

Submission to the inquiry into the funding of political parties and election campaigns

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27 June, 2011

Mr Daryl Melham MP
Chair of the Joint Standing Committee on Electoral Matters
Parliament House
CANBERRA ACT 2600

Dear Mr Melham,

Thank you for the opportunity to make this submission to the latest inquiry of JSCEM on the issue of reforms to funding for political parties and election campaigns.

The rich and powerful in this country have access to politicians that few members of the public will ever experience. Much of this access is gained through large political donations and large contributions at fundraisers.

The current system gives the appearance that many government decisions are influenced by donations rather than based on the common good.

Over the past eight years the NSW Greens Political Donations project, www.democracy4sale.org, has helped to reveal the extent of the influence that corporate donations are having on our democratic process.

In this activity the Greens Democracy4sale research team has identified a number of problems associated with how funding data is presented on the Australian Electoral Commission (AEC) website. The problems we identify are attributed in part to lack of resources for the AEC, but mainly due to the inadequate laws under which they operate. Over the years we have found AEC staff to be extremely helpful and diligent.

I understand many of my colleagues will argue for an electoral funding regime in Australia to be similar to the one in Canada. I strongly support arguments for

capped donations only from individuals, limits on electoral expenditure, limits on third party expenditure and bans on foreign donations.

However, in my submission I will focus entirely on the following term of reference – **“the transparency and accountability of the funding regime”**.

Without transparency of the sources of money for election campaigns and expenditure in those campaigns we would not have been able to explore who was gaining access to our politicians and the possible impact on this money on decisions made by governments over the years. This has been important since I believe the work by Lee Rhiannon and her Political Donation Research Project team has helped create the push for reform of the NSW electoral funding system.¹ Transparency will continue to be important in the effective working of any systems in the future and to ensure the public has trust in these systems.

Summary of Recommendations

Recommendation One: All donations and money spent at fundraisers by a donor during the disclosure period must be aggregated and once the disclosure threshold is reached must be publicly identified by political parties.

Recommendation Two: The disclosure threshold should be lowered to \$200.

Recommendation Three: Political Parties should be legally required to classify the source of their money as “Donation”, “Fundraiser” or “Other Receipt”.

Recommendation Four: Political parties must make detailed disclosure of all electoral expenditure to the AEC. The definition of electoral expenditure must be regularly updated to include new electronic forms of campaigning.

Recommendation Five: All candidates running for federal office must disclose the source of all money received for their election campaigns and their electoral expenditure. Receipts for expenditure should be lodged with the AEC. This information cannot be funnelled through the head office of the political parties.

Recommendation Six: The penalties for non compliance by donors for their legal responsibilities should be increased in order to achieve the necessary compliance.

Recommendation Seven: The definition of Associated Entities should be re-written in order that they are clear and include all organisations that operate

¹ Lee Rhiannon - One of Sydney's most influential people, Sydney Magazine, 9 December 2010
http://www.democracy4sale.org/index.php?option=com_content&view=article&id=495:lee-rhiannon-sydneys-100-most-influential-people&catid=3:law-reform&Itemid=48

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.

Recommendation Eight: All Associated Entities must adequately disclose all income and itemised all expenditure.

Disclosure of Political Donations and Money raised at Fund Raising Events

The Coalition government raised the disclosure threshold effective in December 2005 from \$1,500 to over \$10,000 with the threshold linked to the CPI. On 1 July 2011 the disclosure threshold will be over \$11,900. This means that hundreds of thousands of dollars contributed to the political parties each year is never publicly identified. This is totally unacceptable.

The problem is more serious since political parties are not required to aggregate each donation received and money spent at fundraisers. This means that a donor can contribute small amounts many times and never be identified even if the total given during the reporting period exceeds the disclosure threshold.

In the Agreement between the Australian Greens and the Australian Labor Party last year, this threshold is to be lowered to \$1,000. While this is a step in the right direction, I believe it should be lower.

The NSW Legislation Select Committee on Electoral and Political Party Funding in 2008 recommended a disclosure threshold \$500.² The threshold in Canada is C\$200 and all donations must be aggregated from each donor.³

If the amount individual donors can contribute during a reporting period is capped at \$1,000 as many suggest, then small donations are very important for the political parties and individual candidates. Small amounts of money can gain access to politicians, which in turn can influence their thinking on issues and perhaps even government policy.

