p.13.

51 Australian Electoral Commission, *Election Funding and Disclosure Report: Federal Election 2010*, Commonwealth of Australia, p.13.

52 Australian Electoral Commission, *Election Funding and Disclosure Report: Federal Election 2010*, Commonwealth of Australia, p.13.

## Recommendation 17

- 6.101 **The committee recommends that the *Commonwealth Electoral Act 1918* be amended, as necessary, to ensure the payment of election funding entitlements for eligible candidates and Senate groups can be made to the party, whether or not the party is organised on the basis of a particular state or territory.**

## Administrative funding

- 6.102 At the Commonwealth level, there is no ongoing administrative funding for political parties. Public funding in Australia is based only on election campaigns and calculated according to a 'per vote' formula.
- 6.103 The idea of providing ongoing funding to political parties emerged in a number of submissions. Generally, suggestions and support for this was linked to a proposal for a broader set of reforms. In cases where substantial reform to funding and disclosure systems occurs, one rationale for ongoing funding of parties by the state is to ensure parties have sufficient funds to operate when stricter limits on other sources of finance are in place.
- 6.104 Targeted administrative funding also has application under the current funding and disclosure system. The Australian Labor Party argued that parties were already feeling the pressure of meeting their administrative obligations, stating that:

The cost and burden of administration and compliance is already significant and would in our view justify the consideration of public funding for party administration as has already occurred in some Australian states. Increasing administrative costs associated with Australia's electoral laws becoming more restrictive and placing increased burdens on political parties in terms of reporting and disclosure would have the effect of significantly adding to these pressures.

In response to this challenge Australia has begun the process of moving towards the provision of administrative financing alongside a system of election financing for political parties.<sup>53</sup>

---

53 Australian Labor Party, *Supplementary submission 21.1*, p. 4.

6.105 The Liberal Party of Australia agreed that meeting disclosure obligations can be challenging for political parties that are broad based organisations with large volunteer wings often with limited resources.<sup>54</sup> It argued that:

...should any changes to funding and disclosure obligations proposed at the federal level further add to the reporting and compliance obligations on parties appropriate regular funding for administrative purposes would assist parties in meeting their increased compliance obligations.<sup>55</sup>

6.106 The Australian Labor Party identified the four features that it saw as essential to an effective Commonwealth administrative funding model. It indicated that it would support a model that:

- Provides a level of certainty for parties with quarterly payments to those parties achieving more than 4% of the vote over a three-election cycle, or that have five or more seats in the House of Representatives. The ALP believes that existing political parties represented in the current Commonwealth Parliament should qualify for funding under any extension of public funding for party administration.
- Creates a central Administrative Fund based on the total number of voters enrolled with a set dollar amount per voter. The ALP believes that a central administration fund provides the best model from the experience in state jurisdictions for party administration funding.
- Allocates funding based on the proportion of the popular vote received by a political party, over a three-election cycle. The ALP believes that the popular vote is the best reflection of the standing of a political party, particularly when applied over a three election cycle. As stability is a key objective of party administration funding, this would ensure that funding reflects enduring electoral appeal for a party.
- Supports independent members of parliament and smaller political parties. The ALP believes that Independent members and smaller parties should be recognised under any extension of public funding, as has occurred in state jurisdictions.<sup>56</sup>

6.107 The Australian Greens linked the notion of ongoing funding for political parties to the concepts of education, involvement and access to the political process. On the issue of ongoing public funding generally, the party stated that:

---

54 Liberal Party of Australia, *Submission 25*, p. 3.

55 Liberal Party of Australia, *Submission 25*, p. 3.

56 Australian Labor Party, *Supplementary submission 21.1*, p. 7.

Our...goal of access to political process, which will enable an increase to the diversity of opinions, can be supported through public funding of election campaign expenses, plus public funding and support for the activities of political parties between elections. This type of explicit operational support would not be unique in Australia if introduced as part of a federal public funding regime as it is currently available in the state funding arrangements in Queensland and New South Wales. Support of political parties between elections provides a further means by which the voting public can be educated and involved in the political process.<sup>57</sup>

- 6.108 Internationally, a number of jurisdictions provide financial support for the administrative costs of political parties. In Canada, a registered party that obtains at least 2 per cent of all valid votes cast at a general election, or at least 5 per cent of the valid votes cast in the electoral districts in which it ran a candidate in a general election, is eligible for an annual allowance. Eligible parties receive a quarterly allowance of approximately 43.75 cents per valid vote obtained, or \$1.73 annually per valid vote obtained, which is indexed to inflation.<sup>58</sup>
- 6.109 In the United Kingdom, financial assistance is provided to opposition parties. In the House of Commons, all opposition parties who have secured either two seats or one seat and more than 150 000 votes at the previous general election are eligible for 'short money' to assist parties to carry out its Parliamentary business, for travel and associated expenses, and to assist with the running costs of the Leader of the Opposition's office. A similar scheme exists in the House of Lords; 'Cranborne money' provides financial support to opposition parties and the crossbench.<sup>59</sup> Section 12 of the *Political Parties, Elections and Referendums Act 2000* also provides for Policy Development Grants, which are administered by the UK Electoral Commission.<sup>60</sup>
- 6.110 The ALP noted that in Europe public financing of election activity and party administration has been a feature of political systems there for decades. It commented that:

---

57 Mr Brett Constable, *The Australian Greens, Committee Hansard*, 8 August 2011, p. 39.

58 Elections Canada website, *Information Sheet 8: Annual allowances for political parties*, <<http://www.elections.ca/content.aspx?section=res&dir=loi/inf&document=fs08&lang=e&textonly=false>> viewed 22 November 2011.

59 House of Commons Library, *Short Money*, Standard Note SN/PC/1663, pp. 3, 10-11, <<http://www.parliament.uk/documents/commons/lib/research/briefings/snpc-01663.pdf>> viewed 22 November 2011.

60 UK Electoral Commission website, <[http://www.electoralcommission.org.uk/party-finance/public\\_funding](http://www.electoralcommission.org.uk/party-finance/public_funding)> viewed 22 November 2011.



Germany, Netherlands, France, Portugal, Spain, Sweden, and Italy all have public funding programmes for political parties. This has included reimbursements for electoral expenses, as occurs in Australia, but also extensive party administration grants in many countries.<sup>61</sup>

- 6.111 In Australia, New South Wales and Queensland have administrative funding in place. Under the NSW scheme, parties with endorsed elected members are eligible to obtain administrative funding. They must satisfy the annual continued registration requirements. Unendorsed elected members are also eligible for payments from the administration fund.
- 6.112 Parties can apply for administrative funding on an annual basis, which is paid based on demonstrated expenditure, and are entitled to the lesser of \$80 000 for each elected member from that party or \$2 million per party.<sup>62</sup>
- 6.113 The NSW scheme also makes provision for new and smaller parties through the annual Policy Development Fund, when they are not eligible to obtain funds under the Administrative Fund. This alternative funding stream can provide a maximum of 25 cents for each first preference vote received by any candidate at the previous Senate election who was endorsed by that party. However, the policy development funding can only be claimed for up to eight years.<sup>63</sup>
- 6.114 The Queensland administrative funding system operates in a similar manner. Registered political parties with elected members are entitled to receive a regular amount of administrative funding to reduce their reliance on donations. The requirement to continue to qualify for registration is also a condition of the receipt of administrative funding with funding provided on a six-monthly basis.
- 6.115 GetUp expressed its support for the NSW public funding scheme. It acknowledged the need for funding models to be subject to continual review but expressed support for a move to a system of increased administrative funding, stating that:

...we believe a more effective use of taxpayer resourcing is to give ongoing public funding for party administration and to increase public funding for campaigns for a 5 year transitional period to help parties adjust with re-targeting their donations gathering

---

61 Australian Labor Party, *Supplementary submission 21.1*, p. 6.

62 Australian Labor Party, *Supplementary submission 21.1*, p. 5.

63 Australian Labor Party, *Supplementary submission 21.1*, p. 5.

(towards smaller donations) and their campaigning (away from broadcast).<sup>64</sup>

6.116 The Greens NSW support a funding scheme involving ongoing funding for newer and smaller political parties. In its supplementary submission to the inquiry, it proposed a funding model based on elements of the new regime in NSW. It included administrative funding for registered political parties that qualify and policy development funding for new political parties.<sup>65</sup>

6.117 Similarly to the arguments in the broader public funding debate, criticism of the notion of ongoing funding for political parties is intertwined with criticism of the way in which entitlements and amounts of such funding is calculated. In its supplementary submission to the inquiry, the Greens NSW raised a number of issues with the Queensland administrative funding scheme. They observed that:

Both the NSW and Queensland legislation determine qualification for administration funding and the amount of that funding based on the number of elected MPs who represent that party. The absence of a proportionally elected chamber in Queensland limits that funding to parties able to win single-member electorates, and works in an anti-democratic way against parties who secure substantial amounts of the state-wide vote but fail to win a seat.<sup>66</sup>

6.118 The Greens NSW further expanded on the issues relating to the applicable funding model at the federal level, noting that:

While the Senate is elected proportionally, the 14.28% quota is more than three times larger than the threshold for electoral funding of 4%. The Greens NSW feel a solely elected-member qualification would not result in a fair party administration funding outcome. Nevertheless, it is possible for Senators to be elected with primary votes below the 4% funding threshold, so a hybrid eligibility system could be desirable.<sup>67</sup>

6.119 Further concerns regarding administrative funding on an ongoing basis were raised by the AEC. It pointed out in its submission that similar risks for profiteering existed with administrative funding as existed with the provision of election funding. The AEC observed that:

---

64 GetUp!, *Submission 23*, p. 4.

65 The Greens NSW, *Supplementary submission 18.1*, p. 1.

66 The Greens NSW, *Supplementary submission 18.1*, p. 1.

67 The Greens NSW, *Supplementary submission 18.1*, p. 1.

Profits can perhaps even more easily be realised under such arrangements if there are no or very broad restrictions on the uses to which those funds can be put. Unless there are strict processes for acquitting the expenditure of administrative funding it may be impossible to stop such costs leaking out into election campaigns...<sup>68</sup>

- 6.120 These concerns give rise to the need to consider the way in which the use of administrative funding could or should be regulated. NSW and Queensland have approached the issue by requiring that a dedicated campaign bank account be set up. The deposits that can be made into the dedicated campaign account are strictly regulated.
- 6.121 The AEC outlined a number of broad fundamental qualities for a successful administrative funding scheme, which included that it be:
- well targeted;
  - supportive of identified, specific activities; and
  - relatively modest in scale so as to minimise the quantum of funds that could be used for other purposes.<sup>69</sup>
- 6.122 The AEC also stated that it may be necessary to nominate thresholds of party revenues to progressively or completely eliminate the provision of public funds to parties generating sufficient income to independently undertake those activities themselves.<sup>70</sup>
- 6.123 A further issue of significance in relation to administrative funding at the Commonwealth level is the payment of any funding entitlements to political parties. The most administratively feasible mechanism to carry out payment would be to direct all payments of administrative funding to the 'national office' or 'federal secretariat' of a registered political party. Where a registered party does not have a federal body but has more than one registered branch, alternative requirements will need to be devised.
- 6.124 Given that the election funding payments will be paid to one body of each political party, the national body of each political party will have an obligation to ensure the payments to state branches are only used for political activities at the Commonwealth level.

---

68 Australian Electoral Commission, *Submission 19*, p. 11.

69 Australian Electoral Commission, *Submission 19*, p. 11.

70 Australian Electoral Commission, *Submission 19*, p. 11.

## Conclusion

- 6.125 If the recommendations in earlier chapters to decrease the disclosure threshold and increase the level of detail to be disclosed are accepted, this will increase the administrative burden on individuals and groups with reporting obligations, in particular political parties. Administrative funding is one way to provide assistance to political parties to ensure that they are appropriately resourced to develop an understanding of and can meet the increased demands that come with greater disclosure.
- 6.126 Administrative funding to assist political parties to meet the increased administrative demands that are likely to come with reforms to Australia's funding and disclosure system could be seen as a necessary measure to help improve transparency and accountability in Australia's democratic system.
- 6.127 Administrative funding should be paid by the AEC to the registered 'federal body' or 'national secretariat' of each political party. Parties without an 'official' federal body should be able to nominate the party to whom the funding is paid. The body that receives payment of the administrative funding has the responsibility to ensure the money is only used for Commonwealth political activities.
- 6.128 The Australian Government will need to liaise with the Australian Electoral Commission, political parties, Independents and other stakeholders to devise an appropriate model for administrative funding at the Commonwealth level.

### Recommendation 18

- 6.129 **The committee recommends that the *Commonwealth Electoral Act 1918* be amended to implement a scheme of ongoing administrative funding for registered political parties and Independents. The proposal for administrative funding is part of a broader package of public funding reforms and should complement the changes to election funding arrangements in recommendations 14, 15 and 16. The Australian Government should, in consultation with key stakeholders, develop a model for the entitlement and payment of administrative funding appropriate for application at the Commonwealth level.**

## Third parties and associated entities

### Current arrangements

- 7.1 Many third parties take part in issues based campaigning but some also, both directly and indirectly, advocate for particular political parties and candidates. Consequently it is important to consider the extent to which third party activities in the political sphere can and should be regulated under a funding and disclosure system.
- 7.2 Those favouring lower levels of third party regulation generally base their arguments on protecting the implied freedom of political communication that has been found to exist in the Australian Constitution. In contrast, proponents of reform of third party regulation tend to argue that the potential for third parties to be used as a means by which political parties can circumvent limits justifies the imposition of limitations on their expenditure and gifts, and argue that this can be done without unnecessarily encroaching on the implied freedom of political communication.
- 7.3 While third parties are not explicitly defined in the *Commonwealth Electoral Act 1918* (Electoral Act), section 314AEB provides a definition of 'political expenditure'. Third parties are persons that incur political expenditure above the applicable disclosure threshold for any of the following purposes, by or with his or her own authority:
- (i) The public expression of views on a political party, a candidate in an election or a member of the House of Representatives or the Senate by any means;
  - (ii) The public expression of views on an issue in an election by any means;

- (iii) The printing, production, publication or distribution of any material (not being material referred to in subparagraph (i) or (ii)) that is required under section 328, 328A or 328B to include a name, address or place of business;
- (iv) The broadcast of political matter in relation to which particulars are required to be announced under subclause 4(2) of Schedule 2 to the *Broadcasting Services Act 1992*; or
- (v) The carrying out of an opinion poll, or other research, relating to an election or the voting intentions of electors.<sup>1</sup>

7.4 Certain individuals and organisations who are exempt from the provision are registered political parties, state branches of registered political parties, the Commonwealth (including a Commonwealth Department, an Executive Agency or a Statutory Agency), a member of the House of Representatives or the Senate, and a candidate in an election or a member of a Senate group.

7.5 Some groups that meet the definition of ‘associated entity’ in section 287 of the Electoral Act are also third parties. For example, many trade unions have both associated entity and third party disclosure obligations under the Electoral Act.

7.6 Where a person or group incurs expenditure in the categories defined in section 314AEB(1) of the Electoral Act, it must submit a third party expenditure disclosure return to the Australian Electoral Commission (AEC) within 20 weeks after the end of the financial year.

7.7 Where a third party has received a gift or gifts over the threshold that have been either wholly or partly used to enable the third party to incur expenditure in the defined categories, or to reimburse the person for incurring expenditure, the details must be provided to the AEC by the third party.

7.8 The current approach to regulating the role of third parties in the political process is based on obtaining transparency and accountability through disclosure. There are, as in other areas of the Commonwealth funding and disclosure regime, two key options for reform in relation to third parties:

- amend the current measures to improve the current scheme that governs third parties; or

---

1 See *Commonwealth Electoral Act 1918*, s. 314AEB.

- make more substantial changes, such as placing restrictions on third party expenditure and gifts receivable to maintain the integrity of the democratic process, if such a move is deemed necessary.
- 7.9 The Liberal Party of Australia emphasised the importance of ensuring that third parties were holistically and sufficiently regulated, stating that:
- Any reasonable outcome designed to achieve broad consensus must ensure that the issue of third-party activity in election campaigns is adequately dealt with and, in particular, that trade unions are not excluded in any way from third-party requirements.<sup>2</sup>
- 7.10 *The Electoral Reform Green Paper – Donations, Funding and Expenditure* (first Green Paper) considered whether the appropriate third party regulatory scheme would best be determined once a broader scheme had been designed. For example, where there is a scheme of caps on political party spending and contributions in place, third parties may also need to be more strictly regulated to prevent their use to circumvent caps on political parties and associated entities.<sup>3</sup> As above, this is one of the key arguments supporting increased regulation of third parties.
- 7.11 Similarly, the AEC also observed that increased regulation of third parties often accompanies substantial reform of political financing arrangements for political parties. It submitted that:
- Most jurisdictions that have imposed donation and/or expenditure caps on political parties and candidates have tended to include an extension of those caps in some form to third parties...<sup>4</sup>
- 7.12 In further discussion on this issue the AEC stressed that:
- ...third parties must be effectively regulated if they are not to provide opportunities for circumvention of the donation and expenditure caps placed on political parties and candidates.<sup>5</sup>
- 7.13 The use of third parties to circumvent the broader regulatory scheme was raised as a particular area of concern in the context of the regulation of donations from particular sources, such as the tobacco industry. Ms Anne

---

2 Liberal Party of Australia, *Submission 25*, p. 4.

3 Commonwealth of Australia, *Electoral Reform Green Paper – Donations, Funding and Expenditure*, December 2008, p. 55.

4 Australian Electoral Commission, *Submission 19*, p. 7.

5 Australian Electoral Commission, *Submission 19*, p. 8.

Jones OAM from Action on Smoking and Health Australia (ASH) argued that:

...we cannot just stop at saying we are concerned about the tobacco industry donations to political parties, which have come to millions of dollars over the past decade or so. We know that there are third parties that have been set up that the tobacco industry has funded, but that has been largely secret. I am talking about the whole issue of transparency and accountability.<sup>6</sup>

- 7.14 In this chapter, the committee considered options to improve the current regulation of third parties and measures that could be implemented if more substantial reform was deemed necessary. Issues relating to the definition of 'associated entities' are also addressed.

## Improving the current scheme

### Definition of political expenditure

- 7.15 Much of the debate on third parties within the Commonwealth political financing regime relates to the definition of 'political expenditure', which determines which political participants are third parties with a disclosure obligation. This is an issue distinct from the definition of 'electoral expenditure' in section 308 of the Electoral Act, which sets out the nature of expenditure that must be disclosed by candidates and Senate groups in election returns.
- 7.16 The current definition of political expenditure in section 314AEB of the Electoral Act has been the subject of considerable administrative confusion. The need for a clear definition of 'political expenditure' under the Electoral Act is particularly evident in light of the fact that failure to lodge a third party disclosure return is a strict liability offence under section 315. The only defence, if criminal proceedings were undertaken for a breach, would be a 'mistake of fact'.<sup>7</sup>

---

6 Ms Anne Jones OAM, Chief Executive Officer, Action on Smoking and Health Australia, *Committee Hansard*, 9 August 2011, p. 20.

7 *Criminal Code (Cth)*, s. 6.1. The Commonwealth Electoral Amendment (Political Donations and Other Measures) Bill 2010 seeks to remove strict liability for offences against Part XX of the Electoral Act.



7.17 In this respect, the AEC indicated that it had concerns regarding the operation of requirements for annual returns of political expenditure. It noted:

...[the] uncertainty that exists in relation to the interpretation of this section of the Act. The uncertainty results in it being unlikely that any criminal proceedings could be instituted for an alleged breach of this provision.<sup>8</sup>

7.18 The AEC also raised issues regarding the absence of clear parliamentary intent and the need for the application of ‘subjective tests’ to the current section 314AEB. This was said to cause great difficulties with determining whether a breach has occurred. The AEC advised the committee that:

The advice available to the AEC is that the Parliamentary intention behind some of the requirements contained in subsection 314AEB is not clear and that there are subjective elements that would need to be assessed to establish the intention of the person who incurred the expenditure...this makes it extremely difficult for the AEC to determine whether any breach may have occurred and therefore to apply the section in relation to a particular transaction.<sup>9</sup>

7.19 Emeritus Professor Colin Hughes acknowledged the difficulties with devising a definition of ‘political expenditure’ in the context of, for example, third party advertising that compares different scientist’s approaches to an issue. He stated that this unique form of third party advertising has ‘become part of the political debate which leads up to a voting decision’.<sup>10</sup> However, the increasingly complex nature of advertising that could be classified as ‘political’ highlights the need for a coherent and administratively practical definition.

7.20 In comparable jurisdictions, generally regulatory schemes involving expenditure caps are accompanied by narrower definitions of the types of expenditure that are subject to the cap. For example, the provisions in the *Canada Elections Act* that operate to cap third party expenditure state:

A third party shall not incur election advertising expenses of a total amount of more than \$150 000 during an election period in relation to a general election.<sup>11</sup>

---

8 Australian Electoral Commission, *Supplementary submission 19.1*, p. 6.

9 Australian Electoral Commission, *Supplementary submission 19.1*, p. 6.

10 Emeritus Professor Colin Hughes, Private capacity, *Committee Hansard*, 8 August 2011, p. 17.

11 *Canada Elections Act*, s. 350(1).

- 7.21 In the *Canada Elections Act* 'election advertising' is defined in section 319 as:
- ...the transmission to the public by any means during an election period of an advertising message that promotes or opposes a registered party or the election of a candidate, including one that takes a position on an issue with which a registered party or candidate is associated.<sup>12</sup>
- 7.22 Specific activities are explicitly excluded from the definition of 'election advertising'. These include the transmission of an editorial to the public and the distribution of a book if the book was planned to be made available regardless of the election.
- 7.23 In Queensland, only advertising that directly or indirectly promotes or opposes a candidate or party or influences voting, is covered by the expenditure cap.
- 7.24 The NSW legislation also has a narrower definition of expenditure that is subject to the cap in operation. The NSW *Election Funding, Expenditure and Disclosures Act 1981* includes a definition of 'electoral communication expenditure' and a separate definition for 'electoral expenditure'.<sup>13</sup> While electoral expenditure must be disclosed under NSW disclosure laws,<sup>14</sup> only electoral communication expenditure during a state election campaign is subject to the cap.<sup>15</sup>
- 7.25 Electoral expenditure is defined in the NSW legislation as 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'.<sup>16</sup> Electoral communication expenditure is defined as 'electoral expenditure' of specified types, including television and radio advertisements.<sup>17</sup>
- 7.26 The same definitions of electoral expenditure and electoral communication expenditure apply to political parties, candidates, groups and third parties. This is distinct from the Commonwealth approach, which applies the definition of 'electoral expenditure' to candidates and Senate groups during an election, while the definition of 'political

---

12 *Canada Elections Act*, s. 319.

13 *Election Funding, Expenditure and Disclosures Act 1981* (NSW), s. 87.

14 *Election Funding, Expenditure and Disclosures Act 1981* (NSW), s. 93.

15 See generally *Election Funding, Expenditure and Disclosures Act 1981* (NSW), division 2B.

16 *Election Funding, Expenditure and Disclosures Act 1981* (NSW), s. 87.

17 *Election Funding, Expenditure and Disclosures Act 1981* (NSW), s. 87.

expenditure' applies only to third parties and on an annual rather than election basis.

