Submission to the Joint Standing Committee on Electoral Matters on the Inquiry into the funding of political parties and election campaigns

24 June 2011

AEC Australian Electoral Commission

Contents

Background **2**

Approaches to enforcing compliance with a move to a more regulated system **4**

Third Parties **6**

Challenges for enforcing compliance **8**

Public funding **10**

Disclosure **12**

Registration of Political Parties **13**

Legislative Harmonisation **15**

ANNEX 1 – Changes to annual disclosure requirements 16

Background

The current Commonwealth funding and disclosure schemes are contained in Part XX of the *Commonwealth Electoral Act 1918* (the Electoral Act). Since introduction in 1984 both schemes have undergone significant changes although their essential functions have remained fairly constant.

The public funding scheme was introduced, and continues to operate, to provide financial support to candidates and political parties to assist in meeting federal election campaign costs. When first introduced, it operated as a reimbursement scheme. From the 1996 general election onwards, the scheme was changed to provide automatic payments that distributed full entitlements without any need for parties and candidates to claim these funds or substantiate expenditure. Ever since this change the issue of whether the scheme should revert to one of reimbursement for costs incurred has been regularly raised, with the Joint Standing Committee on Electoral Matters (JSCEM) having considered and discussed the issue in the reports on its inquiries into the 1998 and 2004 federal elections.

The disclosure scheme when first introduced was limited to federal election campaign donations and expenditure. For non-endorsed candidates and Senate groups there has been little change. For political parties concerns over the 'quarantining' of donations for purposes other than a federal election (e.g. general administration costs) led to the introduction of annual disclosure returns that covered all transactions irrespective of their purpose. An extension of these concerns led to the introduction of similar annual disclosure returns that covered all transactions by the associated entities of political parties. Amendments to the original annual disclosure scheme have seen less detail required to be disclosed in the relevant returns than originally was the case (see the Attachment for an outline of the changes in annual return disclosures by political parties).

The objective of public disclosure is to provide greater information to the public about the sources of funding of political parties, candidates and others who become involved in the election processes. With election disclosures currently not publicly released until 24 weeks after polling day and annual disclosures not released until February in the year following the financial year being reported upon, the present disclosure regime scheme has often been criticised as being largely ineffective in informing the public given the time lag between disclosure and election day. This is in marked contrast to the position in Canada and the US where detailed disclosure and reporting occurs prior to polling day so that electors can be clearly informed before casting their votes as to the sources of funding relied upon by candidates and political parties.

The *Electoral Reform Green Paper – Donations, Funding and Expenditure* and submissions outlined options for greater regulation of the funding and disclosure schemes to combat identified deficiencies in the current scheme. The major areas of concern can perhaps be broadly summarised under two headings:

1. the potential for undue influence from larger sums of private financial support; and
2. the inflating cost of election campaigning that has been termed as an 'arms race'.

When raising these concerns the regulatory solution often proffered is to impose donation and expenditure caps. The imposition of a donation cap is seen to address directly concerns that wealthy persons and organisations are able to 'purchase' greater access to political parties which, and Members of Parliament who, then become financially dependent upon these funds and so are more susceptible to implied or overt influence which is not disclosed to electors. The imposition of an expenditure cap is seen to complement a donations cap as it addresses the spiralling cost of election campaigns which is understood to be the major driver behind the imperative for raising large sums by way of private donations or contributions through fundraising events. 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.

The twin concerns of large sums of private funding and the spiralling cost of election campaigns are seen to be responsible for an ever widening gulf between the costs of campaigns being mounted by established political parties and the campaign costs incurred by smaller and new political parties and unendorsed candidates. As part of the argument for "levelling the playing field", through expenditure caps in particular, consideration could be given as to whether the caps to apply to those directly engaged in the political contest (i.e. political parties and candidates attempting to win seats and form government) should differ from than those who are less directly involved (i.e. third parties seeking to influence outcomes). The "playing field" needs to recognise the involvement of third parties in the political process and address issues relating to their ability to influence the outcome of an election while claiming to be independent of either individual candidates or political parties. The inclusion of donation and expenditure caps for third parties would need to be set at levels relative to the caps for political parties and candidates and those levels should recognise the primacy of political parties and candidates in public engagement in political debate during the period of an election campaign, and even during the lead-up to an election.

Approaches to enforcing compliance with a move to a more regulated system

Regulatory schemes fall into two broad categories: ex-post reporting; and contemporaneous compliance. In the face of criticism of ex-post reporting schemes, a shift to contemporaneous regulatory schemes can be seen as a potential solution. In the Australian context, that represents a fundamental shift in the philosophy underpinning the legislative approach to political funding.