Recommendation One: All donations and money spent at fundraisers by a donor during the disclosure period must be aggregated and once the disclosure threshold is reached must be publicly identified by political parties.

Recommendation Two: The disclosure threshold should be lowered to \$200.

² Legislative Council Select Committee on Electoral and Political Party Funding, Electoral and Political Party Funding in New South Wales, June 2008

³ Registered Party Handbook, Elections Canada, (03/07) page 26
http://www.elections.ca/pol/pol/man/ec20229/ec20229_c2_e.pdf

Donations vs. Money Spent at Fund Raising Events

Unlike the NSW system, money spent at fund raising events is typically not considered a donation in the federal system. 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”.

Our work over the past years has convinced me that attending a fund raiser where one can sit at a dinner table talking to a minister or other politician is a much better investment for the donor than sending a cheque for the same amount of money through the post to the party’s head office or the local member’s Federal Electorate Committee/Conference (FEC).

Therefore, I believe the political parties should be legally required to classify the source of their receipts as “Donation” (gift of cash or in kind gift), “Fundraiser” and “Other Receipt” (transfers of funds, interest earned on bank deposits, etc). Such a classification would be most useful information for the voter.

Recommendation Three: Political Parties should be legally required to classify the source of their money as “Donation”, “Fundraiser” or “Other Receipt”.

Campaign Expenditure by Political Parties

Millions of dollars of public money is given to the political parties for campaign purposes. While I think the public has the right to know how money is spent on campaigns, I believe it is even more important that we know this since we are funding the political parties for much of their campaign materials and activities.

Unfortunately there are almost no requirements for the public disclosure of this information. Third parties, candidates and senate groups are required to disclose campaign expenditure, but not the political parties. Even then almost all candidates and senate groups funnel their expenditure through the head offices of the political parties, so this is never made public.

As new electronic social media continues to be developed and used for campaign purposes, money spent for this type of campaigning needs to be included in the law as political expenditure.

When a company ran a free twitter campaign for Carmel Tebbutt during the 2011 NSW state election (a substantial gift in kind),^{4 5} I contacted the NSW Election Funding Authority (EFA) to see if such material legally had to be authorised. They referred it to the legal office of the NSW Electoral Commission and I was sent this information:

“Having regard to the words of the section, and the Act as a whole, it is considered that Parliament’s intention in passing the legislation was to limit the application of the offence to electoral material that is in printed form or capable of being distributed or physically displayed. Notably, the authorisation requirements were extended to advertisements on electronic billboards and digital road signs last year (2010) [s.151EA]. However, the authorisation requirements do not extend to internet blogging or websites, such as twitter.”⁶

Recommendation Four: Political parties must make detailed disclosure of all electoral expenditure to the AEC. The definition of electoral expenditure must be regularly updated to include new electronic forms of campaigning.

Donations Received by Individual Candidates and Their Expenditure

Almost all candidates running on a political party’s ticket submit nil returns to the AEC after each federal election in spite of many spending hundreds of thousands of dollars on their campaigns and probably receiving similar amounts for their campaign funds. When some candidates report expenditure but no donations received, I have been told that this involves a candidate spending his or her own funds on their campaigns.

Malcolm Turnbull is an excellent example of this. It is only because his Wentworth Forum disclosed membership data to the NSW EFA but not the AEC that we know this fundraising body collected at least \$1.1 million for his campaign in the run-up to the 2007 federal election.⁷ Local observers estimate he spent far in excess of a million dollars on this campaign.

Yet, Mr Turnbull submitted a return to the AEC after the 2007 election in which he reported no donations received and less than \$72,000 spent.⁸ As I stated above, I have been advised that when expenditure is reported by lower house candidates this is usually their personal money if they reported receiving no donations. Obviously Turnbull’s donations were funnelled through the head

⁴ Nicole Gooch & Wendy Bacon, Who was behind ‘Keep Carmel’? , New Matilda 8/4/2011
<http://newmatilda.com/2011/04/08/was-behind-keep-carmel-campaign>

⁵ Nicole Gooch & Wendy Bacon, Keep Carmel ‘Broke Funding Law’, New Matilda 21/4/2011
<http://newmatilda.com/2011/04/21/keep-carmel-broke-funding-law>

⁶ Personal communication, NSW Electoral Commission Legal Division, 12/4/2011

⁷ Lee Rhiannon & Norman Thompson, No such thing as a free lunch with Turnbull, New Matilda, 15 July 2009
<http://newmatilda.com/2009/07/15/no-such-thing-free-lunch-malcolm-turnbull>

⁸ <http://electiondisclosures.aec.gov.au/Candidate.aspx?SubmissionID=13745&ClientID=17882>

office of the NSW Liberal Party. This appears to happen with almost all candidates who run on a political party's ticket, hiding the identities of who financially supports these candidates.