- 7.27 The treatment of expenditure by third parties as distinct from expenditure during an election by candidates and Senate groups is one feature that sets the Commonwealth apart from many other jurisdictions.
- 7.28 Calls to amend the definition of political expenditure generally focus on:
- section 314AEB(1)(a)(ii), particularly the lack of clarity regarding the term 'issue in an election'; and
  - section 314AEC(1)(a)(v) regarding the carrying out of opinion polling or other research and its potential for unintended consequences.

### An 'issue in an election'

- 7.29 The use of the term 'issue in an election' in section 314AEB(1)(a)(ii) of the Electoral Act has given rise to considerable administrative difficulties. This is due predominantly to the inherent challenges in prospectively assessing, for the purposes of annual disclosure obligations, which issues will be issues in the next federal election.<sup>18</sup>
- 7.30 The AEC argued that the lack of clarity stemmed from the use of terms, such as 'the public expression of views on an issue in an election' that are not seen elsewhere in the Electoral Act, which makes it difficult to determine the precise scope of the section.<sup>19</sup>
- 7.31 The AEC also argued that a contributing factor to the difficulties involved with the matters covered by section 314AEB(1)(a)(ii) was that the other subsections in section 314AEB(1)(a) were clearly defined and outlined material needing authorisation under sections 328, 328A and 328B, such as printed electoral advertising, paid electoral advertisements on the internet, and electoral advertisements on radio and television regulated under the *Broadcasting Services Act 1992*.<sup>20</sup>
- 7.32 The Australian Council of Trade Unions (ACTU) also expressed concern regarding section 314AEB(1)(a)(ii). It highlighted difficulties with defining an 'issue in an election'. The ACTU raised the question of whether non-partisan attempts to generate public interest and attention around a

---

18 Australian Electoral Commission, *Supplementary submission 19.1*, p. 7.

19 Australian Electoral Commission, *Supplementary submission 19.1*, p. 6.

20 Australian Electoral Commission, *Supplementary submission 19.3*, p. 13.

particular issue of concern, that is, expenditure seeking to make a particular issue an issue in an election is captured by the provision.<sup>21</sup>

- 7.33 Mr Andrew Norton focused heavily on the issues regarding third parties in his submission, including the definitional problems with section 314AEB(1)(a). He noted that a number of commentators in the political financing field, including those that support much stricter regulation on campaign finance, have identified issues regarding the clarity of the meaning of section 314AEB(1)(a)(ii).<sup>22</sup>
- 7.34 Mr Norton suggested that the lack of clarity surrounding the term ‘issue in an election’ arose as a result of the ‘carry-over’ of the term from the times when third party disclosure only occurred after an election. He also observed that annual reporting obligations for third parties mean that an ‘issue in an election’ now has to be determined prospectively.<sup>23</sup>
- 7.35 Mr Norton presented three options to address the lack of clarity in the meaning of ‘issue in an election’ in section 314AEB(1)(a)(ii). His preference was that only expenditure advocating a vote ‘for or against’ a political party or candidate be counted towards the disclosure threshold. However, he recommended that if this was not to be implemented, then:
- section 314AEB(1)(a)(ii) be deleted;
  - an exemption be created from section 314AEB(1)(ii) for commentary on issues; or
  - section 314AEB(1)(a)(ii) only apply in election years.<sup>24</sup>
- 7.36 The creation of specific exemptions to section 314AEB(1)(a)(ii), such as commentary on issues, or having the provision only apply in election years do not resolve further interpretative issues that the AEC argued have resulted in administrative confusion, such as the fact that the term ‘issue in an election’ is not used anywhere else in the legislation. The notion of only applying parts of the definition in election years adds an additional layer of complexity to the definition that may result in further administrative difficulties and confusion.
- 7.37 The AEC argued that in reading section 314AEB(1)(a)(ii) in the context of the other types of expenditure that are covered, it was not clear what additional forms of political expenditure it aimed to cover.<sup>25</sup>
- 

21 Australian Council of Trade Unions, *Submission 9*, p. 6.

22 Mr Andrew Norton, *Submission 20*, p. 16.

23 Mr Andrew Norton, *Submission 20*, p. 16.

24 Mr Andrew Norton, *Submission 20*, p. 3.

## Opinion polls or other research

7.38 Another concern raised regarding the definition of political expenditure in the Electoral Act relates to the provision in section 314AEB(1)(a)(v) that a third party disclosure obligation arises where a person or organisation incurs expenditure through ‘the carrying out of an opinion poll, or other research, relating to an election or the voting intentions of electors’ in excess of the threshold.

7.39 There are two immediate options for reform of this provision:

- to completely delete section 314AEB(1)(a)(v); or
- to include a list of exclusions from its terms.

7.40 The AEC observed that this disclosure obligation could serve to impede the regular activities of some organisations. It advised that:

The phrase “carrying out an opinion poll” results in organisations that carry out opinion polling as a part of their day to day business, rather than actively participating in political activity, having an obligation. In addition, the phrase “other research” could result in people who discuss and analyse elections or the voting intentions of electors as part of their day to day business being potentially captured by this section.<sup>26</sup>

7.41 For example, Galaxy Research submitted a return of third party political expenditure showing nil expenditure.<sup>27</sup> This is because Galaxy Research is merely paid to carry out the activity, rather than engaging in opinion polling of its own accord as a form of campaigning or political participation.

7.42 The AEC also observed that the requirement could potentially catch university students and political scientists. This would result in significant administrative difficulties with ‘no apparent benefits to the financial disclosure scheme’.<sup>28</sup> Accordingly, it suggested in its report on election funding and financial disclosure in relation to the 2010 federal election that section 314AEB(1)(a)(v) be deleted.<sup>29</sup>

---

25 Australian Electoral Commission, *Supplementary submission 19.3*, p. 13.

26 Australian Electoral Commission, *Supplementary submission 19.1*, p. 7.

27 See AEC website for a copy of the Galaxy Research Third Party Annual Financial Disclosure Return, < <http://periodicdisclosures.aec.gov.au>Returns/24/OAMT3.pdf>>

28 Australian Electoral Commission, *Supplementary submission 19.1*, p. 7.

29 Australian Electoral Commission, *Report on election funding and financial disclosure in relation to the 2010 federal election*, Commonwealth of Australia, p. 32.

## Conclusion

- 7.43 The phrase ‘issues in an election’ as applied in section 314AEB(1)(ii) causes significant administrative difficulties, due mainly to the difficulties involved with prospectively predicting which issues will be ‘issues in an election’. The phrase was more practical when third party disclosure obligations only arose after an election, rather than annually, as is currently the case.
- 7.44 The matters of the frequency of third party disclosure and the definition of what must be disclosed are inextricably intertwined. If third party disclosure is to remain on an annual basis, an appropriate definition must be devised that will be able to be administered effectively by the AEC and that will capture and release information into the public arena that is informative and conducive to the principles of transparency and accountability that the scheme seeks to uphold.
- 7.45 The committee notes the AEC’s comments that the term ‘issue in an election’ is particularly confusing given that it is not used elsewhere in the Electoral Act, and that section 314AEB(1)(a)(ii) does not, when read in the context of the other paragraphs, cover any form of expenditure that is not covered elsewhere. Accordingly, the most feasible method by which the clarity of the term can be improved is by deleting the requirement from the definition of ‘political expenditure’ in section 314 AEB(1)(a).

### Recommendation 19

- 7.46 **The committee recommends removing the reference to ‘issues in an election’ from the definition of political expenditure, by deleting section 314AEB(1)(a)(ii) of the *Commonwealth Electoral Act 1918*.**
- 7.47 The current definition of ‘political expenditure’ can potentially capture and impose a disclosure obligation on people, groups and organisation that are not actually intending to influence the outcome of an election or enter the political or democratic process. This is particularly in relation to section 314AEB(1)(a)(v) of the Electoral Act.
- 7.48 People or organisations that may be unintentionally captured by the provision could include market research companies paid to carry out opinion polls and authors, academics and individuals that merely aim to provide commentary and analysis on issues. The benefits to transparency of requiring these individuals or groups to disclose their sources of

financing is questionable. In addition, it can potentially result in an increased administrative burden on the Australian Electoral Commission in administering the provisions.

- 7.49 The committee notes that the Canadian approach in this area is to include exceptions in the legislation to the operation of certain electoral advertising provisions. However, the committee recognises the administrative and interpretative difficulties that may arise from diluting and creating exceptions to legislative requirements. The committee believes that the most effective approach in this respect is to delete the requirement.

### **Recommendation 20**

- 7.50 **The committee recommends removing the reference to opinion polls and other research from the definition of political expenditure, by deleting section 314AEB(1)(a)(v) of the *Commonwealth Electoral Act 1918*.**

### **Frequency of third party disclosure**

- 7.51 In 2006, amendments were made to the Electoral Act that changed the third party disclosure obligation from requiring that a disclosure return be lodged after every election, to annually. This is the current requirement in Part XX of the Electoral Act.
- 7.52 The main options for the timing of third party disclosure are:
- Annual disclosure – would need to be accompanied by amendment of definition of ‘political expenditure’, as discussed above, to operate more effectively;
  - Election disclosure (after an election) – could occur with current definition of political expenditure but definition would still require refinement;
  - Contemporaneous disclosure of gifts; or
  - Contemporaneous disclosure of gifts and expenditure.
- 7.53 The issues of the frequency of third party disclosure and the clarity of the definition of expenditure are closely intertwined. For example, in a context where third party activities are increasing on a regular basis there is prima

facie an increasing value in annual disclosure. However, the disclosure obligation will then need to be detached from the linkage to ‘issues in an election’ and become more general so as to ensure that third parties are clear on their obligations.

7.54 In relation to contemporaneous disclosure, the AEC argued that if it is introduced for donations to political parties then it must extend to third party disclosure, stating that:

...the objective of contemporaneous disclosure to electors could be easily frustrated if it didn’t extend to third parties who potentially could be used as vehicles to delay disclosure until after an election. That is, there appears to be a loophole in the operation of the current disclosure requirements contained in the Electoral Act that could be abused so as to circumvent the current reporting and disclosure regime.<sup>30</sup>

## Conclusion

7.55 In the current climate of continuous election campaigning, third parties are also major participants, and so it is desirable to at least maintain the current annual disclosure requirements for third parties rather than returning to solely election disclosure. However, to operate effectively, the annual disclosure of third parties must be accompanied by the proposed definitional changes outlined above.

7.56 It is important that third party regulation is designed to complement the regulatory approaches to political parties, candidates and groups, so as not to allow them to be used as a means to circumvent the broader scheme.

---

### Recommendation 21

7.57 **The committee recommends that the frequency of disclosure reporting obligations for third parties under the *Commonwealth Electoral Act 1918* align with the frequency with which political party disclosure takes place, to minimise the potential for circumvention of requirements.**

---

30 Australian Electoral Commission, *Supplementary submission 19.3*, pp. 13-14.



## Partisan connections of third parties

7.58 In relation to the disclosure obligations of third parties, the Electoral Act currently only requires that the details of expenditure incurred in excess of the threshold in the five categories set out in section 314AEB(1)(a) be disclosed.

7.59 Mr Andrew Norton expressed concern regarding the fact that the Electoral Act currently does not require third parties to disclose the party or candidate, or the issue that they are campaigning on. He argued that:

...the current federal disclosure system is poorly designed to identify undue third party influence. While third parties must categorise their political expenditure in various ways, there is no requirement or formal opportunity to disclose which party, politician, or issue the spending was directed towards.<sup>31</sup>

7.60 Mr Norton's argument is that the associated entity rules should result in third parties campaigning on purely issues based grounds being 'free' from regulation. Any third party that is campaigning or acting 'wholly or to a significant extent' on behalf of a political party should, Mr Norton argued, be covered by associated entity provisions. He submitted that:

The undue influence case for regulating third parties is an incidental one. This is that if political parties are regulated but third parties are not, donors who want to remain secret will shift their gifts to partisan third parties. However, in Australia this possibility is already covered by the 'associated entity' rules, which cover third parties controlled by a political party or operating wholly or to a significant benefit of one or more political parties.<sup>32</sup>

7.61 It is arguably these 'partisan' third parties in which there is interest in awareness of funding sources. The solution that Mr Norton proposed to rectify this shortcoming with the current arrangements is to remove regulation of 'issues based' third parties from the Electoral Act and only require disclosure of political expenditure under section 314AEB of the Electoral Act from associated entities (or, according to his argument, partisan third parties). He recommended that section 314AEB of the Electoral Act should only apply to associated entities.<sup>33</sup>

---

31 Mr Andrew Norton, *Submission 20*, p. 7.

32 Mr Andrew Norton, *Submission 20*, p. 6.

33 Mr Andrew Norton, *Submission 20*, p. 3.

7.62 A similar issue was raised in the submission from Senator Eric Abetz with respect to GetUp. In relation to third parties that might be partisan he also indicated support for:

...tightening the definition of Associated Entity in the [Electoral Act] or preventing Third Parties from claiming to be independent. If a Third Party is incurring electoral expenditure it is *ipso facto* not being independent...the neatest solution is to amend the [Electoral Act] to prevent Third Parties which incur electoral expenditure from claiming to be independent, non-partisan, impartial or not to back any particular party...<sup>34</sup>

## Conclusion

7.63 Any third party regulatory scheme must also allow third parties to effectively communicate with their supporters and the public, and complement arrangements in place for political parties and other groups, to minimise the possibility of third parties being used to circumvent the wider disclosure requirements. The circumstances of the Australian political party democratic system warrant a third party regulatory scheme that is legislatively distinct from the laws governing associated entities.

## Disclosure threshold for third parties

7.64 Under the current disclosure scheme third parties are subject to the same disclosure threshold as political parties, associated entities and donors for each financial year.

7.65 Mr Andrew Norton proposed in his submission that third parties be subject to a separate, higher disclosure threshold than other participants in the democratic process to ensure that their freedom of political communication was not stifled. He recommended:

- That the threshold for third parties entering the disclosure system be increased to at least \$50 000;
- That the threshold for disclosable donations to third parties remain at \$11 900.<sup>35</sup>

---

34 Senator Eric Abetz, Commonwealth Senator for Tasmania, *Submission 5*, p. 3.

35 Mr Andrew Norton, *Submission 20*, p. 3.

## Conclusion

- 7.66 Making third parties subject to a higher level of regulation than political parties and other groups is not merited or appropriate, and could be seen as an unreasonable restriction of their right to political expression. However, a lesser level of regulation including a lower disclosure threshold may increase the potential for third parties to play a role in circumventing caps applicable to political parties or other groups. In addition, a higher threshold solely for third parties could be seen as tipping the balance in favour of third parties and running the risk of third parties overwhelming the process.
- 7.67 In the interests of ensuring clarity, equality between participants in the political and democratic process, and balance, the disclosure threshold for third parties should remain in line with those applicable to political parties and other groups. There is no justification under the current system to apply a separate disclosure threshold to third parties.

### Recommendation 22

- 7.68 **The committee recommends that third parties be subject to the same disclosure threshold as political parties, Independents candidates, Senate groups, associated entities and donors.**

## Disclosure rules for donors to third parties

- 7.69 Donors to third parties do not have a separate disclosure obligation. The Electoral Act requires a third party to disclose in its return details of donors that give an amount exceeding the disclosure threshold for that financial year.
- 7.70 A number of submitters to the inquiry raised the issue of the impact of any changes to disclosure laws on donors to third parties. Mr Norton described 'donor names' in his submission as 'the only substantive new information that the third party disclosure system can produce', stating:
- Though not relevant to an influence disclosure rationale for campaign finance law, knowledge of third party funding sources could help evaluate the credibility of some third party messages...While knowledge of funding sources does not provide

any conclusive evidence on the merits of an argument, it does alert people to possible biases in sources that otherwise seem credible.<sup>36</sup>

- 7.71 Similar to his approach on other issues pertaining to third parties, Mr Norton supported a reduction in the regulation of donors as a source of funding for third parties partly because donors may stop participating in the political process. He commented that:

People financially support third parties partly because they don't have the time, skills or opportunity to articulate their views in public places. 'Accountability' for donors in this context means suffering some penalty for the views they hold, and fear of such penalties is a deterrent to political participation. The possible value of donor information in a limited number of cases needs to be balanced against donors being intimidated into not expressing their views.<sup>37</sup>

- 7.72 Mr Norton raised donor fears of retribution as an argument against imposing limitations on donations to third parties, as it may discourage a legitimate form of political participation.<sup>38</sup>

- 7.73 Mr Norton also observed that the only protection from retribution given to donors to third parties under the current laws was the high disclosure threshold. He stated that the 'donors that pose the least threat to the integrity of the political process have the weakest legal protection'.<sup>39</sup>

- 7.74 Additionally, a recurring theme throughout preceding chapters has been the need to effectively regulate third parties to prevent them from being used as a means of circumventing stricter requirements on political parties. If donors to third parties are subject to 'weaker' requirements regarding disclosure than donors to associated entities and political parties, this increases the potential for circumvention of restrictions on other political actors.

- 7.75 In support of increased regulation of donors to third parties, the AEC highlighted the difference in requirements for donors to political parties and candidates and donors to third parties. The former must disclose donors of any sums they have received which are used wholly or partly to make their donation. The AEC submitted that:

---

36 Mr Andrew Norton, *Submission 20*, p. 8.

37 Mr Andrew Norton, *Submission 20*, p. 9.

38 Mr Andrew Norton, *Submission 20*, p. 9.

39 Mr Andrew Norton, *Submission 20*, p. 9.

This, importantly, establishes an audit trail back to the source of the funds, something that cannot be achieved for third parties where the only disclosure is on the third party's return showing donations received. In such circumstances, a third party could disclose receiving funds from a private foundation or trust and there would be no public record of where that entity may have originally received its funds from.<sup>40</sup>

- 7.76 The AEC used this as the basis for its support for donors to third parties being subject to the same requirements as donors to political parties. In NSW, 'major political donors' have an obligation to disclose 'political donations' equal to or greater than \$1 000 to political parties, members, groups, candidates or third party campaigners. These are referred to as 'reportable political donations', which is a blanket term for donations to all political actors.
- 7.77 One issue that may arise in relation to imposing a disclosure obligation on donors to third parties is the possibility that a donor may donate to a third party in support of its campaign on a particular issue, but not its campaigns in other areas. That is, the donation is made on the basis of support for a single issue, rather than the group as a whole. If a disclosure obligation was to exist, an individual or group would potentially be publically revealed as a 'supporter' of a group campaigning on an issue, without necessarily agreeing with its approach in all areas.
- 7.78 Mr Norton explained a similar issue in the context of tax deductibility of donations in his appearance before the committee, where an actual intention to participate in the political process through donating to a third party may not be present. He stated that:
- The difficulty is the multipurposes of third parties. For example, the RSPCA ads about the live export issue. You might want to give to the RSPCA because you like their shelters for lost animals, and that is probably a legitimate deductible thing. But then you find your money ends up going to these particular campaigns. So it is very hard to manage the different purposes of the third parties.<sup>41</sup>
- 7.79 However, these types of issues can be overcome in the design of the third party donor obligation, for example, providing donors with room on an applicable form to provide details of their support if they wish. Additionally, it is arguable that a similar issue exists under the current arrangements with donor names and details provided by a third party on

---

40 Australian Electoral Commission, *Supplementary submission 19.3*, p. 14.

41 Mr Andrew Norton, Private capacity, *Committee Hansard*, 10 August 2011, p. 22.

its disclosure form. A separate donor disclosure requirement for donors to third parties could, depending on its design, actually result in rectifying some of these issues and providing a clear trail back to the original source of funds.

## Conclusion

- 7.80 The transparency and accountability achievable in a political financing system is dependent on its ability to reveal the source of funds. In devising appropriate disclosure laws regarding donors to third parties, a balance must be obtained between transparency and accountability and ensuring donors to third parties are not discouraged from political participation because of the requirements or fear of retribution. This balance can be achieved if disclosure obligations for donors to third parties were to be strengthened to match those of donors to political parties.
- 7.81 The fear of retribution by some donors should not prevent them from participating in the political process through making donations. The committee believes that requirements akin to those recommended in Chapter 3 could be implemented in relation to the disclosure obligations of individual third parties.

### Recommendation 23

- 7.82 **The committee recommends that the *Commonwealth Electoral Act 1918* be amended, as necessary, to impose a disclosure obligation on donors to third parties. Amendments should be worded so that only the name, suburb, state and postcode of individual donors are required to be made public.**

## Further reform options

- 7.83 Discussions in relation to significant changes to the current approach to regulating the political finances of third parties generally involve proposals for caps on the donations that can be received by third parties, and caps on the expenditure that they can incur. However, there are a number of issues that need to be considered before such changes could occur.

## Caps on third party expenditure

- 7.84 There are currently no limits on the amount of political expenditure by third parties. However, when expenditure is incurred in excess of the disclosure threshold in one or more of the five legislatively defined categories, the third party must meet its annual disclosure obligation.
- 7.85 Proposals supporting the implementation of caps on third party expenditure are generally linked to proposals for caps on spending by political parties as a measure to curtail spiralling levels of election spending. The broader issues relating to implementing caps as part of political financing schemes are discussed in detail in Chapter 4. In this chapter the issues specific to the imposition of caps on third party expenditure are discussed.
- 7.86 A number of submitters to the inquiry expressed support for caps on expenditure, including caps on the expenditure of third parties. In line with general approaches in the area, the majority of proposals accompanied related calls for caps on political party expenditure. For example, the Australian Labor Party expressed support for the capping of third party expenditure to prevent the circumvention of caps on political parties through the use of ‘soft-money’ through other groups.<sup>42</sup> Similarly, the Australian Greens stated:
- A cap on campaign expenditure removes the excessive dependence on donations funding...Donation and expenditure restrictions should also apply to third parties...[This] would ensure that third party advertising could not be used to circumvent [other measures].<sup>43</sup>
- 7.87 The AEC also raised the related concern that if caps on political parties and candidates are in operation, where third parties are not subject to similar constraints on their actions, there is the potential that third parties could come to dominate public debate to the disadvantage of the ‘primary players’ in election campaigns; political parties and candidates. The AEC submitted:
- ...there is a concern that if political parties and candidates are limited in their campaigning through expenditure caps, then it leaves the revised system vulnerable to having campaigns overwhelmed by third parties that are not similarly constrained. This could have the potential to relegate the primary players in an

---

42 Australian Labor Party, *Submission 21*, p. 3.

43 The Australian Greens, *Submission 12*, p. 5.

election campaign – political parties and candidates seeking to win seats and possibly form government – to second tier status in terms of the volume and reach of campaigning behind bigger spending third parties.<sup>44</sup>

- 7.88 As with general caps on expenditure, the AEC identified the period during which caps on third party expenditure are to apply as a key challenge relating to the implementation of the measure.<sup>45</sup> Other challenges include the nature and design of any third party registration scheme,<sup>46</sup> and the difficulties relating to devising effective penalties for offences against political financing laws committed by third parties, given that their motivations for engaging in the political process is less clear than parties and candidates.<sup>47</sup>
- 7.89 Mr Norton suggested that the implementation of third party expenditure caps could result in the limitation of opposition to government, particularly given that some forms of government advertising were unlikely to be subject to the cap if current models were followed.<sup>48</sup>
- 7.90 However, Professor Sawyer noted in a research paper critiquing Mr Norton’s submission that despite the drop in corporate involvement in elections in Canada since the implementation of spending limits, the overall number of third parties has risen from 50 to 64 over the past four general elections that have been held in Canada since limitations on third parties were introduced. She also stated that none of the third parties had spent anything near the maximum amount allowed. This would seem to suggest that in the Canadian context, third parties have not been unduly constrained by having their particular expenditure cap model in place.<sup>49</sup>

## Constitutional issues

- 7.91 Arguments opposing the imposition of a cap on expenditure by third parties incurring political expenditure generally focus on its potential to stifle the implied constitutional freedom of political communication.

---

44 Australian Electoral Commission, *Submission 19*, pp. 6-7.

45 Australian Electoral Commission, *Submission 19*, p. 8.

46 Australian Electoral Commission, *Submission 19*, p. 7.

47 Australian Electoral Commission, *Submission 19*, p. 5.

48 Mr Andrew Norton, *Submission 20*, p. 20.

49 Professor M. Sawyer, ‘Third Party Regulation – A Question of Balance?’, p. 2, <<http://democraticaudit.org.au/wp-content/uploads/2011/08/sawer2.pdf>> viewed 3 November 2011. This is a discussion paper on Mr Andrew Norton’s Submission 20 to this inquiry, prepared for the Challenges of Electoral Democracy Workshop, University of Melbourne, July 2011.



7.92 Professor Anne Twomey indicated that one of the key considerations in relation to a cap on third party expenditure would be the precise level at which the cap was set. She indicated in her appearance before the committee that:

...[in the United States] the courts have been more concerned that expenditure caps prevent political parties or third parties from expressing their views in election campaigns. So if you make the cap too low and you impede that form of political communication without very good reason then you are vulnerable to constitutional problems.<sup>50</sup>

7.93 In Canada, since 2000, third parties have been required to register with Elections Canada once they spend more than CAD\$500 in election advertising. Third parties in Canada must also disclose the source of donations of more than CAD\$200 during the six months before the issue of the writs and are limited to total expenditure of \$150 000 (indexed) or \$3 000 per electoral district.

7.94 In 2000 the National Citizens Coalition challenged this legislation in the Harper case, in which it was found that third party regulation was a restriction on freedom of expression. However, the Court held that the restriction was reasonable for 'electoral fairness'. The Court accepted that the purpose of third party spending limits was to promote equality and that this purpose was pressing and substantial. The restrictions were necessary to provide equal opportunity to participate in the electoral process and to prevent wealthy voices from overwhelming others. That is, the spending limits enabled citizens to be better informed by preventing domination of the discussion by a wealthy few and enabling opposing voices to be heard.<sup>51</sup>

## Caps on donations to third parties

7.95 Third parties that incur political expenditure in the categories defined in section 314AEB of the Electoral Act are entitled to receive gifts that can be used wholly or partly to incur that expenditure. There are currently no limits on the amounts that may be contributed to third parties. The only proviso is that third parties must disclose in its annual returns gifts received above the threshold and used wholly or partly to incur political expenditure.

---

50 Professor Anne Twomey, Private capacity, *Committee Hansard*, 9 August 2011, p. 39.

51 See *Harper v Canada (Attorney General)* [2004] 1 S.C.R. 827, 2004 SCC 33.

- 7.96 Any consideration of caps on third party expenditure must necessarily involve consideration of caps on incoming finances. The option to cap donations to third parties must be considered in the context of the wider scheme. If donations on political parties are capped, an individual seeking to circumvent these could donate to third parties acting on the political party's behalf. Political parties could also potentially set up third parties for this purpose, if they so wished.
- 7.97 Concerns were raised in submissions that the combined effect of limiting third party sources of funding and expenditure, given that the two measures generally accompany one another, could result in an unfair limitation on their capacity to undertake political communication.
- 7.98 The arguments against caps on donations to third parties are along the same lines as the broader arguments relating to caps on donations, which are addressed in detail in Chapter 3, and are largely based on protecting the implied freedom of political communication issues.
- 7.99 Mr Andrew Norton dealt specifically with the issue of caps on donations to third parties, and cautioned that there could potentially be unintended consequences. He argued that:
- As with expenditure caps, donation caps exacerbate rather than mitigate a power imbalance between third parties and political parties, especially with the governing political party that is often in an adversary position with a third party...The donation caps, in conjunction with other campaign finance measures, look very much like a cynical attempt by political parties to suppress the political activity of their critics and opponents.<sup>52</sup>
- 7.100 In addition, Mr Norton highlighted the risk that caps on donations to third parties to have an 'unequal' effect on third party participants and thus a detrimental effect on the ability for such third parties to effectively participate in the democratic process. He submitted that:
- Donation caps also have unequal consequences between third parties. Third parties that rely on donations are disadvantaged relative to third parties that can fund their own campaigns. Ironically from the perspective of justifications for campaign finance law, traditional vested interests such as unions and business can carry on much as before under donations caps.<sup>53</sup>

---

52 Mr Andrew Norton, *Submission 20*, p. 24.

53 Mr Andrew Norton, *Submission 20*, p. 24.

7.101 Mr Norton argued that if donations caps were to be put into practice, they should apply only to funds raised to advocate a vote for or against a political party or candidate. He stated that the recent reforms in Queensland had successfully implemented similar provisions in relation to caps on donations to third parties. Mr Norton's proposal involved narrowing the definition of 'political expenditure' that donations could be used to fund in order for a scheme involving caps on donations to third parties to operate effectively.<sup>54</sup>

## Conclusion

7.102 The imposition of caps on donations to, and expenditure by, third parties requires further consideration before any moves in this direction can be taken. In particular, a cap on expenditure presents significant difficulties in relation to enforcement.

7.103 However, legitimate concerns have been expressed about the increased spending and the potential influence of third parties engaged in the political sphere. The committee does not seek to unduly hamper third parties campaigning on its core issues, but in cases where third parties are campaigning on key election issues or advocating for or against particular candidates or parties, third parties should not be permitted to overwhelm public debate by means of large expenditure that is not appropriately regulated.

7.104 Accordingly, further investigation should be undertaken into the feasibility of imposing caps on political expenditure by third parties. This must involve consideration of an appropriate period during which caps are to apply in relation to the election date. The aim would be to ensure that third parties do not exert undue influence close to an election by high spending levels, but still allow these groups to engage the community on relevant issues and participate in the political process.

---

54 Mr Andrew Norton, *Submission 20*, p. 24.

## **Recommendation 24**

7.105 **The committee recommends that the Australian Government investigate options for:**

- **restricting or capping third party political expenditure; and**
- **setting a reasonable period relevant to the election date around which this restriction would apply.**

### **A third party registration scheme**

7.106 There is no requirement currently in the Electoral Act regarding the registration of third parties before they can incur political expenditure. While party registration schemes are usually aimed at facilitating the administration of a more extensive regulatory system that involves expenditure caps, the AEC indicated its support for the introduction of party registration as part of the current system. It stated:

The AEC is aware that the overseas experience is that all third parties must be registered with the relevant electoral management body before they are able to incur electoral expenditure. In some jurisdictions there is also a requirement for specific campaign accounts to be established accompanied by proof that the organisation has formally agreed to use the funds in such an account for electoral purposes. This would obviate the need for the auditing and reporting of all other amounts of expenditure (i.e. non-political expenditure) incurred by a third party.<sup>55</sup>

7.107 Additionally, a third party registration scheme could play a similar role to that played by the political party registration scheme within the current regulatory scheme, in that it can assist with tracking disclosure obligations.

7.108 In the context of discussing schemes involving caps on expenditure, the Australian Labor Party advocated that:

- Participation by Third Parties in public election campaigning should be conditional upon registration with the AEC. The ALP believes there should be a high threshold for the registration of

---

55 Australian Electoral Commission, *Supplementary submission 19.3*, p. 14.

a Third Party...which should include provisions similar to that required for the registration of political parties.

- Third parties should be required to demonstrate that they are a *bona fide* community of interest prior to registration.<sup>56</sup>

- 7.109 The AEC stated in its submission that a major aim of third party registration schemes is to publicly disclose in advance the identities of people and organisations – aside from political parties and candidates – that intend to be active in an election.<sup>57</sup>
- 7.110 An additional aim of such a scheme appears to be to ‘weed out’ the ‘illegitimate’ third parties. However, criteria for what might constitute a ‘legitimate’ third party could be difficult to objectively determine.
- 7.111 The Australian Labor Party proposed in its submission that the criteria for third party registration should be premised on that which currently exists for political parties. ‘Eligible political parties’ as defined in section 123 of the Electoral Act may be registered under Part XI if they meet the requirements in section 126(2). An ‘eligible political party’ is one that has at least 500 members or has the support of a sitting member or Senator.
- 7.112 Section 126(2) of the Electoral Act provides that an application for registration from an eligible political party must set out the party’s name, abbreviation (if it wishes to have one), registered officer, a list of the names of the 500 members relied upon for registration, state whether the party wishes to receive election funding, set out names and addresses of the requisite ten members that are making the application (one of whom must be the secretary), include a copy of the party constitution and include the \$500 fee.
- 7.113 Clearly some of these requirements would not be directly relevant to a third party registration scheme, but the concept of requiring a minimum number of members, the requirement to provide a party constitution and the requirement to provide certain office bearer details could legitimately form part of the criteria for the registration of third parties.
- 7.114 The United Kingdom political financing regime includes a third party registration scheme by which a third party that intends to incur above a set threshold in campaign expenditure must first register with the relevant electoral administration body. Domestically, similar requirements exist under the NSW and Queensland schemes that have recently been implemented.

---

56 Australian Labor Party, *Submission 21*, pp. 3-4.

57 Australian Electoral Commission, *Submission 19*, p. 7.

7.115 Each of these schemes is premised heavily on an ‘intention’ to incur political expenditure in excess of a certain defined amount. Under the NSW scheme, registered third parties are subject to a higher expenditure cap than unregistered third parties. The registration of third parties with an intention to incur political expenditure would be of assistance in keeping track of which third parties have disclosure obligations, but the benefits outside this are unclear.

## Conclusion

7.116 The committee does not believe there is currently enough evidence to demonstrate that a third party registration scheme would significantly enhance transparency and accountability in the Commonwealth scheme. While the AEC sees value in third party registration in terms of helping to track third party disclosure obligations, evidence to the inquiry indicates that it would be most useful in a system where caps on the political expenditure of third parties were in place. On balance, if there are to be no restrictions on expenditure, a system of third party registration under the current arrangements would be seen as an unnecessary burden on third parties and the AEC.

## Definition of associated entity

7.117 Prior to the amendments to the Electoral Act in 2006, an associated entity of a political party was defined simply as an entity controlled by one or more registered parties, or that operates wholly or to a significant extent for the benefit of one or more registered political parties. The amendments inserted in 2006 effectively broadened the range of entities that could be classified as ‘associated entities’ for the purposes of Part XX.

7.118 Currently, an associated entity is defined in section 287(1) of the Electoral Act as:

- An entity that is controlled by one or more registered political parties; or
- An entity that operates wholly or to a significant extent for the benefit of one or more registered political parties; or
- An entity that is a financial member of a registered political party; or
- An entity on whose behalf another person is a financial member of a registered political party; or
- An entity that has voting rights in a registered political party; or
- An entity on whose behalf another person has voting rights in a registered political party.

- 7.119 The first Green Paper identified three types of associated entities:
- entities that conduct fundraising activities for a political party;
  - entities that conduct the business activities of a political party; and
  - entities that are ‘members’ of political parties (for example, trade unions that are affiliated with the ALP or businesses affiliated with the National Party of Australia).<sup>58</sup>
- 7.120 As associated entities can be sources of funding for political parties, a number of submitters suggested that there should be changes to the way in which associated entities are regulated under the Electoral Act. There were two major strands of arguments in the submissions that addressed issues surrounding associated entities, and these related primarily to increasing the transparency with which associated entities operate. The key issues raised were:
- Whether the definition of ‘associated entity’ in section 287 of the Electoral Act should be revised; and
  - Whether there should be a change in the disclosure rules regarding associated entities. This is addressed in Chapters 3 and 4.
- 7.121 The definition of ‘associated entity’ in the Electoral Act has been the source of significant difficulties both before its broadening through the 2006 amendments and currently. An analysis of submissions to the inquiry indicated that there are three main themes in relation to perceived definitional weaknesses of associated entities:
- it does not capture all groups and organisations that it should (under-inclusive);
  - it captures groups and organisations that do not have an influence over political party affairs (over-inclusive); and
  - it results in inconsistencies with some groups and organisations being classified as associated entities, with similar groups and organisations escaping the disclosure obligations.
- 7.122 The AEC advised that it had ‘taken the view’ that ‘significant’ in the definition of an associated entity’ is ‘a degree once removed from wholly’. In relation to administrative challenges the definition gives rise to, the AEC stated that:

---

58 Commonwealth of Australia, *Electoral Reform Green Paper – Donations, Funding and Expenditure*, December 2008, p. 21.

...imprecision in the second arm of the definition – ‘*an entity that operates wholly, or to a significant extent, for the benefit of one or more registered political parties*’ – complicates its administration. It is also the case that the AEC’s interpretation of its practical application opens a potential loophole whereby an entity need only prove that a comparatively small proportion of its operations benefit someone other than a political party for it to escape having a disclosure obligation.<sup>59</sup>

7.123 This indicates that the definition of ‘associated entity’ as it currently stands may run the risk of being over inclusive, that is, unintentionally capturing groups and organisations that may not need to be captured, as these groups are unlikely to have any significant influence on party affairs.<sup>60</sup>

7.124 The ACTU also noted Dr Tham’s argument that in other respects, the definition omitted some relevant players, restating that:

...[the definition of associated entity] is under-inclusive because significant influence over a party’s position is not confined to financial membership and voting rights. It can result from other forms of affiliation.<sup>61</sup>

7.125 The NSW Greens Political Donation Research Project also expressed concerns about the issue of sponsorship of some associated entities by companies, which provides an entitlement to access to party officials, and recommended that:

The definition of Associated Entities should be rewritten in order that they are clear and include all organisations that operate wholly, or to a significant extent, for the benefit of political parties – including companies or incorporated associations, trusts, charitable foundations, and unincorporated associations, societies, groups or clubs that actively participate in business, industrial or fundraising activities, or passively hold assets (including intellectual property) or liabilities of the political parties.<sup>62</sup>

---

59 Australian Electoral Commission, *Supplementary submission 19.1*, p. 8.

60 Australian Council of Trade Unions, *Submission 9*, p. 3.

61 Dr Joo-Cheong Tham, Submission to the Senate Finance and Public Administration Legislation Committee’s *Inquiry into the Electoral and Referendum Amendment (Electoral Integrity and Other Measures) Bill 2006*, 23 February 2006, cited in Australian Council of Trade Unions, *Submission 9*, p. 3.

62 NSW Greens Political Donation Research Project, *Submission 17*, pp. 2-3.



7.126 The NSW Greens Political Donation Research Project went on to detail in its submission a number of specific cases in which organisations that appeared to meet the definition of ‘associated entity’ in the Electoral Act had not been classified as such by the AEC. For example, the question was posed:

Why is the Progressive Business Association in Victoria a Labor associated entity when NSW Labor’s Business Dialogue [is] not? They both charge substantial amounts for membership packages which include considerable access to politicians.<sup>63</sup>

7.127 While a number of submissions raised the issue of the definition of associated entities under the Electoral Act, few proposed solutions to the identified weaknesses under the current system.

7.128 In its funding and disclosure report relating to the 2010 federal election, the AEC recommended that three elements of the definition of ‘associated entity’ in the Electoral Act be clarified, and also recommended the manner in which the clarification should take place. It made the following suggestions:

- ‘controlled’ – define as the right of a party to appoint a majority of directors, trustees or office bearers,
- ‘to a significant extent’ – define as the receipt by a political party of more than 50% of the distributed funds, entitlements or benefits enjoyed and/or services provided by the associated entity in a financial year, and
- ‘benefit’ – define as the receipt of favourable, non-commercial arrangements where the party or its members ultimately receives the benefit.<sup>64</sup>

7.129 Section 197 of the Queensland *Electoral Act 1992* defines an associated entity along the lines of the pre-2006 definition at the Commonwealth level, that is, operating wholly or to a significant extent for the benefit of a political party. This definition was inserted into the Queensland legislation based on that in the Commonwealth Electoral Act.

7.130 A clarification of some of the terms used in the definition may negate some of the issues that have been identified, as was inferred by the AEC.<sup>65</sup> This would reduce the administrative uncertainty that has resulted in the provisions regarding associated entities not operating as intended.

---

63 NSW Greens Political Donation Research Project, *Submission 17*, p. 8.

64 Australian Electoral Commission, *Election Funding and Disclosure Report: Federal Election 2010*, Commonwealth of Australia, p. 29.

65 Australian Electoral Commission, *Supplementary submission 19.1*, pp. 7-8.

## Conclusion

- 7.131 There is a lack of clarity in the definition of associated entity in the Electoral Act that could potentially result in its aims not being met and an inconsistent application.
- 7.132 The amendments to the definition that were implemented in 2006 to effectively broaden its scope resulted in a stronger disclosure scheme and reduced the potential for organisations or groups that are potentially 'associated entities' to go unnoticed.
- 7.133 The committee believes that persisting concerns can be overcome by providing legislative clarification regarding the definition. While the details of the clarification require in-depth consideration, there are some key issues that can be dealt with as a starting point.

## Recommendation 25

- 7.134 **The committee recommends that the *Commonwealth Electoral Act 1918* be amended to improve the clarity of the definition of 'Associated Entity'. Particular steps that could be taken might include the following:**
- **Defining 'controlled' as used in section 287(1)(a) to include the right of a party to appoint a majority of directors, trustees or office bearers;**
  - **Defining 'to a significant extent' as used in section 287(1)(b) to include the receipt of a political party of more than 50 per cent of the distributed funds, entitlements or benefits enjoyed and/or services provided by the associated entity in a financial year; and**
  - **Defining 'benefit' as used in section 287(1)(b) to include the receipt of favourable, non-commercial arrangements where the party or its members ultimately receives the benefit.**

## Compliance

- 8.1 Compliance and enforcement of political financing arrangements is central to the effectiveness of the overall scheme. There are a number of issues relating to compliance and enforcement in the context of political financing. However, based on the evidence received for the inquiry, the committee focussed its discussion on the need for compliance and enforcement measures to complement the principles and design of the broader funding and disclosure scheme; the need for effective mechanisms for prosecution; and the issues to be considered if major reforms to the wider system were to occur. These matters formed the basis for discussion in this chapter.
- 8.2 The importance of an effective enforcement and compliance scheme was highlighted in the *Electoral Reform Green Paper – Donations, Funding and Expenditure* (first Green Paper):
- To achieve real change in political practice, electoral reforms must be backed by an effective regulatory and enforcement regime, including penalties that those involved in the political system will take seriously, and which will penalise those involved in practices that breach electoral regulations.<sup>1</sup>
- 8.3 The current funding and disclosure scheme at the Commonwealth level is based on two elements. First, disclosure is designed with the threat of sanction through voting and ultimately the electoral outcome, as its primary enforcement strategy. The idea is that the electorate will not vote for a political party or candidate that does not comply with laws designed

---

<sup>1</sup> Commonwealth of Australia, *Electoral Reform Green Paper – Donations, Funding and Expenditure*, December 2008, p. 72.

to combat the potential for undue influence. The second element is the enforcement of the scheme through offences and imposing penalties.<sup>2</sup>

- 8.4 The current compliance and enforcement scheme operates on an *ex post facto* basis, which involves seeking to punish non-compliance, rather than compelling compliance at the time relevant actions are being undertaken.
- 8.5 It has been argued that the ‘lag’ in disclosure coupled with the minor penalties that currently apply mean that the threat of punishment does not act as an effective deterrent to non-compliance.<sup>3</sup> The underlying principles of the scheme – disclosure backed up by penalties to deter a breach, with the ultimate threat of sanction at the ballot box – are not supported by the design of the scheme itself. That is, disclosure happens on an *ex post facto* basis meaning that sanction from electors at the ballot box is not possible.
- 8.6 The Nationals argued that there is no need for a reform of the offences and penalties attached to breaches of funding and disclosure laws, because compliance levels are high and ‘deliberate breaches are rare’.<sup>4</sup> However, for disclosure returns relating to the 2007-2008 financial year, the AEC website shows 17 political parties as not having lodged a disclosure return as at the deadline of 20 October 2008. A breach of law, whether deliberate or through poor management, has technically occurred in each of these cases.<sup>5</sup>
- 8.7 Calls for reform in the area of enforcement and compliance of the Commonwealth political financing regime can be divided into two categories. Firstly, there is the option to make changes to improve the existing enforcement and compliance regime, if the broader scheme retains its current focus on transparency and accountability through disclosure. Such measures would include changes to render the design of the scheme more conducive to the principles and rationales that underpin it.
- 8.8 Secondly, there are the necessary changes to the compliance and enforcement scheme to align with the goals and direction of a revised scheme involving, for example, caps and bans. It would be important to ensure that such changes complement the principles driving reform of the broader funding and disclosure regime. That is, where a political financing regulatory system requires that something ‘not’ be done, such as

---

2 See generally Australian Electoral Commission, *Submission 19*.

3 See Australian Electoral Commission, *Submission 19*, p. 2.

4 National Party of Australia, *Submission 24*, p. 3.

5 AEC website, <<http://periodicdisclosures.aec.gov.au>Returns/10/late.pdf>> viewed 3 November 2011.

breaching a cap, the enforcement measures would be best suited to ensuring that the particular action is not taken, rather than punishing the behaviour if the action is undertaken.<sup>6</sup>

- 8.9 Consensus among key stakeholders for political financing is the best foundation for compliance because the key actors will be committed to upholding and adhering to the system.

## Improving the current system

- 8.10 There are two immediate issues with the current Commonwealth enforcement scheme that warrant consideration:
- the introduction of administrative penalties to increase administrative efficacy and address issues pertaining to low prosecution rates; and
  - the strengthening of penalties for those matters considered serious and/or involve a 'wilful' breach of the law.

## Administrative penalties

- 8.11 One way in which to improve the current system is to introduce administrative penalties to operate alongside the current criminal sanctions.
- 8.12 Administrative penalties would involve the imposition by the administering agency of sanctions for a breach of the relevant law without having to involve courts or tribunals. In practical terms, this could mean that the AEC could impose a penalty, for example, issuing a fine for a failure to lodge a disclosure return.
- 8.13 Currently, offences against Part XX of the *Commonwealth Electoral Act 1918* (Electoral Act) are all criminal offences. This means that if prosecution action is pursued, a brief of evidence must be compiled by the Australian Electoral Commission (AEC), which is then referred to the Commonwealth Director of Public Prosecutions (CDPP). The CDPP undertakes an assessment to determine whether there is sufficient evidence and public interest to prosecute.
- 8.14 The prosecution rate for failing to lodge a disclosure return under the Electoral Act is relatively low. In its supplementary submission, the AEC noted that while no convictions had been obtained in the past five years,

---

<sup>6</sup> Australian Electoral Commission, *Submission 19*, p. 4.

the CDPP in Queensland had found that there was sufficient evidence to pursue a case for failure to lodge a disclosure return and was prepared to issue a summons to commence proceedings. The AEC suggested that the low rate of prosecutions is due in part to the relatively weak penalties for offences under Part XX Electoral Act, which indicates to the CDPP that the offences are not serious, and that there will be limited public interest in pursuing prosecution.<sup>7</sup>

- 8.15 A shift to administrative penalties has been proposed as a means by which some of these challenges can be addressed. The AEC explained its rationale for supporting a move to administrative penalties for some offences, arguing that:

The addition of administrative penalties would assist the AEC to enforce compliance requirements without the necessity of referring all matters to the CDPP. It is expected that these types of administrative penalties would result in more timely compliance with disclosure provisions without creating an additional burden on the CDPP resources.<sup>8</sup>

- 8.16 The AEC suggested that offences under Part XX of the Electoral Act that could better operate as administrative ones were offences that were 'straightforward matters of fact'.<sup>9</sup> These could include:

- late lodgement of a disclosure return;
- failing to lodge a disclosure return; or
- lodgement of an incomplete return without meeting the requirements of section 318 of the Electoral Act.