In a transparent democracy it is important that the public knows who contributes to candidates running for federal office and how they spent the thousands of dollars during their campaigns – preferably before people vote but certainly later as individuals watch decisions made by their local MP. Receipts for expenditure is important so the public is kept accurately informed about the use of their tax dollars.

Recommendation Five: All candidates running for federal office must disclose the source of all money received for their election campaigns and their electoral expenditure. Receipts for expenditure should be lodged with the AEC. This information cannot be funnelled through the head office of the political parties.

Disclosure of Contributions by Donors

Donors are required to submit donors' returns to the AEC each year when the total amount contributed reaches the disclosure threshold. Unlike political parties, donors must aggregate all their donations and report all donations when the total reaches the threshold.

This has been most useful information in our research project since we can see many donations omitted by the political parties in their returns. For example, when I was conducting research on donations from the Australian Hotels Association (AHA) for a recent article,⁹ I saw how much was not disclosed by the political parties since they aren't required to aggregate. Using one of the many possible examples, I found in 2007/08 the South Australia branch of the Labor Party disclosed receiving \$15,000 from the AHA¹⁰ while the AHA reported contributing over \$31,000 to that division of the ALP.¹¹ As you can see, the donors' returns are crucial for increased transparency.

However, in our research we have found that a number of donors fail to meet their legal requirements to submit donors' returns to the AEC. In 2001 an AEC official was quoted as saying that agency had not been able to have a successful case brought against a donor for this failure since the mid 1990s.¹² This was confirmed by another AEC official in 2004.¹³ It appears that there have been no

⁹ Norman Thompson, An intoxicating influence on our streets. New Matilda, 2 March 2011
<http://newmatilda.com/2011/03/02/intoxicating-influence-our-streets>

¹⁰ Australian Labor Party (SA division) return to AEC for 2007/08
<http://periodicdisclosures.aec.gov.au/ReceiptsEntityPartyList.aspx?SubmissionID=10&ClientID=54&ClientTyCo=P>

¹¹ AHA (SA Branch) donor return to AEC 2007/08 <http://periodicdisclosures.aec.gov.au>Returns/10/D8554.pdf>

¹² Lisa Allen, Invisible World of Political Donations, Australian Financial Review, 20/4/01, pp 72-3

¹³ Kathy Mitchell, personal communication, 9 August 2004

successful cases since that time. As more donors hear this it appears that fewer donors submit the required returns.

The Office of the Commonwealth Director of Public Prosecutions (CDDP) appears to have a very heavy caseload.¹⁴ If the penalties for failure to comply with reporting requirements were strengthened this would encourage more stringent efforts to bring such cases to court as has happened in NSW. In turn this hopefully will lead more donors to comply with the law. Since the information in these returns is so important for transparency of private money contributed for campaign purposes it is crucial that this matter be corrected.

Recommendation Six: The penalties for non compliance by donors for their legal responsibilities should be increased in order to achieve the necessary compliance.

Associated Entities

The issue of associated entities is a very complex and confusing area. When I attended a workshop on 'Electoral Regulation and its Prospects for Australian Democracy' at the University of Melbourne Law School in 2009, I raised this topic with several election funding experts working for various government agencies around Australia. They all agreed that this is a very murky area in federal law.

The current definition of associated entities:

An associated entity under the *Commonwealth Electoral Act 1918* (s287) means an entity:

- that is controlled by one or more registered political parties; or
- that operates wholly or to a significant extent for the benefit of one or more registered political parties; or
- that is a financial member of a registered political party; or
- on whose behalf another person is a financial member of a registered political party; or
- that has voting rights in a registered political party; or
- on whose behalf another person has voting rights in a registered political party.

Examples of associated entities include '500 clubs', 'think tanks', registered clubs, service companies, trade unions and corporate party members.