- 8.17 The AEC could issue 'on-the-spot' administrative penalties, such as fines, where occurrences of non-compliance with the laws were found.<sup>10</sup> The refusal to comply with a notice issued under section 316 could include the penalty fine accumulating for each day the offence is active.

- 8.18 The AEC submitted that a move to administrative penalties for straightforward offences would be vital under a system requiring contemporaneous or continuous disclosure. This should help ensure that

---

7 Australian Electoral Commission, *Supplementary submission 19.1*, p. 3.

8 Australian Electoral Commission, *Supplementary submission 19.1*, p. 3.

9 Australian Electoral Commission, *Supplementary submission 19.1*, p. 3.

10 Australian Electoral Commission, *Supplementary submission 19.1*, p. 2.

just as disclosure occurs continuously, issues or failures can also be properly addressed in a timely and efficient manner.<sup>11</sup>

- 8.19 A risk in the context of a move to administrative penalties is the appearance of a reduction of the 'gravity' of a breach of the law. However, the AEC highlighted additional measures that could be taken to address this concern. It stated that:

...as the imposition of an administrative penalty is an administrative decision, it would be appropriate to have a review right for an aggrieved person to challenge the AEC decision in this area. Second, the AEC could be required to publish on the Internet and in the subsection 17(2) report (on the operation of the Funding and Disclosure scheme to the Parliament) a regular updated list of all penalties imposed for a breach of the reporting requirements. Any such information to be added to this list could only occur after any period to seek a review had expired.<sup>12</sup>

- 8.20 The first Green Paper outlined the different approaches that other countries have taken to devising effective penalty regimes for campaign financing. It stated that some nations have differentiated between 'corrupt practices' which 'warrant criminal sanctions', and 'illegal practices' which can be addressed through other mechanisms.<sup>13</sup> Such an approach received support in the First Report of the Joint Select Committee on Electoral Reform (JSCER) in 1983, in which it recommended that there be no penalty for inadvertent breaches of the law, but that severe penalties be attached to the 'wilful filing of false or incorrect returns'.<sup>14</sup>

- 8.21 The first Green Paper provided Canada as an example of a jurisdiction that has effectively revised its enforcement regime and indicated that the Canadian system included:

...a range of administrative options which are based on the proposition that most participants in the electoral process want to comply with the law and will react to correct their behaviour to ensure conformity with the law. Canada continues to have criminal penalties for serious offences; however it has also

---

11 Australian Electoral Commission, *Supplementary submission 19.3*, p. 12.

12 Australian Electoral Commission, *Supplementary submission 19.3*, p. 12.

13 Commonwealth of Australia, *Electoral Reform Green Paper – Donations, Funding and Expenditure*, December 2008, p. 70.

14 Joint Select Committee on Electoral Reform, *First Report*, September 1983, Commonwealth Parliament of Australia, p. 168, paragraph 10.24, cited in Australian Electoral Commission, *Supplementary submission 19.3*, p. 10.

established a range of 'administrative incentives' to encourage compliance.<sup>15</sup>

- 8.22 Among the penalties under the Canadian scheme are the powers to deregister a political party and liquidate its assets, where the party provides false or misleading information or fails to provide a financial transactions return or related documents.<sup>16</sup>
- 8.23 An additional consideration where a shift to administrative penalties takes place is whether those who may be issued with an administrative penalty should have a right of review of the decision, as raised by the AEC above. At the federal level in Australia, certain decisions such as an authorised officer serving a notice to require a person to produce documents or give evidence regarding whether a particular entity is an associated entity, allow the person issued with a notice the right to request a review.<sup>17</sup>
- 8.24 Certain decisions under Part XI of the Electoral Act, which deals with the registration of political parties, also give a person 'affected by' the decision the right to seek a review by the full Electoral Commission.<sup>18</sup> However, matters that would be considered 'straightforward matters of fact', such as failing to respond to a notice of review issued under section 138A do not give rise to a right of review by the Electoral Commission.<sup>19</sup>
- 8.25 Currently, even if a right of review to an AEC decision is not explicitly provided for, an individual may challenge the imposition of a penalty by the AEC by seeking a review of the decision by the Federal Court under section 5 of the *Administrative Decisions (Judicial Review) Act 1977*.

## Strengthening current penalties

- 8.26 The accompanying argument in support of a move to administrative penalties for straightforward matters is that the penalties for the other offences under Part XX of the Electoral Act that are classified as more 'serious', such as lodgement of a false and misleading disclosure return, should be strengthened. The AEC advised that one way to address

---

15 Commonwealth of Australia, *Electoral Reform Green Paper – Donations, Funding and Expenditure*, December 2008, p. 70. See also R Landry, 'Enforcement of Canada Elections Act', *Electoral Insight*, Vol. 5, No. 1, March 2003, pp. 2-6, <[http://www.elections.ca/res/eim/article\\_search/default.asp?textonly=false&lang=e](http://www.elections.ca/res/eim/article_search/default.asp?textonly=false&lang=e)> viewed 21 November 2011.

16 *Canada Elections Act*, ss. 501(2) and 501(3).

17 *Commonwealth Electoral Act 1918*, s. 316(3B).

18 See generally *Commonwealth Electoral Act 1918*, s. 141.

19 See generally *Commonwealth Electoral Act 1918*, s. 141.



concerns about enforcement was to reconsider the severity of offences under Part XX of the Electoral Act.<sup>20</sup>

- 8.27 The issue of the weak penalties for offences against the Commonwealth political financing arrangements has long featured in debate in the area. The *Advisory report on the Commonwealth Electoral Amendment (Political Donations and Other Measures) Bill 2008* (2008 Advisory Report) identified low penalties as a problem that the bill was seeking to rectify. The previous committee that examined the bill noted that:

Since 1983, the real value of a number of financial penalties has declined over time, to a level that is less than 40 per cent of its value in 1983. For example, the penalty attached to the failure to furnish a return has remained at \$1,000 in nominal terms but has declined to only \$382 in real terms in 2008.<sup>21</sup>

- 8.28 The fines of approximately \$1 000 to \$10 000 that serve as penalties for most offences under section 315 and section 316 have remained at the same level since the inception of the Commonwealth political financing scheme in 1984. The disclosure threshold for the 2010-2011 financial year is \$11 500, which means that a wealthy person can donate amounts greater than this, and submit a return that is 'false or misleading in a material particular' and be subject to a fine of just \$5 000 if convicted.<sup>22</sup> Thus the potential for this to act as a deterrent for a donor determined to obtain access or exercise influence through political donations is limited.
- 8.29 Coupled with a shift of offences that are straightforward matters of fact into administrative offences, the strengthening of penalties for offences against the funding and disclosure provisions in the Electoral Act may play a key role in indicating to the CDPP the gravity with which such offences should be viewed, and accordingly, potentially increase the chance of prosecution.
- 8.30 The AEC argued that the reason for low prosecution rates stemmed from the relatively weak penalties for offences against Part XX indicate to the CDPP that the offences are not very serious.<sup>23</sup> It stated:

...in comparison to other penalties, they are relatively low. That then takes you into a consideration with the DPP that, against all

---

20 Australian Electoral Commission, *Supplementary submission 19*, p. 5.

21 Joint Standing Committee on Electoral Matters, *Advisory report on the Commonwealth Electoral Amendment (Political Donations and Other Measures) Bill 2008*, October 2008, Commonwealth Parliament of Australia, p. 66.

22 *Commonwealth Electoral Act 1918*, s. 315(4).

23 Australian Electoral Commission, *Supplementary submission 19.1*, p. 2.

of the other matters that they are prosecuting, our matters appear relatively low priority from the perspective of public interest and what can be served.<sup>24</sup>

8.31 It has been suggested that ‘electoral integrity depends not on the willing compliance of the ethical, but on the enforced compliance of the unethical’.<sup>25</sup> The first Green Paper stated that:

Australia’s electoral laws provide the framework for free and fair elections and protect the integrity of the electoral system and the faith Australians have in the process of democratically electing their government. Deliberate contravention of those laws strikes at the heart of democracy, and by undermining the legitimacy of the elected government, undermines governance itself. Such breaches must be acted on and penalised.<sup>26</sup>

8.32 There are three options for strengthening the penalties under the Electoral Act for breaches of the funding and disclosure laws:

- increase the financial penalties;
- include imprisonment as a penalty for additional offences; or
- implement both increased financial penalties and add terms of imprisonment as a penalty for offences deemed more ‘serious’.

8.33 The Commonwealth Electoral Amendment (Political Donations and Other Measures) Bill 2010 (the 2010 bill) seeks to implement harsher penalties in respect of offences under the Commonwealth political financing regime relating to claims for election funding. In addition, the bill aims to strengthen penalties in relation to:

- failure to furnish a return;
- furnishing an incomplete return;
- failure to retain records;
- lodging a claim or return that is known to be false or misleading in a material particular;

---

24 Mr Ed Killesteyn, Electoral Commissioner, Australian Electoral Commission, *Committee Hansard*, 21 September 2011, p. 11.

25 B Edgman, ‘Political Funding: Challenges of Enforcement and Compliance’, Paper prepared for the Challenges of Electoral Democracy Workshop, University of Melbourne, July 2011, p. 2.

26 Commonwealth of Australia, *Electoral Reform Green Paper – Donations, Funding and Expenditure*, December 2008, p. 72.

- providing information to another that is false or misleading in a material particular in relation to the making a claim or the furnishing of a return; and
  - failure or refusal to comply with notices relating to AEC-authorized investigations and knowingly giving false or misleading evidence required for such investigations.<sup>27</sup>
- 8.34 The United States has taken the approach of dividing offences against campaign finance laws into offences committed by ‘mistake’ or unintentionally, and purposeful breaches of the law. Offences committed by mistake are handled administratively, while offences committed with intent can be pursued through criminal prosecution.<sup>28</sup>
- 8.35 The 2010 bill proposes to remove the status of offences under the funding and disclosure provisions as strict liability ones, which means an intention element will need to be proven.

## Conclusion

- 8.36 The low penalties for offences relating to the funding and disclosure regime, coupled with the Prosecution Policy of the Commonwealth Director of Public Prosecutions which requires consideration of the public interest in pursuing prosecution, have made it difficult to obtain criminal conviction for breaches of the funding and disclosure provisions in the Electoral Act.
- 8.37 International examples provide some guidance on the way in which dividing the administrative penalties and criminal penalties can be done. Greater efficiencies in enforcement can be achieved if some offences that constitute ‘straightforward matters of fact’ are subject to administrative penalties in a system of contemporaneous disclosure.
- 8.38 The committee supports a shift to administrative penalties for certain more straightforward offences. The offences that could reasonably have administrative penalties apply are:
- failure to lodge a disclosure return by the due date (section 315(1));

---

27 Parliamentary Library, ‘Commonwealth Electoral Amendment (Political Donations and Other Measures) Bill 2010’, *Bills Digest No. 43, 2010-2011*, 17 November 2010, p. 22.

28 S. Nelson ‘Election Law Enforcement: International Comparisons’, *Electoral Insight, Vol. 5, No. 1*, March 2003, pp. 2-6, available at <[http://www.elections.ca/res/eim/article\\_search/default.asp?textonly=false&lang=e](http://www.elections.ca/res/eim/article_search/default.asp?textonly=false&lang=e)> viewed 21 November 2011.

- lodging an incomplete return without complying with section 318 (section 315(2)); and
- refusal to comply with a notice issued under section 316 (section 316(5)).

### **Recommendation 26**

8.39 **The committee recommends that the *Commonwealth Electoral Act 1918* be amended, as necessary, to make offences classified as ‘straightforward matters of fact’ subject to administrative penalties issued by the Australian Electoral Commission. The issuance of an administrative penalty should be accompanied by a mechanism for internal review.**

8.40 The committee supports the measures in the Commonwealth Electoral Amendment (Political Donations and Other Measures) Bill 2010 that seek to implement harsher penalties in relation to offences against Part XX of the Electoral Act. The implementation of harsher penalties should act as a deterrent to breaching the Commonwealth funding and disclosure laws, and apply to the offences classified as more ‘serious’ breaches.

### **Recommendation 27**

8.41 **The committee recommends that the penalties in relation to offences that are classified as more ‘serious’ should be strengthened along the lines proposed in the Commonwealth Electoral Amendment (Political Donations and Other Measures) Bill 2010.**

## **Compliance review powers**

8.42 The AEC conducts compliance reviews of federal registered political parties, their state branches and associated entities under the power conferred in section 316(2A) of the (Electoral Act). The purpose of these reviews is to assess each political party and associated entity’s adherence to the disclosure laws. Every political party and its associated entities are generally reviewed once in a parliamentary cycle. The AEC issues a report on its findings following the compliance review to the political party agent or associated entity’s financial controller, and if any problems are

identified, the AEC can request that an amendment be submitted, or that evidence be provided refuting the AEC's findings.<sup>29</sup>

- 8.43 Currently the AEC does not have any power to conduct compliance reviews of candidates and Senate groups. Given that most endorsed candidates incur expenditure and receive donations through the political party itself, *prima facie*, the value of conferring the AEC with this power is limited.
- 8.44 The AEC is also missing the power to conduct reviews of elected members. In fact, elected members, including Independents do not have disclosure requirements and the trend in the Electoral Act has generally been to exempt Independent members (following the end of their candidacy) from disclosure. In NSW legislation the inspection powers extend to certain documents relating to elected members, and accordingly, a matter for broader consideration is whether there should also be a trend in this direction at the Commonwealth level.
- 8.45 Given the absence of regulation regarding Independent members once they are elected, in some circumstances there may be value in being able to conduct a compliance review of an individual candidate or Senate group, including Independents, particularly where large amounts of money are in play.
- 8.46 The NSW jurisdiction provides inspectors under its legislation with the power to inspect the books of candidates and groups. Section 110(2) of the *NSW Election Funding, Expenditure and Disclosures Act 1981* provides 'inspectors' under the legislation to inspect or take extracts of any bankers book kept by or on behalf of and to the extent they relate to a party, elected member, group or candidate or agent for any of these, and includes a former party, elected member, group, candidate or agent.
- 8.47 Inspectors can 'request' that documents are produced and make examinations.<sup>30</sup> There are financial penalties for any person that refuses or intentionally delays admission of an inspector, intentionally obstructs an inspector, or fails to comply with a request made by an inspector.<sup>31</sup> This is in the context of a more complex system.

---

29 AEC website, <[http://www.aec.gov.au/Parties\\_and\\_Representatives/compliance/compliance-reviews.htm](http://www.aec.gov.au/Parties_and_Representatives/compliance/compliance-reviews.htm)> viewed 26 October 2011.

30 *Election Funding, Expenditure and Disclosures Act 1981*, s. 110(3).

31 *Election Funding, Expenditure and Disclosures Act 1981*, s. 110(4).

## Conclusion

- 8.48 The absence of a power for the Australian Electoral Commission to conduct compliance reviews on candidates and Senate groups is contrary to the principles of transparency and accountability on which the Commonwealth political financing regime was built.
- 8.49 As most significant gifts and expenditure by endorsed candidates occurs through the political party, the provision of a broad power to conduct compliance reviews of all candidates and Senate groups may not be an effective solution. However, there is merit in providing the AEC with the power to conduct compliance reviews of candidates and Senate groups where there are receipts of greater than a prescribed amount. This would then cover Independents, Senate groups and candidates. The figure could be in line with that which applies to donors, \$25 000.

### Recommendation 28

- 8.50 **The committee recommends that the *Commonwealth Electoral Act 1918* be amended, as necessary, to provide the Australian Electoral Commission with the power to conduct compliance reviews and serve notices on candidates and Senate groups, in addition to federal registered political parties, their state branches and associated entities.**
- 8.51 The compliance review function is an important mechanism to help ensure that those involved in the political and electoral processes are meeting their disclosure and reporting obligations. To enhance the transparency and accountability of this process, the Australian Electoral Commission should make all compliance reviews and details of final determinations available on its website.

### Recommendation 29

- 8.52 **The committee recommends that the *Commonwealth Electoral Act 1918* be amended, as necessary, to require the Australian Electoral Commission to make available on its website compliance review reports and details of final determinations on reviews.**

## Further reform options

### Challenges

8.53 The AEC indicated in its submission that the current *ex post facto* approach to punishing non-compliance with the Commonwealth political financing scheme would not be effective if legislative changes were made which involved caps and bans on donations from certain sources.<sup>32</sup> For example, a breach of an expenditure cap or acceptance of an illegal donation would only become evident after votes had already been cast.

8.54 Due to the current delay in relevant disclosure – political party returns that will cover the period in which the 2010 federal election was held will only be released to the public in February 2012 – a breach of an expenditure cap or acceptance of an illegal donation would only be evident well after votes had already been cast if this disclosure system was maintained with such a scheme. The AEC explained the issue in its submission, stating that:

The current approach under Part XX of the Electoral Act relies on identifying, investigating and then prosecuting to enforce penalties for offences committed. It is a traditional approach of punishing non-compliance rather than contemporaneously enforcing compliance. This essentially post-event strategy of enforcement through a penalty regime is perhaps best targeted at compliance behaviour that requires something to be done (i.e. make disclosures) rather than behaviour that requires something not be done (i.e. not exceed donation or expenditure caps).<sup>33</sup>

8.55 The AEC argued that if a shift to a system of caps and bans was to take place, then the need for the implementation of a contemporaneous reporting requirement and an IT system to facilitate the administration of such a scheme would be necessary. The AEC submitted that:

...the accountability imposed by financial disclosures can ultimately only be exercised at the ballot box. To achieve this goal necessitates material disclosures being made public in a timely fashion. In an election campaign, this would require something as close to contemporaneous disclosure as practicable. The only means that this could be achieved [sic] would be for all disclosures to be made via an online lodgement system that then would allow

---

32 Australian Electoral Commission, *Submission 19*, p. 4.

33 Australian Electoral Commission, *Submission 19*, p. 4.

the AEC to release those disclosures without delay.

(A continuation of allowing disclosures to be lodged in paper format necessitates the AEC manually data-entering that information, which could take many days.)<sup>34</sup>

- 8.56 In addition, the AEC highlighted the need for an effective enforcement scheme to include penalties that target the motivation for the crime. For example, the motivation for spending more than is allowed under an expenditure cap is to win the seat in which the cap is exceeded. The AEC noted that where the penalty is a fine, a wealthy person or group that is able to absorb the cost can easily breach expenditure caps that act as a limitation to other groups.<sup>35</sup> A more effective penalty could be to prevent the person that breaches the cap from taking up their seat in Parliament, as is currently applied in Canada. The AEC submitted that:

...presumably a candidate's motivation to spend above an expenditure cap would usually be to win a seat. If the penalty included action that prevented or limited the ability of the candidate to occupy that seat in the Parliament, then breaking the expenditure cap ultimately would not deliver the candidate the reward of sitting in Parliament and so would make overspending far riskier, and therefore a much less appealing strategy.<sup>36</sup>

- 8.57 The Australian Greens also expressed support for targeting motivations for breaches of funding and disclosure laws. However, the AEC noted that while devising penalties that target the motivation for the crime is relatively simple where political parties are concerned, the development of equally effective penalties for offences by third parties may prove more difficult, primarily because the motivation for each third party participating in the political arena or breaching funding and disclosure laws is more difficult to pinpoint. The AEC submitted that:

Not everyone, however, will have a motivation that can be addressed in such a direct manner. Third parties particularly will fall into such a category, as they are not personally contesting an election and the outcome they are seeking is not always so readily identifiable or tangible.<sup>37</sup>

- 8.58 However, in practice an *ex post facto* approach to disclosure and compliance could result in such penalties not serving their purpose. In
- 

34 Australian Electoral Commission, *Submission 19*, p. 12.

35 Australian Electoral Commission, *Submission 19*, p. 5.

36 Australian Electoral Commission, *Submission 19*, p. 5.

37 Australian Electoral Commission, *Submission 19*, p. 5.



Canada, a case has been pending in relation to the reimbursement of election expenses by political parties and candidates since 2006. While appeals were progressing, the relevant members continued to sit in their seats in the Canadian parliament. A further election was held due to 'deadlocking' of various committees on the issue.<sup>38</sup>

8.59 Accordingly, the development of appropriate and effective penalties within a system involving increased regulation presents significant difficulties. The Canadian model discussed above provides some guidance, but a number of issues need to be addressed to create an enforcement and compliance scheme that is truly effective in an increased regulatory context.

8.60 In relation to the compliance and enforcement scheme in practice under the NSW system, the AEC stated:

There is little by way of new or innovative compliance strategies in New South Wales or Queensland. They are still largely dependent upon a penalty-and-offence regime of punishing noncompliance after the event...There is little in either of those two pieces of legislation that seeks to enforce compliance or compel compliance at the time. It is waiting to investigate noncompliance and prosecute offences after the event.<sup>39</sup>

8.61 The NSW regime also employs a mechanism known as 'compliance agreements'. Section 110B of the *Election Funding, Expenditure and Disclosures Act 1981* provides the Election Funding Authority with the discretion to enter agreements with political parties to remedy non-compliance with the legislation or ensuring compliance with the legislation.

8.62 However the penalty for breaching a cap is still a fine, with false and misleading information offences carrying the potential for 12 months imprisonment. Disclosure still takes place after the electoral event. As these changes have only been in effect for approximately one year, it is too soon to determine what issues may have arisen.

---

38 See *Chief Electoral Officer of Canada v LG (Gerry) Callaghan in his capacity as agent for Robert Campbell, and David Pallet in his capacity as official agent for Dan Mailer* 2011 FCA 74, <<http://www.scribd.com/doc/49807655/Full-Ruling>> viewed 4 November 2011.

39 Mr Brad Edgman, Australian Electoral Commission, *Committee Hansard*, 8 August 2011, p. 3.

## Proactive enforcement

- 8.63 Where a move to a system involving caps and bans may occur, consideration could be given to a complete shift in approaches to penalties, compliance and enforcement in the context of political financing to proactive enforcement. Proactive enforcement models in the area of political financing can involve the completion of certain 'checks' to ensure a cap has not been reached or exceeded or that the legislation is not being breached before, for example, expenditure can be incurred. Such models have been described as a 'solution of speed bumps rather than speed cameras'.<sup>40</sup>
- 8.64 If an increased regulatory scheme for political financing requires, for example, a cap not to be breached, the mechanisms for enforcement must be designed to ensure that action cannot be carried out.
- 8.65 In a paper prepared for the purposes of the Challenges of Electoral Democracy Workshop held at the University of Melbourne Law School in July 2011, Mr Brad Edgman, Director of financial compliance in the AEC's Funding and Disclosure section provided an example of the way in which such a model could operate:
- Registration of third parties could be enlisted as a tool in enforcing compliance with campaign expenditure caps. This would require media outlets to first verify that an entity is registered to place advertisements (i.e. incur expenditure above a threshold) and that their cumulative spend remains under the cap at the point it is to be incurred. This would require checking registered details via a website, which could extend to who is authorised to incur expenditure on behalf of the third party, and to input the value of the advertising (through a secure logon issued to the media outlet). Only if these conditions are met should the media outlet be legally entitled to run/place the advertisement. Penalties should apply to media outlets that do not abide by these procedures.<sup>41</sup>
- 8.66 In its submission, the AEC acknowledged that such models of enforcement could be perceived as overly intrusive or bureaucratic, and as potentially impeding the freedom of political communication to an unnecessary and unwarranted extent, so far as it applies to third parties and political parties.<sup>42</sup> It has also been argued that there is a need to
- 

40 B. Edgman, 'Political Funding: Challenges of Enforcement and Compliance', Paper delivered at the Challenges of Electoral Democracy Workshop, University of Melbourne, July 2011, p. 1.

41 B. Edgman, 'Political Funding: Challenges of Enforcement and Compliance', Paper delivered at the Challenges of Electoral Democracy Workshop, University of Melbourne, July 2011, p. 3.

42 Australian Electoral Commission, *Submission 19*, p. 6.

balance the delivery of an effective solution and placing restrictions on participants in the political process.<sup>43</sup>

- 8.67 Proactive enforcement necessarily requires the consideration of measures to ensure laws are not broken as an integral part of any model of political financing regulation,<sup>44</sup> rather than as a matter to be dealt with once the rest of the scheme has already been designed. The AEC noted in relation to the reforms recently implemented in NSW and Queensland that this approach to enforcement had not been taken, stating that:

...with these new schemes... the outcomes they seek to achieve are all premised on full compliance... There is little by way of new or innovative compliance strategies... They are still largely dependent upon a penalty-and-offence regime of punishing noncompliance after the event. With donation and expenditure caps in particular, when trying to level the playing field and keep the relativities between the players, [third parties and other participants] become players within the integrity of the election outcome itself. There is little in either of those two pieces of legislation that seeks to enforce compliance or compel compliance at the time.<sup>45</sup>

## Conclusion

- 8.68 Compliance and enforcement mechanisms play an important role in the success of any regulatory framework for political financing.
- 8.69 If significant changes to the funding arrangements are to occur at the Commonwealth level, a complete overhaul of the enforcement scheme would also need to occur. However, a substantial reform of political financing arrangements presents significant challenges, particularly where third parties are concerned. The administering authority having more options for addressing non-compliance, rather than simply punishing non-compliance, would better support the aims of transparency and accountability of the funding and disclosure system.
- 8.70 The committee believes that proactive enforcement mechanisms are likely to be an effective measure in a system with increased regulation of the activities of political actors. However, it is important to strike an effective and workable balance between competing factors, and for the proactive

---

43 B. Edgman 'Political Funding: Challenges of Enforcement and Compliance', Paper delivered at the Challenges of Electoral Democracy Workshop, University of Melbourne, July 2011, p. 1.

44 B. Edgman, 'Political Funding: Challenges of Enforcement and Compliance', Paper delivered at the Challenges of Electoral Democracy Workshop, University of Melbourne, July 2011, p. 1.

45 Mr Brad Edgman, Australian Electoral Commission, *Committee Hansard*, 8 August 2011, p. 3.

enforcement scheme to avoid being overly bureaucratic while also meeting its aims.

- 8.71 Thorough investigation, consultation with experts and planning are essential if proactive enforcement mechanisms are to be pursued.

## Relationships between federal, and state and territory arrangements

- 9.1 Evidence received by the committee suggested that the harmonisation of federal, and state and territory political financing arrangements was seen as a feasible option to address concerns that arise in relation to having different systems in place. However, if this is not possible at this time, there is support for ensuring there is a clear distinction between the responsibilities of federal, and state and territory administering bodies, and for seeking opportunities for cooperation on specific matters.

### Background

- 9.2 Currently, in addition to the Commonwealth arrangements, some of the Australian states and territories – New South Wales, Queensland, the Australian Capital Territory, Tasmania and Western Australia – have funding and disclosure schemes that apply to elections and related activities within their respective jurisdictions.
- 9.3 The *Electoral Reform Green Paper – Donations, Funding and Expenditure* (first Green Paper) discussed the issue of different systems operating at the federal, and state and territory levels. It was stated that:

These schemes have all largely developed by reference to each other and consequently are broadly quite similar in objectives and approaches. Nevertheless, there are some significant differences that have evolved independently of each other in response to local factors. An important point of difference arises in the disclosure thresholds that apply, with the major deviation being in the

federal scheme's current threshold of \$10,900 which is many times higher than that applying in any of the state or territory schemes.<sup>1</sup>

- 9.4 It has been argued that having two different layers of arrangements can be confusing and impose additional administrative burdens on groups and individuals with reporting obligations – and in some cases on the administrators of those systems. There is also the challenge in a federal system such as Australia's that changes made to arrangements at one level of government may have implications for another. This is a particular concern in cases where a decision taken at one level restricts or imposes a burden on individuals or groups engaging in the political process at other levels.
- 9.5 It is generally agreed that harmonisation of political financing arrangements between federal, and state and territory levels of government is desirable. However, achieving greater consistency between these systems has proven to be challenging when it comes to electoral matters. With options for reform still under consideration at the federal level, and significant reforms already undertaken and continuing in New South Wales and Queensland, as outlined in Chapter 2, Australia's systems for funding and disclosure seem to be diverging rather than harmonising.

## **Support for harmonisation**

- 9.6 Submitters to the inquiry suggested that different system requirements can create confusion amongst groups and individuals with reporting obligations, especially if disclosure and reporting requirements are different at the federal, and state or territory level. The administrative burden on responsible persons in keeping up with and meeting the requirements was also raised as a concern.
- 9.7 It was suggested that one of the effects of the different Commonwealth, and state and territory arrangements has been the potential overlap between disclosure requirements and their administration in the different jurisdictions.

---

1 Commonwealth of Australia, *Electoral Reform Green Paper – Donations, Funding and Expenditure*, December 2008, p. 24.

9.8 The Australian Electoral Commission (AEC) expressed concern about potential overlap between different jurisdictions, stating that:

Perhaps more fundamentally than possibly seeking harmonisation, consideration will need to be given to the effects of overlapping provisions.<sup>2</sup>

9.9 This concern emerged at the Joint Standing Committee on Electoral Matters (JSCEM) Roundtable discussion on the first Green Paper. For example, a participant expressed his concern about the element of confusion that can be associated with the current arrangements and commented that:

Harmonisation is essential for no other reason than you look at the definition of 'expenditure' and that blurs or includes state or federal politicians. Just speaking on behalf of the punter in our office who has to do the returns, it is a very annoying compliance cost to get your head around the different regimes and to try to comply with them all. It would be good if we could do one set of compliance.<sup>3</sup>

9.10 At the hearing on 14 September 2011, Mr Paul Neville MP, the Member for Hinkler appeared in a private capacity to share his experience of having the details of specific payments queried by the Electoral Commission of Queensland. The payment queried that is relevant to this discussion is a fee that Queensland Liberal National Party members pay to their head office for administrative purposes. Mr Neville commented that:

I have no problems with transparency and accountability, but I felt that that was an intrusion. Those are arrangements between me, a federal member of parliament, and my state head office over matters federal. I do not know exactly where the Electoral Commission of Queensland got the information from. They either got my returns from the federal election or the LNP party's returns, went through them, picked items out and then went about querying them. To me, that is almost a form of double jeopardy. Do we accept a situation where the state electoral commissions can double-guess the federal process?<sup>4</sup>

---

2 Australian Electoral Commission, *Submission 19*, p. 15.

3 Dr Gregory Ogle, The Wilderness Society, Roundtable discussion on the first Electoral Reform Green Paper – Donations, Funding and Expenditure, *Committee Hansard*, 16 April 2009, p. 42.

4 Mr Paul Neville MP, Member for Hinkler, Private capacity, *Committee Hansard*, 14 September 2011, p. 1.

- 9.11 Mr Neville confirmed that once the nature of the payment had been explained the matter was resolved. However, he felt the incident highlighted the need for greater clarity between state and federal requirements and administrative responsibilities.
- 9.12 Subsequent discussion at the hearing also indicated that the incident could also be viewed in a positive light – as an example of transparency at work, where the state administering body had identified and queried the nature of a specific payment, and then accepted the answer when it was explained to be a matter for federal jurisdiction.<sup>5</sup>
- 9.13 Mr Andrew Murray, a former Democrats Senator, in his submission to the first Green Paper, argued that while harmonisation represented a challenge for reformers, it was possible. He observed that:

...in the Green Paper is expressed the hope that if electoral reform does not achieve harmonisation, at least it might result in greater consistency. Such a minimalist hope is undoubtedly prompted by the difficulty facing any reformer of achieving significant change in the field of electoral matters, where vested interests hold such strong sway.

Such a view may be too pessimistic. As in other countries, the institutional self-interest of the political establishment can be overcome to advance the reforms required to implement a much improved system of accountability and transparency in political funding and disclosure. There are already signs of willingness to consider meaningful change in Australia, consequent to media and public pressure, and to internal party calls for reform.<sup>6</sup>

- 9.14 The Liberal Party of Australia also highlighted the importance of considering options for harmonisation when undertaking the broader process of reform:

It would assist in simplifying the administration of political parties if any changes at the federal level were administered in a way which did not lead to unnecessary duplication and complexity in compliance obligations between State and Federal levels.<sup>7</sup>

---

5 See discussion in *Committee Hansard*, 14 September 2011, pp. 1-2.

6 Mr Andrew Murray, *Submission 5* to the Electoral Reform Green Paper – Donations, Funding and Expenditure, December 2008, p. 9.

7 Liberal Party of Australia, *Submission 25*, p. 3.



## Key issues

### Consensus

- 9.15 While a system developed by consensus between the Commonwealth, and states and territory governments was presented as the 'ideal' option, its proponents, in the course of this inquiry and in the wider debate, generally conceded that this was not likely at the current time.
- 9.16 A single national funding and disclosure system with a single administering body could help address concerns about confusion; the administrative burden on individuals, political parties and other groups with reporting obligations; and federalism issues. Mr Murray argued that such an arrangement would also have practical and cost saving benefits, commenting that:
- Savings and efficiencies would result from one rather than nine laws and nine electoral commissions. A similar argument applies for the regulation of political participants and for funding and expenditure.<sup>8</sup>
- 9.17 Mr Murray acknowledged that such an approach would need the agreement of all parties in order to be effective. He stated that:
- Political parties could be forced into a federal regulatory regime by the simple device of requiring all parties desirous of public funding to be an incorporated entity subject to the federal Corporations law. Such a course of action would be unwise if there was a strong reaction and resistance from the states and territories. Permanent change is achieved when the transfer of powers is consensual and based on sound policy considerations.<sup>9</sup>
- 9.18 Further, Professor Twomey outlined three benefits that could be derived if such consensus could be achieved:
- Firstly, it would eliminate some of the constitutional problems that could arise;
  - Secondly, a uniform approach would be more effective in addressing some of the potential for circumventing requirements that exists when

---

8 Mr Andrew Murray, *Submission 5* to the Electoral Reform Green Paper – Donations, Funding and Expenditure, December 2008, p. 10.

9 Mr Andrew Murray, *Submission 5* to the Electoral Reform Green Paper – Donations, Funding and Expenditure, December 2008, p. 11.

different system are operating at the federal and state government levels, because 'if you impose limitations at one level and they do not exist at the other, the money comes back in through the back door and the regulation tends to be ineffective. That is the major problem in the United States.';

- Thirdly, it will improve administrative efficiency and reduce administrative burden, as 'a single political party that operates at the state and Commonwealth level only has one set of administrative rules to comply with, it is going to be much more efficient and easy for them to operate'.<sup>10</sup>

9.19 However, it is clear that, while desirable, much work remains to be done on reaching consensus between key stakeholders in obtaining comprehensive reform based on cooperation on these issues across Australia.

## Constitutional and federalism issues

9.20 As discussed above, Professor Anne Twomey cautioned that constitutional issues could arise if the Commonwealth sought to impose a uniform system of funding and disclosure laws on the states.<sup>11</sup>

9.21 Concerns about federalism issues – the need to consider the implications that changes at one level of government may have on the exercise of political freedoms at another level – were also raised. Banning donations from certain industry groups provides an example of the type of problems that may arise.

9.22 Professor Twomey noted that when New South Wales and Queensland were introducing bans on donations, they were careful to consider the possible implications at the Commonwealth level. She observed that:

...both of the states were very conscious of the fact that if they legislated to ban donations or do anything in a way that affected political parties supporting the Commonwealth campaigns that that would be problematic constitutionally. So they deliberately put in provisions to say that these limitations only applied with respect to special accounts that had to be established for the funding of state political campaigns.<sup>12</sup>

---

10 Professor Anne Twomey, Private capacity, *Committee Hansard*, 9 August 2011, p. 38.

11 Professor Anne Twomey, Private capacity, *Committee Hansard*, 9 August 2011, p. 38.

12 Professor Anne Twomey, Private capacity, *Committee Hansard*, 9 August 2011, p. 38.

9.23 When questioned about Senator Bob Brown's Commonwealth Electoral Amendment (Tobacco Industry Donations) Bill 2011, which seeks to create offences to prohibit political parties or candidates from receiving donations from manufacturers or wholesalers of tobacco products, Professor Twomey observed that the bill, as it currently stands, would have implications at the state level. She commented that:

I note that in the tobacco bill the proposal does not require particular Commonwealth political campaigns to be set up. So the ban in this proposed bill would apply to all the states and state political party branches with respect to their funding of state campaigns. That is when you start getting into trouble when your Commonwealth legislation is impinging on state elections and vice versa – if your state legislation is impinging on Commonwealth elections.<sup>13</sup>

9.24 This highlights some of the serious difficulties that may arise and the necessity to ensure that in a federal system any significant changes to funding and disclosure arrangements must take into account the implications on other levels of government.

9.25 In Australia's federal system, the relationship between the Commonwealth, and states and territories reflects the nature of the funding and disclosure system itself, as actors in the electoral arena cannot be easily compartmentalised and actions taken in one area may have unintended and unanticipated effects in another. The challenge for reformers and administrators is to adopt a holistic approach, wherever possible, to maximise desired objectives and minimise any negative effects.

9.26 Professor Twomey agreed that a single system addressing political financing issues would be desirable, but noted that there were challenges to address before greater harmonisation could be achieved.<sup>14</sup> She advised the committee that:

Constitutionally, I do not think that can be imposed by the Commonwealth. Ideally, one would have a cooperative scheme where the states and the Commonwealth come together, reach an agreement and enact a form of uniform legislation, perhaps with one jurisdiction taking the lead and the others adopting mirror legislation – something of that kind.<sup>15</sup>

---

13 Professor Anne Twomey, Private capacity, *Committee Hansard*, 9 August 2011, p. 38.

14 Professor Anne Twomey, Private capacity, *Committee Hansard*, 9 August 2011, p. 38.

15 Professor Anne Twomey, Private capacity, *Committee Hansard*, 9 August 2011, p. 38.

9.27 However the genuine relevance of the concept of federalism to political financing regulation was questioned by Mr Murray. He further stressed the need to simplify the laws and outlined how the arguments put forward against harmonisation by proponents of federalism could be overcome. Mr Murray argued for a more comprehensive review of the federal and state relationship, stating:

I ask a fundamental question in my submission: what is national and what is federal? I actually think harmonisation is a bad second best in this particular circumstance. I argue that there is only one system that is genuinely federal, and that is electoral systems; constituencies, whether you have an Upper House or not with fixed terms and all that is up to the nine individual jurisdictions. But the conduct for elections, the regulation of political participants and funding and expenditure, I argue, all should be national. I would urge the minister to ask the Council of Australian Governments to step back and ask themselves the question: what is federal and what is national? And having agreed what is national, decide the principles that they would support in a national scheme. It is much easier and much simpler than trying to harmonise systems.<sup>16</sup>

## Options for reform

9.28 The main themes arising in discussions during the inquiry for pursuing reform in this area were to:

- Develop a uniform national approach by consensus with the different levels of government, including simplify the laws;
- Undertake reform at the Commonwealth level and act as a leader on these issues; or
- Focus on developments in areas where some progress can be made, for example seeking agreement on disclosure thresholds and a shared electronic method for disclosure.

---

16 Mr Andrew Murray, Private capacity, Roundtable discussion on the first Electoral Reform Green Paper – Donations, Funding and Expenditure, *Committee Hansard*, 16 April 2009, p. 43.

9.29 Mr Murray argued that the ‘best way to eliminate (or at least drastically reduce) the negatives’ of the current system ‘is to have just one law, one administrator and one regulator’.<sup>17</sup> Mr Murray suggested that ‘electoral matters’ can be divided into three categories; electoral systems, the conduct of elections, the regulation of political participants, and funding and disclosure. He proposes electoral systems should remain separately legislated in a federal system, but that the oversight of the other three categories can be managed under a national system. He argued that:

...there is no reason why the conduct of elections (federal, state, territory, local and organisational); the regulation of political participants (parties, associated entities, candidates, third parties); and funding and expenditure could not be under one electoral commission and one national set of laws.

Of course the principles and main policies need to be agreed by COAG and the States and Territories parliaments before a national regime replaces the federal system for these three parts, but once that is done it becomes a question of timing and implementation.<sup>18</sup>

9.30 Mr Peter Brent of the Democratic Audit of Australia agreed that considerable reform of administering bodies was required. He argued that:

[In] terms of what is essential, I agree with what has been said about harmonisation. What is desirable is to have no state electoral bodies, along the lines of what Mr Murray has been saying. Not one national body but possibly three national bodies – one that enforces things that we have been talking about, another that maintains the electoral roll and another that conducts the election. It would be desirable to have no state bodies. In terms of local government, I think most local government elections are run either by the AEC or the state commission. That part of what is desirable is already in place. I imagine the other part is such a can of worms that it is desirable as well to have uniform laws across all of the councils, but I imagine that would be very hard to put in place.<sup>19</sup>

---

17 Mr Andrew Murray, *Submission 5* to the Electoral Reform Green Paper – Donations, Funding and Expenditure, December 2008, p. 9.

18 Mr Andrew Murray, *Submission 5* to the Electoral Reform Green Paper – Donations, Funding and Expenditure, December 2008, p. 10.

19 Mr Peter Brent, Democratic Audit of Australia, Roundtable discussion on the first Electoral Reform Green Paper – Donations, Funding and Expenditure,, *Committee Hansard*, 16 April 2009, p. 44.

9.31 However, it has been suggested that pursuing cooperation on specific components of the funding and disclosure schemes may be a more feasible option. Accordingly, another approach the Commonwealth should consider is whether it wishes to take the lead and seek to influence change at the state or territory levels of government.

9.32 In the first Green Paper the Australian Government indicated its commitment to working towards harmonisation of Australia's electoral systems and commented on what form this could take:

The Commonwealth is committed to working with the states and territories to achieve harmonisation of Australia's electoral systems. Harmonisation of the Commonwealth, state and territory systems could, for example, enable participants in the political process to lodge a single disclosure return rather than lodging separate and sometimes different federal, state and territory disclosure returns. Ultimately, harmonisation could enable the establishment of a single authority to administer a national disclosure system.<sup>20</sup>

9.33 Professor George Williams argued that action should be taken on these issues, even if wider consensus is not reached between the different levels of government. He argued that:

Without [consistency]...the possibilities are opened up to work around one level of regulation by operating at a state or territory level. Nonetheless, my view is that there are still great advantages of proceeding, even if the federal parliament needs to do so initially and alone. It might actually provide a model that can then be adopted elsewhere, so we have a seamless network of regulation.<sup>21</sup>

9.34 Disclosure thresholds were identified in the first Green Paper as a point for cooperation. It was stated that:

Coordinating disclosure thresholds between the Commonwealth and the states and territories would be an important factor in achieving harmonisation of the schemes and would simplify compliance for those that may have disclosure obligations.<sup>22</sup>

---

20 Commonwealth of Australia, *Electoral Reform Green Paper – Donations, Funding and Expenditure*, December 2008, p. 24.

21 Professor George Williams, *Private capacity*, *Committee Hansard*, 9 August 2011, p. 29.

22 Commonwealth of Australia, *Electoral Reform Green Paper – Donations, Funding and Expenditure*, December 2008, p. 50.

- 9.35 The Nationals agreed that the Commonwealth, and states and territories could enhance their cooperation on disclosure matters, stating that:

Ideally, there should be harmonised disclosure provisions across all jurisdictions with a single disclosure system administered by a single electoral agency, most appropriately the Australian Electoral Commission (AEC). Such a system must be low cost, administratively efficient and cover all participants in the electoral process.

Failing the achievement of a single harmonised system, there should be clear distinction between the responsibilities of state and federal electoral commissions. In simple terms, state electoral processes should be the responsibility of state electoral commissions and federal electoral processes should be the responsibility of the AEC.<sup>23</sup>

- 9.36 The AEC saw potential for enhancing administrative efficiency if greater consistency of disclosure requirements could be achieved. It suggested:

If the various Commonwealth and State reporting and disclosure requirements are not fundamentally dissimilar, opportunities could exist for the establishment of a single, shared lodgement portal that could satisfy both Commonwealth and State requirements. The approach to online disclosure currently operated by the AEC that seeks information to be entered or uploaded following a “wizard” format could be adapted to seek all the information pertinent to both the Commonwealth and State obligations in a single operation, but then produce two disclosure returns each tailored to the individual legislative requirements. The shared disclosure portal could be accessed from both Commonwealth and State websites.<sup>24</sup>

- 9.37 A shared electronic system such as that mentioned by the AEC could go some way to addressing concerns about overlap of administrative functions between federal and state electoral commissions. In setting up such a system consideration must be given to clarifying the categories of information and how the data could be organised into reports that meet the respective requirements of the Commonwealth, and the state or territory.

---

23 The Nationals, *Submission 24*, p. 6.

24 Australian Electoral Commission, *Submission 19*, p. 15.

9.38 The AEC also identified the area of administrative funding as one requiring consideration, stating:

Harmonising Commonwealth and State schemes also could present some quandaries beyond the more obvious ones of political parties and others having to operate under broadly similar schemes but to different rules designed to achieve those ends. One such issue would be where ongoing administrative funding is to be offered at both the Commonwealth and State levels to take account of the impact of rules that essentially have a singular impact.<sup>25</sup>

9.39 If administrative funding were to be introduced at the Commonwealth level, then a review of what administrative funding is available in a given state or territory would be necessary to minimise the potential for parties 'double dipping' for administrative funding.

## Conclusion

9.40 Harmonising political financing arrangements between the federal, and state and territory levels should be a goal of reforms in this area.

9.41 Significant reforms of funding and disclosure systems at one level of government that are isolated or not reflected at the other level of government may create confusion and impose a greater burden on those attempting to understand and meet their obligations under both state or territory and federal arrangements.

9.42 Greater consistency in federal, and state or territory arrangements would help improve clarity and provide greater opportunities for cooperation in the design, implementation and operation of these systems.

9.43 While harmonisation in Australia will take time, the Australian Government should pursue opportunities to enhance cooperation sooner rather than later. Technology supporting the operation of the funding and disclosure systems as an area in which more immediate gains can be made.

9.44 In particular, the committee notes with interest the AEC's advice about the possibility of a shared online disclosure lodgement portal that could be used to input information and produce returns to Commonwealth, and state and territory requirements. Such a mechanism could enhance the efficiency of the disclosure system and help to reduce the administrative

---

25 Australian Electoral Commission, *Submission 19*, p. 15.



burden on those with a reporting obligation and the AEC in administering the returns.