¹⁴ Legal and Constitutional Affairs Legislation Committee , 25/4/2011

Associated entities operating wholly, or to a significant extent, for the benefit of political parties may include: companies or incorporated associations, trusts, including charitable foundations, and unincorporated associations, societies, groups or clubs. These may actively participate in business, industrial or fundraising activities, or passively hold assets (including intellectual property) or liabilities.¹⁵

In 2002 and 2004 the Greens referred a total of seven organisations to the AEC as possible associated entities of the NSW National Party. These were the Supporters Foundation, Green and Gold Foundation, National Building Foundation, Comserv (No 2092) Pty Ltd, National Free Enterprise Foundation, Natpar Pty Ltd and Centralised Trustee Foundation.

The referral of the Green and Gold Foundation was made by Senator Kerry Nettle's office in mid 2002 and classified as an associated entity sometime after that.¹⁶ It was listed on the AEC web site as an associated entity for 2002/03 and 2003/04 but disappeared by 2004/05 and is no longer categorised as such an entity.

All of these organisations have the same postal address and telephone number of the NSW division of the National Party. In the past ten years the combined contributions from these seven organisations to the NSW Nationals was \$6,487,971.

The AEC obviously conducted a thorough investigation of the Greens referral of these organisations as possible associated entities. Although these organisations appear to meet the criteria set out above, the AEC's conclusion in February 2005 was "the trustee companies and trusts do not meet the definition of associated entity under the Act and are not required to lodge associated entity financial disclosure returns."¹⁷

There are many strange anomalies in what is considered an associated entity and what is not. Why is the Progressive Business Association in Victoria a Labor associated entity when NSW Labor's Business Dialogue not? They both charge substantial amounts for membership packages which include considerable access to politicians.

¹⁵ AEC Funding and Disclosure Guide for Associated Entities, 2010 – 2011 Financial Year.
http://www.aec.gov.au/Parties_and_Representatives/forms_handbooks/handbook/2010/files/funding-and-disclosure-guide-for-associated-entities.pdf

¹⁶ Federal Finance and Public Administration Legislation Committee 17/2/2004 page F&PA7
<http://www.aph.gov.au/hansard/senate/commttee/s7313.pdf>

¹⁷ Australian Electoral Commission, National Party – Possible Associated Entities,
http://www.aec.gov.au/Parties_and_Representatives/compliance/AEC_Advice/national.htm

The NSW Liberal Party's Millennium Forum was launched by John Howard in 1999. It is a "vehicle to provide practical SUPPORT for the election of Liberal Governments at a federal and state level that will confidently manage our Australian and NSW economies and foster a positive environment for doing business."¹⁸ The Millennium Forum has sponsors, regular functions and a clear common purpose. It has raised millions of dollar for the Liberal Party – Michelle Grattan estimated in just its first two and a half years it raised between \$5 million and \$6 million for the Liberals¹⁹ - yet it has never been mentioned in one return by the Liberal Party to the AEC.

Although it was founded in 1999 it has a chequered history as an associated entity. A Millennium Forum first appeared on the AEC list of such entities in 2003/04 and 2009/10, yet no returns were submitted for either year. If this is the NSW Liberal's Millennium Forum, why did it take years to be declared an associated entity, lose that status after a year before being declared one again, and then not even submit the required return in 2003/04 or 2009/10? We know from some donors' returns (mainly those submitted to the NSW EFA for the 2009/10 period) that people have contributed many thousands of dollars to that organisation.

Why are the NSW Liberal's Wentworth Forum and North Sydney Forum not associated entities while The Warringah Club is? These types of examples can go on and on.

As I stated earlier, the entire area of associated entities is a very murky one. If we want to have adequate transparency in our political disclosure system, this is an area where much work needs to be done by the Joint Standing Committee on Electoral Matters.

Recommendation Seven: The definition of Associated Entities should be re-written 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.

¹⁸ The Millennium Forum <http://millenniumforum.org.au/>

¹⁹ Michelle Grattan, Lib fundraiser tips bucket on Heffernan, Sydney Morning Herald, 22/3/02
<http://www.smh.com.au/frontpage/2002/03/21/frontpage.pdf>

Recommendation Eight: All Associated Entities must adequately disclose all income and itemised all expenditure.

Sincerely,
Dr Norman Thompson