## Other issues

### Administrative body for funding and disclosure

- 10.1 A number of submitters raised the option of creating a separate administrative body for the enforcement of the Commonwealth funding and disclosure scheme. Some submitters argued that a discrete administrative body should exist under the current framework and others proposed that in cases where substantial changes are made to the funding and disclosure scheme there is justification for a separately resourced administrative body for political financing.
- 10.2 The arguments for separating funding and disclosure functions from the AEC relate mainly to the fact that it is a specialist field and may benefit from having discrete funding and subject matter experts, rather than being part of a larger organisation.
- 10.3 The Australian Labor Party submitted that, particularly where requirements beyond disclosure are in place:
- ...the clearest case for a separate entity exists around what may become the new and more detailed areas of campaign finance and expenditure.<sup>1</sup>
- 10.4 The issue was also raised in the submission from GetUp who outlined options for the form the separate agency could take:
- the national campaign authority may form part of the AEC;
  - the national campaign authority may be a separate office within the AEC; or

---

1 Australian Labor Party, *Submission 21*, pp. 4-5.

- the national campaign authority may be a completely separate body from the AEC.<sup>2</sup>
- 10.5 The Democratic Audit of Australia indicated its general support for the separation of funding and disclosure to be dealt with by a single administrative body, in concert with recommendations regarding harmonisation of federal, state and territory jurisdictions.<sup>3</sup> In its submission to the JSCEM inquiry into the conduct of the 2007 federal election, the Democratic Audit of Australia also stated that each of the tasks undertaken by the AEC, in particular the administration of the electoral roll, conduct of elections, and the administration of funding and disclosure, all required a variety of different skills and expertise. The Democratic Audit also highlighted the fact that some jurisdictions, such as New Zealand, have three separate electoral bodies for enrolment, elections and campaign finance and related matters.<sup>4</sup>
- 10.6 Domestically, the NSW Election Funding Authority is a separate administrative body for the purpose of funding and disclosure. It administers the political party registration, public funding, disclosure and financial compliance aspects of the NSW legislation. There is some overlap between staff and some services. The Election Funding Authority existed as a separate body prior to the implementation of the revised regulatory system in that jurisdiction.
- 10.7 The AEC, in its appearance before the previous committee for the purposes of the *Advisory Report on the Commonwealth Electoral Amendment (Political Donations and Other Measures) Bill 2008* (2008 Advisory Report), expressed its support for the notion of a dedicated office within the AEC, stating that:
- The current funding and disclosure unit is within the AEC and they are not really involved in our other core business. So if we were resourced to establish such a unit that would be quite possible from within the AEC.<sup>5</sup>

---

2 GetUp!, *Submission 23*, p. 2.

3 Democratic Audit of Australia, *Submission 2*, p. 6.

4 Democratic Audit of Australia, *Submission 45* to JSCEM inquiry into the conduct of the 2007 federal election and matters related thereto, pp. 12-13.

5 Mr Paul Dacey, Acting Electoral Commissioner, *Committee Hansard*, 26 September 2008, p. 4.

- 10.8 The resources and powers of any administrative authority responsible for monitoring and enforcing compliance with a political financing scheme are also key elements of its success. It has been argued that the resources available for compliance activities in this area dictate, at least to an extent, the 'nature and extent of support that can be offered to encourage and assist voluntary compliance'.<sup>6</sup>
- 10.9 The Commonwealth Electoral Amendment (Political Donations and Other Measures) Bill 2010 proposed providing the AEC's authorised officers with powers to seek documents from a broader range of people than is currently the case under the Commonwealth legislation.

## Conclusion

- 10.10 If a move to increased regulation occurs at the Commonwealth level, the separation of the funding and disclosure functions into a separate, specialist body with discrete resourcing will need to be seriously considered to ensure that the administering agency can meet the increased compliance and enforcement demands of a more complex funding and disclosure system.
- 10.11 However, under the current system, with the proposed reforms as outlined in this report, administrative efficiencies would be best achieved by leaving the administration of the Commonwealth funding and disclosure system with the Australian Electoral Commission. It is imperative that the body is adequately resourced and have sufficient enforcement powers to meet the demands of an expanded funding and disclosure system.

### Recommendation 30

- 10.12 **The committee recommends that the funding and disclosure functions in the *Commonwealth Electoral Act 1918* continue to be exercised and administered by the Australian Electoral Commission, and that the Australian Electoral Commission receive additional resources to carry out these functions and exercise its enforcement powers.**

---

6 B Edgman, 'Political Funding: Challenges of Enforcement and Compliance', Paper prepared for the Challenges of Electoral Democracy Workshop, University of Melbourne, July 2011, p. 1.

## Internal rules for corporate donations

- 10.13 Another point for consideration is the internal rules for corporations or other organisations making political donations, as donations can be made by corporations and trade unions without the knowledge of members or shareholders or without their explicit consent.
- 10.14 The first Electoral Reform Green Paper raised the issue of corporations, and other organisations, needing to get shareholder or member approval before donations to political parties can be made. The requirement currently applies in the United Kingdom. For any political donations greater than £5 000 in a 12 month period, a resolution itemising the money to be donated must be passed by shareholders before the political donation can be made. This resolution is valid for four years.<sup>7</sup>
- 10.15 In the findings of the Parliamentary Joint Committee's inquiry into the Corporate Law Economic Reform Program (Audit Reform and Corporate Disclosure) Act 2004 (CLERP 9) draft exposure Bill, that committee recommended 'that provisions be inserted in the Corporations Act that would require the annual report of listed companies to include a discussion of the board's policy on making political donations'.<sup>8</sup>
- 10.16 However, the additional burden that would be placed on corporations in having to organise meetings for approval of donations or alternative mechanisms for approval by shareholders, could discourage them from making political contributions. There is also the concern that if shareholder approval were required, the matter of making a political donation would become incredibly invasive and complicated, and that it would be very difficult to reach consensus on a single beneficiary.<sup>9</sup>
- 10.17 There are a number of alternatives available to address the concerns in respect of requiring shareholder approval of individual political donations. For example, companies could be required to develop political donations policies, which would need to be made available on their websites. In addition, company annual general meetings could serve as an
- 

7 *Companies Act 2006* (UK), ss. 366-368, 378.

8 Chartered Secretaries Australia, 'No support for involving shareholders in political donations', *Media Release*, 6 June 2004, <[http://www.csaust.com/Content/NavigationMenu/NewsAdvocacy/Mediareleases/Political\\_donations080604.pdf](http://www.csaust.com/Content/NavigationMenu/NewsAdvocacy/Mediareleases/Political_donations080604.pdf)> viewed 24 October 2011.

9 Chartered Secretaries Australia, 'No support for involving shareholders in political donations', *Media Release*, 6 June 2004, <[http://www.csaust.com/Content/NavigationMenu/NewsAdvocacy/Mediareleases/Political\\_donations080604.pdf](http://www.csaust.com/Content/NavigationMenu/NewsAdvocacy/Mediareleases/Political_donations080604.pdf)> viewed 24 October 2011.

appropriate forum for shareholders to air any grievances about company political donations or donations policies.<sup>10</sup>

## Conclusion

- 10.18 There would be benefits in following the United Kingdom's model of requiring shareholder approval for political donations by companies. However, the precise amendments to the *Corporations Act (Cth)* and the Electoral Act necessary to facilitate this change would need to be determined, as would the means for the administration of such a requirement.
- 10.19 Another approach that would arguably be less onerous would be for corporations, unions and other organisations that make political donations, to make full disclosure of their policy in this regard on their websites, in their annual reports and other publically accessible mediums.

Daryl Melham MP

Chair

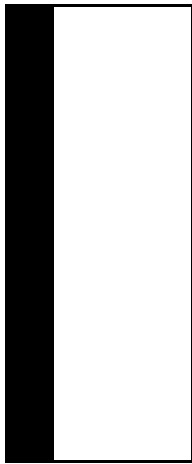
30 November 2011

---

10 Chartered Secretaries Australia, 'No support for involving shareholders in political donations', *Media Release*, 6 June 2004, <[http://www.csaust.com/Content/NavigationMenu/NewsAdvocacy/Mediareleases/Political\\_donations080604.pdf](http://www.csaust.com/Content/NavigationMenu/NewsAdvocacy/Mediareleases/Political_donations080604.pdf)> viewed 24 October 2011.







Dissenting report – The Hon. Bronwyn Bishop MP, The Hon. Alex Somlyay MP, Senator Scott Ryan, Mr Dan Tehan MP and Mr Darren Chester MP

# **Inquiry into the funding of political parties and election campaigns**

**Joint Standing Committee on Electoral  
Matters**

## **Dissenting Report**

**The Hon. Bronwyn Bishop MP**

**The Hon. Alex Somlyay MP**

**Senator Scott Ryan**

**Dan Tehan MP**

**Darren Chester MP**

**December 2011**

## Introduction

Coalition members of the Joint Standing Committee on Electoral Matters note most of the recommendations by the Committee are solely to serve the interests of the Australian Labor Party, the Greens and their backers such as GetUp. This is particularly evident in relation to the proposed lowering of the donation disclosure threshold from \$11,900 to \$1000, which will significantly impact the ability of individuals to give donations to political parties without the potential for intimidation and harassment.

The Coalition believes in participatory democracy and that individuals should be allowed to contribute to the political process, however, the proposed reduction in the disclosure threshold will greatly hamper the ability of individuals and firms to contribute. Neither the evidence heard by the inquiry, nor the submissions of the Labor Party, the Greens, GetUp or any other group have shown there to be any cause for concern of donations under the current threshold buying political influence. These groups have also failed to address the more obvious cause for concern where affiliation fees from unions directly buy votes on the Labor Party conference floor and a significant say in the preselection process. The hypocrisy of groups such as GetUp and political parties such as the Greens is also quite concerning, whilst both organisations claim that large political donations have the potential to corrupt the process, both organisations accepted individual donations over \$1 million during the 2010 Federal Election and did not declare them until well after the election campaign had finished.

There are also significant concerns about the Committee's recommendations relating to continuous disclosure and the redefining of the word "gift" to include attendance at political fundraisers. This move will add significant compliance costs for political parties, third parties and any individual attending a political fundraiser, but will not improve the public's confidence in the electoral system nor will it increase the ability of the AEC to prosecute cases of electoral fraud. In light of the Committee's recommendation that anonymous donations over \$50 are banned, small branches within political parties face further red tape in relation to community forums and small fundraisers.

The Coalition does have some concerns with the current system and the way that many organisations are circumventing electoral laws. This shows that the need for a dedicated fraud squad within the AEC is very much needed to increase compliance. The Coalition is particularly concerned about the evidence heard during the inquiry of the circumvention of electoral laws through the use of union credit cards. There was a significant amount of evidence heard at the inquiry about the then Labor candidate and now Federal Member for Dobell, Mr Craig Thomson, who allegedly spent thousands of dollars on his 2007 election campaign

on a Health Services Union credit card, which was allegedly not disclosed to the AEC. There was also significant cause for concern over organisations appearing to blatantly mislead the AEC on their electoral expenditure returns, notably the HSU East branch updating its expenditure and receipts on its 2009/10 returns by \$25 million.

The Coalition also has concern about current arrangements relating to groups which are claiming to be independent third parties whilst in reality are associated entities of political parties who actively coordinate campaign activities. This was evident by GetUp's acceptance of a donation of over \$1 million from the CFMEU, an associated entity of the Australian Labor Party, and coordinated its 2010 election advertising with the Labor Party, yet the whole time claimed to be an independent third party, despite one of their original directors being Bill Shorten, now a Minister in the Gillard Government.

Coalition members also note the issue about election campaigns being funded by tax deductible donations given to unions and special interest groups. At present, individuals are allowed to claim a deduction of up to \$1500 for donations to political parties or individual candidates, however, trade unions spend millions on election campaigns and receive much of their funding from tax deductible membership fees, not subject to the \$1500 cap. Similarly, groups such as the Australian Conservation Foundation and Greenpeace also receive tax deductible donations, and then spend money on political campaigning, putting them at a significant advantage over political parties whose donors have limited tax deductibility. The Coalition believes this issue should be examined further.

The Coalition opposes the following Recommendations:

1, 3, 4, 6, 9, 24.

## The Disclosure Threshold

Coalition members of JSCEM do not agree with the reduction in the disclosure threshold, noting that it strongly increases compliance costs for political parties, third parties and individuals and will lead to potential intimidation of small donors. They further do not agree that reducing the address details for donors over \$1000 on the AEC website will reduce the potential for intimidation and harassment of individuals or businesses who choose to donate to a political party or candidate.

The Coalition notes the proposal by the Australian Greens to cap donations at \$1000, yet their conduct during the 2010 Federal Election campaign showed they were more than willing to go against their own policy when offered a \$1.6 million donation from Wotif founder, Graeme Wood. Brett Constable, the National Manager of the Australian Greens, noted that Greens leader Senator Bob Brown

was in discussion with Mr Wood at the time or making the donation when he was questioned by Senator Scott Ryan at the JSCEM hearing on 8 August 2011:

**“Senator RYAN:** *Thank you, Mr Constable. Senator Brown, I understand, was involved in discussions—and I am using as less inflammatory language as I can—with Mr Wood about the donation, was he not?*

**Mr Constable:** *At the time of making the donation?*

**Senator RYAN:** *Yes.*

**Mr Constable:** *Yes, in relation to—“<sup>1</sup>*

The Greens even chose not to disclose this information during the election campaign, at the request of Mr Wood. This was admitted to by Mr Constable at the hearing:

**“Senator RYAN:** *Whose decision was it not to disclose it prior to the election?*

**Mr Constable:** *That was really out of respect to the donor. Yes, we have an aim to improve the disclosure regime. We have an internal policy within the party which looks at how to review as best we can within the resources we have available the capacity of the donor and the alignment of the donor with the aims of the party, and then we have a rule about disclosing donations well in advance of what is currently required.”<sup>2</sup>*

Mr Wood’s motives for the donation have also been widely commented upon, he was quoted in the Australian Financial Review on 30 July 2011 stating that by donating to the Greens he would then not have to personally donate money to certain environmental causes:

*“Wood has certainly forged a unique path and his donation to the Greens is hardly typical of Australian corporate philanthropy, but it is not woolly do-gooding either. He saw the \$1.6 million donation as a defensive move that saved him many millions of dollars.*

*‘I was a bit concerned that if the Coalition got in a lot of my investments in environmental causes would have been down the plughole,’ he says. ‘It will hopefully save me a whole lot of money in fighting other environmental wars or battles.’”<sup>3</sup>*

This is potentially inconsistent with Mr Constable’s evidence to JSCEM when questioned by The Hon. Bronwyn Bishop MP where he claimed that Mr Wood’s donation didn’t exert any influence on the Greens:

---

<sup>1</sup> Hansard, Joint Standing Committee of Electoral Matters hearing, Canberra, 8 August 2011

<sup>2</sup> Hansard, Joint Standing Committee of Electoral Matters hearing, Canberra, 8 August 2011

<sup>3</sup> Australian Financial Review, *What if I gave away all my money*, 30 July 2011

**“Mrs BRONWYN BISHOP:** *That is not what I asked. I said: could you tell me what influence he has exerted as a result of his donation? You, like others, assert that we have to restrain donations because they influence political parties. Could you tell me how Mr Wood has influenced your party and what gain he has had from that?*

**Mr Constable:** *I would say that he has not exerted any influence on the party.”<sup>4</sup>*

It is interesting to note, however, that Senator Bob Brown subsequently, on 16 June 2011 asked the Minister for Agriculture, Fisheries & Forestry the following question and supplementary question:

*“My question is also to the Minister for Agriculture, Fisheries and Forestry, Senator Ludwig, in his capacity as minister for forests. Yesterday the minister told the parliament that the government has not received any requests from Gunns for funding support in relation to the mill or its business structure. Can the minister give an assurance to the Senate that no money will be given to Gunns in relation to its mill or its business structure, including for severance payments for the hundreds of workers already facing the loss of their jobs or facing the loss of jobs in the future related to the forest agreement or otherwise?”*

*“There are consultations in process and I am asking the minister about where those consultations are at. I ask the minister: is he aware of the highly-publicised sale by Gunns of its woodchip mill at Triabunna, the application by a consortium of loggers to buy that mill and an alternative application by Eco Resource Development to buy the mill? Will the minister ensure that no money from the forest agreement process flows to the logging entities.... I ask about that consortium: has the government had any discussions about that? Will the government ensure that no money goes, through the forest agreement or in any other way from the public purse, into facilitating the purchase of that Triabunna woodchip mill?”<sup>5</sup>*

Furthermore, Mr Constable himself noted in his evidence that it would be seen as hypocritical to accept a large donation at the same time as he was calling for donation caps, and acknowledged the donation by Mr Wood made a significant difference to their campaign:

*“I agree that it can be seen as hypocritical in terms of the direction we want to go, but it is the direction we want to go and we are not there yet, so we are constrained by the system we have. In order to be successful in election campaigns at the moment, you need a significant war chest. The \$1.6 million was a fantastic contribution to our campaign.”<sup>6</sup>*

---

<sup>4</sup> Hansard, Joint Standing Committee of Electoral Matters hearing, Canberra, 8 August 2011

<sup>5</sup> Senate Hansard, 16 June 2011

<sup>6</sup> Hansard, Joint Standing Committee of Electoral Matters hearing, Canberra, 8 August 2011

The Coalition firmly believes it is disingenuous for the Greens to now call for donation caps, because they are worried about the perception of donors buying public influence, when they are more than willing to accept large donations, claiming that it does not buy any public influence.

The right of individuals to participate in the democratic process is a fundamental belief of the Liberal and National parties, and lowering the donations disclosure threshold will discourage many from actively participating. There has been no evidence during the funding inquiry that there is a particular problem with donations under \$11,900 buying political influence, which suggests that the move to lower the threshold is more on ideological grounds and to advantage both Labor and the Greens. In their submission, both parties called for the lowering of the threshold to \$1000, but both parties failed to show how lowering the threshold will improve confidence in the electoral donations system nor reduce the opportunity for influence to be bought by disclosing donations between these amounts.

Rather than focusing on donations under \$11,900 having the perception of buying influence, the Coalition is more concerned with affiliation fees from associated entities obtaining votes within political parties. The Labor Party and Greens members of JSCEM refused to discuss the issue of associated entities becoming entitled to votes on the ALP conference floor as a result of their affiliation fees. As a result of affiliation fees, trade unions are entitled to a block of votes in Labor preselections and executive elections. The Coalition believes that these affiliation fees, which are often hundreds of thousands of dollars, are far more cause for concern than donations under the \$11,900 threshold.

Coalition members of JSCEM are particularly concerned about the potential for intimidation if the donation threshold is lowered to \$1000, as is being proposed. In the 2004 Inquiry into the Federal Election campaign, Committee members noted comments by Warwick Parer in 1992 about the very real threats of intimidation for some people who choose to make political donations:

*“... donors must be protected against coercion and intimidation. Every time I have raised this, people have said to me, ‘It does not really exist. You are making it up’. Anyone with any experience of the world out there knows the nonsense involved in that...A businessman told me that if he gave a \$20 donation to the Liberal Party, in his honest opinion, the unions would ensure that \$200,000 worth of damage was done to his company. That is not a story that I am throwing around here for political purposes; it is a genuine belief held by people in society...A little old lady pensioner from far north Queensland sent me through the mail a donation of \$10 but she said specifically that she did not want a receipt because she did not want anyone to know she had given it to me in*

*case she was singled out for some sort of discrimination in the small country town from which she came.”<sup>7</sup>*

The Coalition believes that the current level of disclosure is appropriate because it strikes the right balance between a transparent system where major donors are identified whilst protecting those who wish to make a smaller donation to the candidate, political party or third party of their choice without the fear of intimidation.

In terms of the question of political donations buying influence, there are already some mechanisms in place to address this when there is seen to be some cause for concern. Where there are questions about conduct, matters can be referred to the House of Representatives or Senate Privileges Committee.

The Coalition opposes Recommendation 3, which recommends that donations to individual state branches be considered as one donation to a political party. This recommendation is not feasible when state divisions don't always have a direct federal counterpart, particularly in relation to the Liberal National Party in Queensland, the Country Liberal Party in the Northern Territory and the National Party in Western Australia. The Coalition believes that donations to individual state branches should be treated separately and does not believe the case has been made to change the current arrangement.

The Coalition further opposes Recommendation 6, which calls for disclosure to be introduced on a six monthly basis. This will add significant compliance costs to political parties, associated entities, third parties and the Australian Electoral Commission, which will be faced with a higher administration burden. Once again, the Coalition does not believe there is a problem with the current arrangement of annual disclosure and more attention should be paid to those organisations who file misleading statements, such as the HSU East Branch in 2009/2010 which increased its expenditure and receipts by nearly \$25,000,000 when amending its return.

## **Circumvention of Disclosure Laws**

Coalition members of JSCEM note that during the inquiry, concerns were raised about the potential for campaign expenditure disclosure obligations to be circumvented through the use of credit cards issued by trade unions.

This was particularly evident by news reports first aired in April 2009 which noted that the then Labor candidate, now Member for Dobell, Mr Craig Thomson MP, is alleged to have spent \$104,000 on election expenditure using his Health Services

---

<sup>7</sup> JSCEM Report 2004 Federal Election, p. 332



Union Credit Card, as stated in Mark Davis's article in the Sydney Morning Herald on 9 April 2009 Doubts over disclosure of poll fund:

*"HEALTH Services Union officials believe union credit cards were used to spend at least \$104,000 on federal Labor MP Craig Thomson's political campaign for the Central Coast seat of Dobell before the 2007 election."*<sup>8</sup>

During the hearing on 21 September 2011, the Hon. Bronwyn Bishop MP, Shadow Special Minister of State, asked Mr Paul Pirani, Chief Legal Officer at the Australian Electoral Commission about the following expenditure and what the AEC did to investigate:

*"Going back to 8 May 2009, there was the article 'Commission not told of spending on MP's campaign', a report in the Sydney Morning Herald that showed allegations that the HSU spent \$53,000 on Mr Thomson's campaign for Dobell, which included—and this is very important—payments to The Entrance Print from May to November 2007 totalling \$12,647, which was made on Craig Thomson's MasterCard and paid for, as we know, by the HSU.....*

*It is in the Sydney Morning Herald and, in that article, it showed a payment for \$7,253.17 made to Australia Post in July 2007 by electronic transfer funds from the HSU SGE Credit Union account. In other words, the HSU directly paid the Australia Post bill during the election campaign for Mr Thomson. There was a Payment on Nova Radio for \$2,739 on Mr Thomson's union MasterCard on 12 October 2007. There was a payment to Central Coast Radio on 12 November 2007 for \$14,647.60 made by the HSU by electronic funds transfer. So the union directly paid that bill for the election campaign of Mr Thomson. \$7,900 was paid to Cumberland Newspapers in 2006 on an HSU national office Diners Club card. These are all payments that are made in respect of Mr Thomson's campaign, not disclosed."*<sup>9</sup>

Coalition members and senators believe it is imperative that any changes to donation laws look at the very real threat posed by certain organisations using credit cards to circumvent disclosure laws. During the previous JSCEM inquiry into the 2010 Federal Election campaign, the Coalition called for the establishment of a dedicated fraud unit within the AEC to investigate claims of fraudulent voting. The Coalition believes that this unit would also be an appropriate mechanism to deal with those who have circumvented electoral disclosure laws. Coalition members believe that the AEC's investigation into the allegations against Craig Thomson and the HSU relating to the 2007 election campaign was inadequate, meaning that the time limit for potential prosecutions was reached

---

<sup>8</sup> *Doubts over Disclosure of Poll Fund.* Mark Davis, Sydney Morning Herald, 9 April 2009

<sup>9</sup> Hansard, Joint Standing Committee of Electoral Matters hearing, Canberra, 14 September 2011

before the three year cut off date. To alleviate problems like this in the future, it is essential that a fraud unit is established in the AEC to investigate issues such as these.

## Changing the definition of 'gift'

The Coalition opposes Recommendation 4, which is the changing of the definition of 'gift' to include fundraising activities. This will significantly hamper the ability of individuals to participate in the political process, will cause increased compliance costs for political parties and third parties and will not achieve any net benefit to the current electoral funding arrangement. This is particularly apparent when this redefinition is coupled with Recommendation 11 that anonymous donations over \$50 be banned.

As participatory democracy is one of the Coalition's fundamental beliefs, any move which discourages individuals from becoming involved is very concerning. Individuals attend fundraising events for a number of reasons, be it for informal policy discussions or to get more information about the political process. Attendees at fundraisers aren't always politically active and would be uncomfortable to hear attending a lunch to hear a guest speaker costing \$50 would be considered a political 'gift', potentially giving them a reporting obligation as a result. This does not encourage participation in Australia's political system and will discourage many individuals from becoming involved.

The Coalition is also concerned about increased compliance costs for political parties, associated entities and third parties who will all face significant increases in their regulatory burden as a result of these changes. Under this new system, anyone spending more than \$50 in a single year is expected to have their details kept by a political party to ensure they don't go over the new \$1000 disclosure threshold. To expect parties to keep detailed records of expenditure at "fundraisers", which often raise little money, by each individual in attendance will not increase public confidence in the electoral system but will add a significant layer of bureaucracy. This will also affect registered third party campaigners and all their associated branches who conduct similar small activities, be they community organisations, student bodies or farmer's groups.

For this reason, the Coalition also opposes Recommendation 9 which will mean political parties have to keep records of every individual who has given them any donation nationwide to ensure they don't go over the \$1000 disclosure threshold. The Coalition believes that changing the definition of "gift" will not add any public confidence to the electoral system, but will instead discourage involvement amongst individuals and add an unreasonable compliance burden to political parties, third parties and associated entities.

## Tax deductibility and the inconsistency of public 'funding'

Since the introduction of public funding prior to the 1984 election, it has usually been discussed in the context of the direct payments to political parties from the Commonwealth, however, this omits an element of the funding arrangements that can have an impact both on the cost to the taxpayer and the effective total amount of money available to participants in the political process – the tax treatment of donations.

Canada allows for donations to a capped amount to be treated as a tax credit, as opposed to a deduction against taxable income. This obviously has an impact on the cost of making a donation of an amount under that cap, as does any tax deductibility of donations, albeit to a lesser extent than a tax credit – as the total cost of the donation in after tax income is reduced.

There has been insufficient consideration in Australia of the impact of the tax treatment of donations to political participants. This is not surprising given there are beneficiaries of the current regime who have little interest in addressing this imbalance. The current limit on the tax deductibility of donations is \$1500 for individuals. Donations over this amount to political parties are not tax deductible, nor are donations from businesses.

However, funds can be donated to organisations that have Deductible Gift Recipient status. These organisations include some that actively participate in the political process and effectively campaign on issues. Some of these, such as the Australian Conservation Foundation and the World Wildlife Fund, become directly involved in election campaigns although they do not endorse candidates in a formal sense.

Given the political leanings and priorities of some of these organisations, it is entirely possible for a donation to be given to them that facilitates a prominent campaign on a particular issue during an election period. Yet, if such a donation is above the tax deductible threshold for donations to political parties, it would be treated differently in tax terms. In that sense, the 'cost' of making a donation of a specific amount would be different, depending on to whom it was made – even though it might be directed towards running a very similar campaign in highlighting a particular issue.

This inconsistency is of increasing concern given the increased role played by third parties in election campaigns. This inconsistency is compounded by the tax status of the trade union movement. Union membership fees are tax deductible. This effectively makes the pool of funds unions draw from for affiliation fees and political campaigns tax-free. This in itself is a blinding inconsistency, as a member or supporter of the Labor Party or Greens may effectively take advantage of a

second tax-free donation threshold not available to those not members of unions affiliated to Labor or supportive of the Greens.

This is exacerbated by the significance of funds flowing from the union movement – not only to the ALP, but to the Greens and third party groups such as GetUp! There is no rationale for why funding and donations to some political participants should be treated differently by the tax system than others. Given the possibility that the difference in such tax treatment can dramatically impact either the 'cost' of making a donation or the amount of funds that flow between associated or otherwise linked entities, Coalition members and senators believe this is a matter that requires attention.

Coalition members of the committee are not proposing a specific measure at this stage, merely pointing out that this is a glaring inconsistency that needs to be considered in any proposed reform. We also note that neither the Government nor the Greens have taken up suggestions to specifically undertake such consideration as part of this inquiry. In essence, this is akin to a 'malapportionment' of the financial arrangements regarding political participants – as some players have benefits available to them that are not available to others.

Any moves to further this imbalance by banning donations from companies but not doing so from other bodies corporate or entities (such as trade unions) would take this effective financial malapportionment further along the path to a financial gerrymander.

## Membership and Donations

This inquiry provided an opportunity for those opposed to donations from companies to make their case. Coalition Members and Senators do not believe that any case for change to the current arrangements was made. We strongly disagree with the slurs and assertions that somehow the current arrangements are somehow lacking in public legitimacy because of donations by companies. No serious, unbiased evidence was presented to support this – merely accusations by those with well-known and predetermined perspectives or an interest in a particular regulatory outcome.

Furthermore, the agenda of many of those advocating such a move is obvious through a key omission – the lack of commitment to addressing the tax inequalities outlined above and, in some cases, a refusal to address the most longstanding and significant relationship between entities and politics, that which exists between the ALP and the trade union movement.

To those who argue that somehow a donation from a body corporate is not appropriate, a necessary consequence must be to express some concern about the very real and official constitutional role of certain bodies corporate in the Labor

Party. While not conceded by the Coalition, the idea that somehow a corporate donation can lead to the perception of influence but that the very real and formal voting role of another type of entity within a political party is not a problem is nothing short of completely hypocritical. To argue that a donation can buy influence and that this is a concern, but that having a formal voting role is somehow not of concern illustrates the profound inconsistency of this attitude.

The excuse occasionally offered up for this is to distinguish between individual membership, such as that of the Liberal Party, and group or corporate membership, as is represented by the affiliation of unions to the ALP. To consider banning donations from companies on the grounds of potential or perceived influence while not addressing the formal, constitutional and voting role of entities in particular political parties is nothing short of hypocritical and betrays the agenda of some of the proponents of such.

If donations from other than natural persons to political parties are a concern, then the formal voting rights of entities in political parties of entities that are not natural persons must also logically be at least of a similar level of concern, if not more so, due to the actual fact that such links have formal power, not just allegations of influence. This inconsistency is of course further exacerbated by the refusal to consider union affiliation fees in a similar context to corporate donations.

If donations are only to be made by individuals, then there is no logical, consistent or fair position that would simultaneously allow entities to be members (including the payment of membership or affiliation fees). Coalition members and senators do not propose any action in this regard. We simply note that proposals to change the laws regarding corporate donations need to consider the financial and other formal relationships at a membership level as well or any such changes will profoundly lack legitimacy.

## **Third Parties**

The Coalition acknowledges that there are a large number of third parties who campaign in elections based on a number of issues, but is concerned about situations where third parties receive money from political parties or their associated entities and continue to claim they are independent. The actions of GetUp are particularly concerning, where they admitted to receiving a \$1 million donation from the CFMEU during a public hearing for this inquiry. In reality, GetUp receives significant donations from the trade union movement, most of whom are affiliated with the Australian Labor Party.

The conduct of GetUp during the Committee's inquiry was very disappointing, the National Director Simon Sheikh failed to appear before the Committee on 2 November 2011 and instead sent the Deputy Director, Sam McLean, to act on the organisation's behalf. This was after GetUp cancelled a hearing on Wednesday 12 October 2011 because they were allegedly travelling to India, when in fact they were in Canberra spruiking the carbon tax, which had just passed the House of Representatives.

In the hearing on 2 November, GetUp admitted that its claims of hundreds of thousands of members were wildly exaggerated when questioned by The Hon. Bronwyn Bishop MP:

**Mrs BRONWYN BISHOP:** *Mr McLean, you say that you have four hundred and forty something thousand members. Is that what you claim?*

**Mr McLean:** *I think our website currently say we have some 600,000 members.*

**Mrs BRONWYN BISHOP:** *What is your claim? How many members do you claim?*

**Mr McLean:** *From memory, our website currently claims in the order of 600,000. It is on our home page.*

**Mrs BRONWYN BISHOP:** *I want to go right to that. In your constitution you have a very strict regime of what a member is. They have to apply and be accepted by the board, and they can be in two categories: voting and non-voting. How many voting members do you have that have been accepted by the board?*

**Mr McLean:** *I would have to take that on notice to give you an accurate answer, but suffice to say that it would be less than a dozen.<sup>10</sup>*

GetUp further admitted at this hearing that everyone who clicks on their website is counted as a "member" by them, when in reality they only have 12 voting members:

**"Mrs BRONWYN BISHOP:** *You say you've got 600,000 members, which is up from 430,000, which is the claim I saw last. Do you count everyone who clicks on your website?*

**Mr McLean:** *Yes, we count people who take action through GetUp! and then continue to do so and don't opt out.*

**Mrs BRONWYN BISHOP:** *So anyone who clicks on your website is counted?*

**Mr McLean:** *They can be, yes.*

**Mrs BRONWYN BISHOP:** *So if I clicked on it tomorrow you would count me?*

**Mr McLean:** *Yes, if you elected—*

**Mrs BRONWYN BISHOP:** *That's outrageous."<sup>11</sup>*

<sup>10</sup> Hansard, Joint Standing Committee of Electoral Matters hearing, Canberra, 2 November 2011

<sup>11</sup> Hansard, Joint Standing Committee of Electoral Matters hearing, Canberra, 2 November 2011

With GetUp admitting that it has less than 12 members having a real say, it must also be noted that GetUp's constitution specifies a number of its directors must come from a trade union background. Like the Greens alleged commitment to donation caps, GetUp's claims of being an independent organisation are disingenuous.

There is clearly a need for third parties who act in a manner such to disclose their partisan connections. The Coalition believes that when "independent third parties" who receive large donations from associated entities of political parties cease to be independent and by continuing to push the "independent" label are severely misleading the public as to what their aims and objectives really are.

## Summary

The Coalition does not believe that the Labor, Greens and Independent members of the Committee have successfully argued their case for changes to the current donations system. The Coalition does have concerns with some aspects of the current system, particularly in relation to third parties classifying themselves as "independent" whilst at the same time receiving large donations from political parties or their associated entities; which was highlighted by GetUp's acceptance of a \$1 million donation from the CFMEU to run ads attacking Tony Abbott. The Coalition is also concerned with the current arrangements relating to tax deductibility of donations, noting that many organisations, including unions, are running or contributing to election campaigns through funds generated from tax deductible receipts.

The Coalition strongly disagrees with a number of the recommendations of this Committee, noting that they pose a significant threat to participatory democracy, where individuals have the right to have their say in a free and open system, free from intimidation. As such, the Coalition opposes:

- Changing the donation disclosure threshold; it should remain at its current level of \$11,900, which is indexed.
- Donations to 'related political parties' being treated as a donation to the same party.
- Altering the definition of "gift" to include attendance at fundraisers.
- Moving to six monthly disclosure for political parties.
- Investigating options to introduce a system of expenditure caps.

Furthermore, the Coalition reiterates its call for a special fraud unit within the AEC to investigate and prepare briefs for prosecution where there has been a potential breach of the electoral disclosure laws. The Coalition believes the challenges with the electoral donations system at the moment are primarily related to the enforcement of the current arrangements and believes that the proposed changes by Labor and the Greens will not increase public confidence in the system.

**The Hon. Bronwyn Bishop MP**

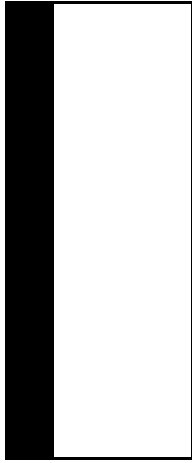
**The Hon. Alex Somlyay MP**  
**Deputy Chair**

**Senator Scott Ryan**

**Dan Tehan MP**

**Darren Chester MP**





Dissenting report – Senator Lee Rhiannon,  
The Australian Greens



## **Dissenting Report**

# **JCSEM Inquiry into Funding of Political Parties and Election Campaigns**

Prepared by:

Senator Lee Rhiannon

on behalf of The Australian Greens

6 December 2011

## **Summary**

The inquiry has been a missed opportunity to make key advances in federal election funding reform. New South Wales and Queensland have introduced recent legislative reforms to restrict donations and campaign expenditure which must be undertaken at a federal level as a move toward national uniform reform to enhance and protect our democratic system of government.

It is disappointing that the inquiry rejected the opportunity to place caps on election expenditure, to place a total ban on corporate donations, or to support a ban on all donations from the tobacco, gambling, alcohol and property development industries. These four industries have all made large donations to political parties and there is substantial evidence that such donations influence government policies that affect those industries. Prohibiting these industries from making political donations would be a first step in combating the corrupting influence of donations in politics.

In particular, the inquiry missed the opportunity to support the Australian Greens' Commonwealth Electoral Amendment (Tobacco Industry Donations) Bill 2011 that will ban donations from manufacturers or wholesalers of tobacco products by political parties, to end the culture of Big Tobacco buying influence in Parliament.

The inquiry report recommends some small though significant changes to the electoral funding system, which the Australian Greens support. By lowering the donation disclosure threshold to \$1000, and counting all donations to related political parties when determining if a donor has exceeded this threshold, a much larger proportion of donations to parties will be disclosed, enhancing the transparency of the donations disclosure process.

It is encouraging that the inquiry recommends that any donation of over \$100,000 must be disclosed within fourteen days. However, the decision that this rule will not apply cumulatively to multiple donations from the same donor has created a massive loophole. It will not be difficult for a donor to avoid the \$100,000 donation disclosure threshold by making a series of smaller donations over a few days.

### The Greens vision for electoral funding

The Australian Greens aim to see elections in Australia funded through a combination of public funding and small donations from individuals, with speedy and transparent public disclosure of donations to allow voters to have access to full information about the source of funding of political parties.

To this end, the Australian Greens recommend:

- A ban on all donations from all entities other than individuals.
- A cap on the amount of money that can be donated in a year from a single individual to a political party or candidates.
- Caps on expenditure by political parties, candidates and third parties.
- Adequate public funding for political parties, including both funding for election campaigning and for other administrative work of the party, with funding based on the percentage of the vote received by each party.
- Continuous disclosure of all political donations above \$100, within two weeks of all donations being made.

### Overview

Over the last three decades the scale of spending in Australian elections has skyrocketed, with both major parties engaging in a funding arms race that has seen a rapid increase in the amount of money spent in Australian federal and state elections. The spending increase has outstripped the availability of public funding, and thus private donations to major political parties have increased markedly, particularly from business and lobby groups who are most affected by government legislation.

This growth in donations has seen a culture develop where large donors have gained privileged access to ministers and MPs, and policy decisions have benefited large donors such as property developers. This has contributed to a perception that corporate donors are buying influence. In some cases there is evidence that this perception accurately reflects the real relationship between politicians and donors.

In some states, such as New South Wales and Western Australia, these issues have resulted in a series of scandals where ministers have been exposed making decisions to benefit key donors. Property developers have particularly developed inappropriate relationships with local councillors and state politicians who make decisions about property development. While this poisonous culture has been most obvious in states like New South Wales and Queensland, donations continue to buy influence in federal politics and in every state in the country.

Current electoral funding laws not only allow these large donations, but they make it difficult for most people to identify who is donating to whom. High disclosure thresholds and loopholes allow many tens of thousands of dollars to be donated to a political party from a single company without being disclosed. Lengthy disclosure periods mean that donations made in the lead up to an election are kept secret until well after the election is held. While it is easy to dismiss concern about the corrupting influence of donations as a mere perception of corruption, it is impossible to have definitive answers as long as large political donations can remain a secret.

The Greens NSW launched the Democracy for Sale research project's website in 2002 in order to shine a light on the influence of donations on the political process. This website has compiled information from donations returns to the Australian Electoral Commission and the NSW Electoral Funding Authority, classified donations by donor industry and provided them in a transparent and easily accessible format that allows the public to view at a glance where political parties are sourcing their funding. Official disclosure websites have often failed to do this.

We have now begun to see some movement in the states. New South Wales passed new laws in late 2010 that placed caps on donations, put limits on campaign expenditure, and banned donations from certain industries. Following the 2011 state election, the new government in New South Wales has proposed legislation to impose further restrictions on campaign donations. The Queensland government has also begun to make moves in the direction of restricting donations and campaign expenditure.

Federal legislation is central to tackling the issue of reforming the culture of political donations. Australia's political parties are mostly national organisations and money regularly flows from one state to another. It is impossible for states to

effectively reform the electoral funding system without reform on the federal level. For example, the new laws in NSW can still be effectively circumvented by donating to a federal election campaign. These donations can still have a corrupting influence on state politics.

Internationally there is a trend towards electoral funding reform. The Australian government is falling out of step with other western democracies that are strengthening their democratic processes.

## Short term measures

While the Australian Greens support comprehensive reforms to the electoral funding system there are a number of interim steps that should be implemented to increase transparency and public trust in the electoral funding system.

### 1. Common funding rules for Commonwealth and State elections

Electoral funding rules vary enormously between the Commonwealth and the various states. This is a most serious issue when it comes to the disclosure of donations and expenditure. Efforts at a state level to regulate money in politics have been undermined by the ability of donors to funnel money into party federal election accounts which are not under the jurisdiction of state election funding laws.

While it may be difficult to reach agreement about a standard for caps on expenditure and bans on some types of donations, there are other areas where gaps and loopholes could more easily be closed.

Different jurisdictions vary in terms of how large a donation can be without being disclosed and in terms of what time period is covered by each return. In addition, different jurisdictions vary in terms of the definition of a 'donation', and how much detail must be covered. All of these variations make it hard to compare like with like, and reduce transparency in the system.

**Recommendation 1: Efforts are made to reach agreement with state governments to ensure there is uniformity between states and the Commonwealth in regard to donations disclosure thresholds, time periods for disclosures, and the definitions of donations and other incomes that must be disclosed.**

### 2. Detailed disclosure of electoral expenditure

Political parties are now required to provide an overall amount of expenditure by the party in their annual return to the Australian Electoral Commission, yet there

is no requirement for any more detail. If we are serious about having a strong disclosure regime, it is important to know how parties spend their campaign funds. More information will assist the assessment of appropriate levels of expenditure caps.

**Recommendation 2: Political parties are required to disclose how much was spent during the election period on each type of expenditure, such as wages, advertising and printing.**

### 3. Ban on donations from certain key industries

There is a pressing need to ban donations from certain industries with a record of using political donations to try and influence policy. In particular the property development, tobacco, alcohol and gambling industries are all dependent on government policy and have funnelled large amounts of money to both political parties.

The Australian Greens and the Australian Labor Party do not take donations from the tobacco industry, but other parties continue to take these donations. These industries are now banned from giving donations for NSW state elections under NSW legislation.

**Recommendation 3: Ban donations from the property development, tobacco, alcohol and gambling industries.**

## Long term solutions

### 4. Public funding of elections

The Australian Greens support a system of full public funding for elections. The Canadian electoral funding system serves as a good model as it includes:

- a ban on corporate donations and caps individual donations;
- caps on election campaign expenditure;
- reimbursement for election expenditure based on percentage of vote;
- payment of an annual allowance (adjusted for inflation) to political parties for operational and administrative costs.

**Recommendation 4: A move towards the full public funding of elections campaigns.**

## 5. A ban on all donations except from individuals and bequests

There is widespread cynicism in the community about the influence of donations over political parties and politicians.

There is a common perception that the payment of donations is a form of corruption, and that corporate donors are buying access to decision makers which is not available to the average person.

The best way to restore trust in the democratic process is to restrict political donations to only those made by individuals and bequests. This would ban businesses and lobby groups from using donations to push an agenda while allowing individuals on the electoral roll to give a limited amount of money.

While there is no doubt that individuals may also have a political agenda, the sense of corruption is much less in the case of individuals. It is also important that there is still room for modest donations from individuals to help fund new parties.

It is also legitimate for parties to gain funds from many individuals giving small amounts of money, and this can be a way to raise money without effectively selling influence.

**Recommendation 5: Ban all forms of donations and fundraising payments except those received from individuals on the electoral roll and from bequests.**

## 6. Caps on donations by individuals

While individuals should be permitted to donate to candidates and parties, it is necessary that these donations are restricted to smaller amounts that do not have the danger of corruptly influencing parties or members of Parliament.

**Recommendation 6: Restrict donations by individuals to a maximum of \$1000 in any one year to any political party, with donations to different branches of the same political party counting towards a single cap of \$1000.**

**Recommendation 7: Restrict donations by individuals to a maximum of \$1000 in any one year to candidates from the same political party, with donations to different candidates of the same political party counting towards a single cap of \$1000.**

## 7. Continuous disclosure of donations

At the moment, donations are not revealed to the public until the regular cycle of electoral returns and party annual returns are usually months after the federal election. This time lag dramatically reduces the accountability of parties and candidates. Voters have the right to know about donations before they go to the polls.

This committee has taken a small step in the right direction by recommending that any single donation of over \$100,000 is disclosed within 14 days of receipt. This requirement can be easily avoided by spreading a donation out over a number of occasions, possibly in a very short period of time. This loophole should be immediately closed. Moves should be made now to ensure continuous disclosure of all significant donations.

**Recommendation 8: If at any point a donor has given over \$100,000 to a political party or candidate the party or candidate is then required to disclose all donations from that donor within fourteen days of the cumulative donations exceeding \$100,000.**

**Recommendation 9: All donations from donors whose cumulative donations over the course of a year exceed \$1000 be disclosed.**

**Recommendation 10: The government provide sufficient funding to the Australian Electoral Commission to develop a system to allow for immediate submission of returns for all donations of \$1000 or more within seven days of the donation being given.**

**Recommendation 11: Once it is technically feasible, parties and candidates are required to disclose all donations from donors who have donated \$1000 or more in that financial year within fourteen days of the donation being received.**

## 8. Limits on spending during election campaigns

In the fiercely competitive environment of electoral politics, there will always be the temptation for parties and candidates to try to attract greater amounts of donations than their rivals, regardless of what rules are imposed restricting their ability to receive donations.



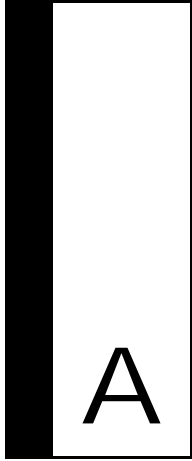
Restricting the level of expenditure is an effective way to bring fairness to the electoral system and stop the election funding arms race that has engulfed Australian politics.

**Recommendation 12: A cap is imposed on election expenditure for each state for political parties and for each House of Representatives electorate for candidates for the three months prior to election day.**

**Recommendation 13: Penalties are imposed for violation of election expenditure caps, including loss of public funding, large fines, and in extreme cases disqualification as a candidate or as a Member of Parliament.**

Senator Lee Rhiannon





## Appendix A—Submissions and Exhibits

### List of submissions

- 1 Dr Joo-Cheong Tham
- 1.1 Supplementary to submission 1:  
Dr Joo-Cheong Tham
- 1.2 Supplementary to submission 1:  
Dr Joo-Cheong Tham
- 2 Democratic Audit of Australia
- 3 Professor George Williams
- 4 Mr Andrew Murray
- 5 Senator Eric Abetz
- 6 FamilyVoice Australia
- 7 Public Health Association Australia
- 8 Action on Smoking and Health
- 9 Australian Council of Trade Unions
- 10 Australian Democrats
- 11 Australian Council on Smoking and Health Australia
- 12 The Australian Greens
- 13 National Heart Foundation of Australia
- 14 Electoral Reform Society of South Australia

- 15 McCusker Centre for Action on Alcohol and Youth; and Cancer Council Western Australia
- 16 Emeritus Professor Colin Hughes
- 17 NSW Greens Political Donation Research Project
  - 17.1 Supplementary to submission 17:  
NSW Greens Political Donation Research Project + Attachments A and B
- 18 The Greens NSW
  - 18.1 Supplementary to submission 18:  
The Greens NSW
- 19 Australian Electoral Commission
  - 19.1 Supplementary to submission 19:  
Australian Electoral Commission
  - 19.2 Supplementary to submission 19:  
Australian Electoral Commission
  - 19.3 Supplementary to submission 19:  
Australian Electoral Commission
  - 19.4 Supplementary to submission 19:  
Australian Electoral Commission
- 20 Mr Andrew Norton (revised)
- 21 Australian Labor Party
  - 21.1 Supplementary to submission 21:  
Australian Labor Party
- 22 Accountability Round Table
  - 22.1 Supplementary to submission 22:  
Accountability Round Table
  - 22.2 Supplementary to submission 22:  
Accountability Round Table
- 23 GetUp!
- 24 The Nationals
- 25 Liberal Party of Australia
- 26 Senator John Madigan, Senator for Victoria

## List of exhibits

- 1 The Greens NSW submission to the Electoral Reform Green Paper, dated 18 February 2009 and including minor revisions 28 June 2011 (provided by Mr Chris Maltby, Registered Officer, The Greens NSW)
- 2 Action on Smoking and Health Australia, Submission on possible reforms to Lobbying Code of Conduct and Register of Lobbyists, September 2010 (provided by Mr Stafford Sanders, Communications Officer, Action on Smoking and Health Australia)
- 3 World Health Organisation, Tobacco industry interference with tobacco control, 2008 (provided by Mr Rohan Greenland, Government Relations Director, National Heart Foundation of Australia)
- 4 Sample Wentworth Forum invitation letter (provided by Mr Norman Thompson, Director, NSW Greens Political Donations Research Project)
- 5 World Health Organisation, WHO Framework Convention on Tobacco Control, reprinted 2005; and Guidelines for implementation of Article 5.3 of the WHO Framework Convention on Tobacco Control (provided by Ms Anne Jones OAM, Chief Executive Officer, Action on Smoking and Health)
- 6 Memorandum from Phil Francis to Geoffrey Bible, re Health Warnings and Contents Labelling, dated 19 March 1993, provided by the Australian Council on Smoking and Health (provided by Mr Maurice Swanson, Honorary Secretary, Australian Council on Smoking and Health)
- 7 Health Services Union and Craig Thomson – failure/late lodgement of returns under Part XX of the Commonwealth Electoral Act 1918 Chronology of events relating to these matters (provided by Australian Electoral Commission)
- 8 Articles: Sydney Morning Herald, ‘MP accused of credit card rort’, 8 April 2009; ‘Probe into union finances after escort payments’, 9 April 2009 (provided by The Hon Bronwyn Bishop MP, Member for Mackellar)
- 9 Transcript and newsletter: Parliament of New South Wales, General Purpose Standing Committee No. 5, Examination of proposed expenditure for the portfolio area, Fair Trading, Uncorrected Proof, 27 October 2011; and Coastal Voice Community Group Newsletter, September 2006 (provided by The Hon Bronwyn Bishop MP, Member for Mackellar)





## Appendix B—Hearings and Witnesses

**Monday, 8 August 2011 – Canberra**

**Australian Electoral Commission**

Emeritus Professor Colin Hughes (via teleconference)

National Heart Foundation of Australia and

Australian Council on Smoking and Health Australia

(ACOSH via teleconference)

Australian Democrats

The Australian Greens

**Tuesday, 9 August 2011 – Sydney**

**Greens NSW**

**NSW Greens Political Donation Research Project**

Mr Chris Maltby, Registered Officer

Dr Norman Thompson, Director, NSW Greens Political Donations Research

Project

**Action on Smoking and Health**

Ms Anne Jones OAM, Chief Executive Officer

**Private capacity**

Professor George Williams

**Private capacity**

Mr Stephen Mills

**Private capacity**

Associate Professor Anne Twomey

**Wednesday, 10 August 2011 – Melbourne****Accountability Round Table**

The Hon Tim Smith QC

**Private capacity**

Dr Joo-Cheong Tham

**Private capacity**

Mr Andrew Norton

**Wednesday, 14 September 2011 – Canberra**

Mr Paul Neville MP, Member for Hinkler, Queensland

**Wednesday, 21 September 2011 – Canberra****Australian Electoral Commission**

Mr Ed Killesteyn, Australian Electoral Commissioner

Mr Paul Pirani, Chief Legal Officer

Mr Brad Edgman, Director, Funding and Disclosure Section, Compliance

**Tuesday, 1 November 2011 – Canberra****Australian Electoral Commission**

Mr Ed Killesteyn, Australian Electoral Commissioner

Mr Paul Pirani, Chief Legal Officer

Mr Brad Edgman, Director, Funding and Disclosure Section, Compliance

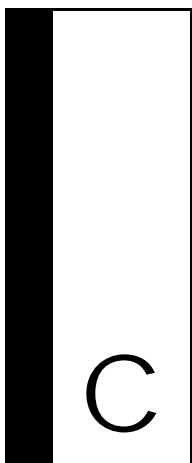


**Wednesday, 2 November 2011 – Canberra**

**GetUp!**

Mr Sam McLean, Deputy Director





## Appendix C—Commonwealth disclosure requirements

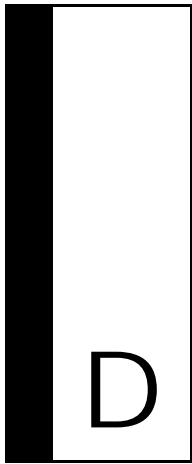
Table C.1 Commonwealth donations disclosure requirements

Individual/Group	Disclosure threshold	What must be disclosed
<b>Annual reporting</b>		
<b>Political parties</b>	\$10 000 (CPI indexed) (\$11 500 for 2010-2011 financial year)	Total receipts, payments and debts Details of receipts above the threshold (name and address of person or organisation) Details of debts above the threshold Further information:  Particular details must be disclosed in relation to receipts above the threshold from trusts, foundations and unincorporated associations  Particular details must be disclosed in relation to loans (terms and conditions of the loan), and loans from non-financial institutions
<b>Associated entities</b>	\$10 000 (CPI indexed) (\$11 500 for 2010-2011)	Total receipts, payments and debts Details of receipts and debts above the threshold (name, address) Further information:  Particular details must be disclosed in relation to receipts above the threshold from trusts, foundations and unincorporated associations  Particular details must be disclosed in relation to loans from both financial and non-financial institutions
<b>Donors to political parties or associated entities</b>	\$10 000 (CPI indexed) (\$11 500 for 2010-2011)	Donations made to political parties or associated entities that individually, or when added together, are greater than the disclosure threshold  Gifts received above the threshold that were used to make donations to a political party or associated entity
<b>Third parties incurring political expenditure</b>	\$10 000 (CPI indexed) (\$11 500 for 2010-2011)	Political expenditure incurred in the legislatively defined categories in section 314AEB  Gifts received above the disclosure threshold that were used to incur political expenditure

Individual/Group	Disclosure threshold	What must be disclosed
<b>Annual reporting</b>		
<b>Candidates</b>	\$10 000 (CPI indexed) (\$11 500 for 2010-2011)	Donations received and expenditure incurred
<b>Senate groups</b>	\$10 000 (CPI indexed) (\$11 500 for 2010-2011)	Donations received and expenditure incurred Members of a Senate group must also submit a candidate return
<b>Donors to candidates and Senate groups (election donors)</b>	\$10 000 (CPI indexed) (\$11 500 for 2010-2011)	Donations made to candidates and/or Senate groups Gifts received to make donations to a candidate or a Senate group

Source Australian Electoral Commission website <[http://www.aec.gov.au/Parties\\_and\\_Representatives/index.htm](http://www.aec.gov.au/Parties_and_Representatives/index.htm)>





## Appendix D—Comparison of Commonwealth, State and Territory schemes

Table D.1 Comparison of Commonwealth, States and Territory schemes

	<b>Commonwealth</b>	<b>New South Wales</b>	<b>Queensland</b>	<b>Western Australia</b>	<b>Australian Capital Territory</b>	<b>Northern Territory</b>
<b>Public funding</b>	YES – direct entitlement scheme  4% threshold of first preference votes cast	YES –reimbursement scheme  4% threshold of first preference votes cast	YES – reimbursement scheme  4% threshold of first preference votes cast	YES – reimbursement scheme  4% threshold of first preference votes cast	YES – direct entitlement scheme  4% threshold of eligible votes	None
<b>Administrative/ ongoing funding</b>	NO	YES – annual payments for registered political parties with elected members and Independents	YES – Bi-annual payments for eligible registered political parties and Independents	NO	NO	NO
<b>Financial disclosure</b>	Annual returns by political parties, associated entities, donors, third parties  Election returns by candidates, Senate groups, election donors	Annual returns by party agents or official agents must disclose details of political donations above \$1 000 and aggregate of donations below \$1 000  Annual returns by party agents or official agents of members, candidate, third parties and groups must lodge annual returns of donations and electoral expenditure	Bi-annual returns (six-monthly disclosure)  Special reporting of large donations  Election returns detailing expenditure by political parties, candidates and third parties  Broadcaster and publisher returns	Annual returns by political parties and associated entities  Election returns by third parties and candidates	Annual returns by political parties, associated entities, MLAs, donors  Election returns by donors to candidates, persons incurring political expenditure and broadcasters and publishers	Annual returns by political parties, associated entities, donors  Election returns by candidates, third parties



Table D.1 Comparison of Commonwealth, States and Territory schemes (continued)

	Commonwealth	New South Wales	Queensland	Western Australia	Australian Capital Territory	Northern Territory
<b>Threshold</b>	\$10 000, indexed according to CPI (\$11 500 for the 2010-2011 financial year)	\$1 000	\$1 000	\$2100 (not clear from legislation – obtained figure from WAEC website) (indexed figure)	\$1 000	\$1 500 (donations to registered political parties),  If a person receives gifts of \$1 000 or more to make donations, these must be disclosed  \$200 (donations to candidates);  \$1 000 to entities declared by NTEC to be an entity to which the disclosure obligation applies
<b>Caps</b>	NO	YES	YES	NO	NO	NO
<b>Bans</b>	YES – anonymous gifts to political parties	YES – tobacco industry, liquor or gambling industry and property developers, close associates of these and industry representative organisations of these cannot make political donations	YES – anonymous and foreign donations	YES – anonymous gifts over \$2100	YES – anonymous gifts above \$1 000 to parties, MLAs, candidates and associated entities	YES – anonymous gifts over \$1 000 to political parties and over \$200 to candidates

Table D.1 Comparison of Commonwealth, States and Territory schemes (continued)

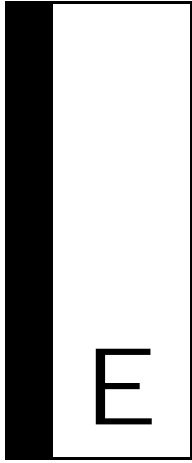
	<b>Commonwealth</b>	<b>New South Wales</b>	<b>Queensland</b>	<b>Western Australia</b>	<b>Australian Capital Territory</b>	<b>Northern Territory</b>
<b>Expenditure</b>	<p>Third parties incurring political expenditure must submit an annual disclosure return</p> <p>Candidates and Senate groups must disclose their donations and expenditure following an election</p> <p>Political parties and associated entities must disclose a total figure for payments made during the financial year</p>	<p>Caps on 'electoral communication expenditure'</p> <p>Capped expenditure period is from 1 October in the year before the election (fixed election date in March)</p> <p>All electoral expenditure is required to be disclosed, whether incurred during a capped expenditure period or not</p>	<p>Caps on electoral expenditure</p> <p>Political parties must submit disclosure returns detailing all electoral expenditure incurred during the capped expenditure period</p> <p>Disclosure of gifts used to incur expenditure by third parties</p>	<p>Political parties, candidates, Senate groups and third parties must lodge election returns detailing expenditure incurred, even if nil</p>	<p>Candidates must disclose electoral expenditure over \$1 000</p> <p>Broadcaster and publisher returns must include details of expenditure</p>	<p>Candidates must disclose electoral expenditure following an election, unless expenditure incurred was less than \$200; statement must be given to NTEC where nil expenditure was incurred</p> <p>Political parties and associated entities disclose total expenditure in annual returns</p>
<b>Compliance</b>	<p>AEC has power to conduct compliance reviews of political parties, associated entities and donors that give more than \$25 000</p> <p>AEC has power to compel production of certain documents in some circumstances</p>	<p>EFA has a range of enforcement options including (in ascending order of severity):</p> <ul style="list-style-type: none"> <li>• written warning or advice of breach;</li> <li>• penalty notice;</li> <li>• recovery of monetary amount;</li> <li>• compliance agreements</li> <li>• Supreme Court injunction; and</li> <li>• prosecution</li> </ul>	<p>Authorised officers have particular powers to conduct inspections and enter premises</p>	<p>Investigatory power along same lines of Commonwealth – authorised officers have power to compel documents and conduct investigations</p>	<p>'Prescribed persons' under the legislation may conduct investigations to compel production of documents or evidence</p>	<p>Commission has power to issue investigation notices, compel document or give evidence</p>

Table D.1 Comparison of Commonwealth, States and Territory schemes (continued)

	<b>Commonwealth</b>	<b>New South Wales</b>	<b>Queensland</b>	<b>Western Australia</b>	<b>Australian Capital Territory</b>	<b>Northern Territory</b>
<b>Administrative agency</b>	Funding and disclosure administered by the Australian Electoral Commission	Election Funding Authority is responsible for funding and disclosure – it is a corporation with the corporation name 'Election Funding Authority of NSW'  The NSW Electoral Commission is the administrative unit through which the Election Funding Authority exercises its statutory responsibilities	Funding and disclosure administered by the Electoral Commission of Queensland	Funding and disclosure administered by the WA Electoral Commission	Funding and disclosure administered by Elections ACT	Funding and disclosure administered by the Northern Territory Electoral Commission

Source Prepared based on material from the Electoral Commission websites: Australian Electoral Commission <[http://www.aec.gov.au/Parties\\_and\\_Representatives/index.htm](http://www.aec.gov.au/Parties_and_Representatives/index.htm)>, NSW Election Funding Authority <<http://www.efa.nsw.gov.au/>>, Electoral Commission Queensland <<http://www.ecq.qld.gov.au/financial.aspx?id=675>>, Western Australian Electoral Commission <[http://www.waec.wa.gov.au/pp\\_candidate/financial\\_disclosure/](http://www.waec.wa.gov.au/pp_candidate/financial_disclosure/)>, ACT Electoral Commission <[http://www.elections.act.gov.au/political\\_parties/funding\\_and\\_disclosure](http://www.elections.act.gov.au/political_parties/funding_and_disclosure)>, and Northern Territory Electoral Commission <[www.nt.gov.au/nteo](http://www.nt.gov.au/nteo)>





## Appendix E—Comparison of international political financing schemes

Table E.1 Comparison of international political financing schemes

	<b>Election funding</b>	<b>Administrative/ ongoing funding</b>	<b>Disclosure requirements</b>	<b>Threshold</b>	<b>Caps</b>	<b>Bans</b>
<b>New Zealand</b>	Yes  Primarily in the form of allocation of broadcast time	No dedicated scheme	Yes  Political parties, third parties and candidates are all subject to separate disclosure requirements	\$1 500  Third parties only have to submit disclosure returns if they spend over \$100 000	No general caps  There is a maximum amount for 'protected donations' that can be received by political parties  Expenditure of political parties, third parties and candidates is also capped during defined periods	Yes  Anonymous donations to candidates and political parties over \$1 500 are banned  Overseas sourced donations to candidates and political parties over \$1 500 are banned
<b>Canada</b>	Yes, reimbursement scheme	Yes	Yes	\$200	Yes  Political donations are capped  Third party and political party expenditure are capped	Yes  Political donations are banned from all entities apart from individuals that are citizens or permanent residents of Canada
<b>United States</b>	Yes  Subsidies for presidential candidates, contingent on agreement to limit campaign expenditure  Election funding for new and minor parties	No	Yes  Candidates, party committees, and political action committees have disclosure obligations	\$200	Yes  There are a complex set of contribution limits applicable to each political participant	Yes  Donations from corporations; labour organisations; federal government contractors and foreign nationals are banned

	Election funding	Administrative/ ongoing funding	Disclosure requirements	Threshold	Caps	Bans
<b>United Kingdom</b>	No	Yes  Some funding for opposition parties  Policy Development Grants (maximum £2m per year, shared between eligible parties)	Yes  Political parties, candidates, MPs and third parties all have separate disclosure requirements	For political parties: Donations over £7500 to the central party (including aggregation of multiple donations from same donor) Donations over £1500 to accounting units (constituent or local office) (including aggregation of multiple donations from same donor) For candidates: Details of all donations over £50 and all impermissible donations must be disclosed For MPs: Disclose all donations and loans and impermissible donations For third parties: Must register if intend to spend more than £10 000 in England or £5 000 in Scotland. Cannot spend more than this if not registered	No donation caps  Expenditure caps apply to political parties, candidates and third parties	Yes  Anonymous donations over £500 are banned and must be returned  Donations over £500 can only be received from permissible donors as defined in the legislation

*Source* Prepared based on material from the Electoral Commission websites: Elections New Zealand <<http://www.elections.org.nz>>, Elections Canada <<http://www.elections.ca/home.aspx>>, Electoral Commission (United States) <<http://www.fec.gov>>, and Electoral Commission (United Kingdom) <<http://www.electoralcommission.org.uk>>







Appendix F—Commonwealth  
Electoral Amendment (Tobacco  
Industry Donations) Bill 2011

2010-2011

The Parliament of the  
Commonwealth of Australia

THE SENATE

*Presented and read a first time*

**Commonwealth Electoral Amendment  
(Tobacco Industry Donations) Bill 2011**

**No.     , 2011**

*(Senator Bob Brown)*

**A Bill for an Act to amend the *Commonwealth  
Electoral Act 1918* in relation to political donations  
by the tobacco industry, and for related purposes**

# Contents

1	Short title .....	266
2	Commencement .....	266
3	Schedule(s) .....	266

## **Schedule 1—Amendment of the Commonwealth Electoral Act 1918**<sup>267</sup>

## **A Bill for an Act to amend the *Commonwealth Electoral Act 1918* in relation to political donations by the tobacco industry, and for related purposes**

The Parliament of Australia enacts:

### **1 Short title**

This Act may be cited as the *Commonwealth Electoral Amendment (Tobacco Industry Donations) Act 2011*.

### **2 Commencement**

- (1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

<b>Commencement information</b>		
<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>
<b>Provision(s)</b>	<b>Commencement</b>	<b>Date/Details</b>
1. Sections 1 to 3 and anything in this Act not elsewhere covered by this table	The day this Act receives the Royal Assent.	
2. Schedule 1	The 28th day after the day this Act receives the Royal Assent.	

Note: This table relates only to the provisions of this Act as originally enacted. It will not be amended to deal with any later amendments of this Act.

- (2) Any information in column 3 of the table is not part of this Act. Information may be inserted in this column, or information in it may be edited, in any published version of this Act.

### **3 Schedule(s)**

Each Act that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.

## **Schedule 1—Amendment of the Commonwealth Electoral Act 1918**

### **1 After section 303**

Insert:

#### **303AA Certain gifts not to be received**

(1) It is unlawful for:

- (a) a political party; or
- (b) a State branch of a political party; or
- (c) a person acting on behalf of a political party or a State branch of a political party;

to receive a gift made to or for the benefit of the party or branch by another person or entity if the person or entity making the gift is:

- (d) a manufacturer or wholesaler of tobacco products; or
- (e) the agent of a manufacturer or wholesaler of tobacco products.

(2) It is unlawful for:

- (a) a candidate; or
- (b) a member of a group; or
- (c) a person acting on behalf of a candidate or group;

to receive a gift made to or for the benefit of the candidate or the group, as the case may be, by another person or entity if the person or entity making the gift is:

- (d) a manufacturer or wholesaler of tobacco products; or
- (e) the agent of a manufacturer or wholesaler of tobacco products.

(3) A person or entity must not accept a gift at any time, if the purpose of the gift is to:

- (a) to enable the person or entity to make gifts covered by subsections (1) and (2);  
or
- (b) to reimburse the person or entity for making such gifts.

(4) For the purpose of subsection (2), a person who is a candidate in an election shall be taken to remain a candidate for 30 days after the polling day in the election.

(5) For the purpose of subsection (2), persons who constituted a group in an election shall be taken to continue to constitute the same group for 30 days after the polling day in the election.

(6) If a person or entity receives a gift that, by virtue of this section, it is unlawful for the person or entity to receive, an amount equal to the amount or value of the gift is payable by that person or entity to the Commonwealth and may be recovered by the Commonwealth as a debt due to the Commonwealth by action, in a court of competent jurisdiction, against:

- (a) in the case of a gift to or for the benefit of a political party or a State branch of a political party:
  - (i) if the party or branch, as the case may be, is a body corporate—the party or branch, as the case may be; or

- (ii) in any other case—the agent of the party or branch, as the case may be; or
- (b) in any other case—the candidate or a member of the group or the agent of the candidate or of the group, as the case may be.

### **303AB Unlawful circumvention of subsection 303AA(1), (2) or (3)**

- (1) A person or an entity must not:
  - (a) circumvent, or attempt to circumvent, subsection 303AA(1), (2) or (3); or
  - (b) act in collusion with another person or entity for that purpose.
- (2) A person or entity who contravenes subsection (1) is guilty of an offence punishable on conviction:
  - (a) if the offender is a natural person—by a fine not exceeding 10 penalty units or imprisonment for 3 months, or both; or
  - (b) if the offender is a body corporate—by a fine not exceeding 50 penalty units.

### **303AC Unlawful contributions**

- (1) A person or entity must not make a gift to or for the benefit of a political party or a candidate that comes from money, property or services of another person or entity, if that other person or entity is:
  - (a) a manufacturer or wholesaler of tobacco products; or
  - (b) the agent of a manufacturer or wholesaler of tobacco products; andthe money, property or services were provided to the first person or entity to enable the person or entity to make that gift or to reimburse the person or entity for making that gift.
- (2) A person or entity who contravenes subsection (1) is guilty of an offence punishable on conviction:
  - (a) if the offender is a natural person—by a fine not exceeding 10 penalty units or imprisonment for 3 months, or both; or
  - (b) if the offender is a body corporate—by a fine not exceeding 50 penalty units.