An increase in the level of regulation of the funding of registered political parties and election campaigns presents an Electoral Management Body (such as the AEC) with increased challenges for managing the scheme's potential impact on electoral integrity. 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). Also, the current regime for lodging petitions to the Court of Disputed Returns requires any "illegal practice" to be identified within 40 days of the return of the writs for an election. Clearly in the current reporting framework, issues of non-compliance with Part XX of the Electoral Act cannot be used to challenge an election result in the CDR purely because of the time lag between the incurring of the expenditure and the lodging of returns that disclose that expenditure. The issue then becomes whether in a revised regulation framework, such a "penalty" should be available for non-compliance with donation and expenditure caps. If this were to be done, then real time reporting and monitoring would be required to be undertaken with associated increased administrative costs for both stakeholders and the AEC.

The purpose of caps and/or bans is to prevent or curtail particular activities which are regarded as harmful to the democratic processes. In aiming to eliminate undue influence in an election campaign and so preserve the integrity of the election result, the strategy for compliance would need to be to compel compliance at the time that donations are being made and expenditures are being incurred. By definition this obliges enforcement mechanisms to operate proactively. This requisite is not well served by an enforcement regime such as currently exists in Part XX of the Electoral Act of post-event imposition of penalties for proven offences.

One approach would be to reconsider the severity of penalties for offences against Part XX of the Electoral Act. This approach formed a part of the amendments proposed in the Commonwealth Electoral Amendment (Political Donations and Other Measures) Bill 2010. The current regime treats transgressions as relatively minor offences by setting low ceilings on the financial penalties that can be imposed upon conviction. Similarly low penalties may not continue to be appropriate in a new paradigm of active regulation, non-compliance with which has the potential to impact directly on the integrity of electoral outcomes. Indeed, even substantial financial penalties may not act as effective disincentives if the person or organisation is sufficiently wealthy to absorb the cost and is willing to accept it, along with possible negative publicity, in the course of attempting to influence the outcome of an election or the policy stance of political parties and candidates.

A further issue is to identify the "person" who engaged in the offence given that a political party is not a legal entity under the current regime but is merely a voluntary association of members. This legal status results in an individual within a political party being the only person against whom prosecution action can be taken even though that individual would not have received any benefit (e.g. being elected to Parliament) as a result of the commission of the offence.

Other approaches to penalties may need to be considered if they are to be effective as tools of enforcement. Penalties that target the motivation for an offence may operate to undercut that motivation. For instance, 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. Focussing penalties on the motivation for an offence in this way, however, would require that prosecution of such offences can be finalised in a timely manner.

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. Experience in trying to prevent cartel behaviour under trade practices law has shown that financial penalties, even when seemingly quite severe, may not always be an effective deterrent. Therefore, including in the Electoral Act a wide range of penalties ranging from binding agreements dealing with future action, to civil penalties to criminal penalties with terms of imprisonment is an option that may need to be considered, as ultimately was the case with respect to cartel activities. Offences against donation and expenditure caps could be viewed as being extremely serious matters given

that such behaviours have both the intent and potential to unfairly influence and so compromise the integrity of an election result. Such a penalty is also not without precedent as Part XX of the Electoral Act does currently contain one offence that carries a penalty of a six month term of imprisonment in conjunction with a financial penalty of $1,000.[1]

An alternative to a sole reliance on penalties would be to design prevention into the scheme itself. Such an approach has the potential to be more successful in achieving greater compliance, including preventing inadvertent non-compliance. Moves in this direction, however, would most probably necessitate procedures that introduce additional steps in making/receiving donations and incurring campaign expenditure and so may be seen by at least some as intrusive or 'bureaucratic'.

Proactive enforcement models, however, will always need to be backed up by adequate penalties, enhanced investigatory powers and the necessary resources to deal with detection, compliance and enforcement activities. In this regard, it would be important for the expectations of the role and duties of the regulatory body enforcing these provisions to be clearly spelt out as both the powers and resources necessary will vary considerably based on whether the regulatory body is required to implement an active assurance programme, or play a primarily reactive role of investigating possible breaches. It will also assist in ensuring that the regulator will be able to meet expectations once the scheme is operational.

The design of a campaign funding scheme has the potential also to impact greatly on the resources that may be required for compliance activities. For instance, under a model that allowed participants to self-fund their own campaign expenditure, a programme that sought to verify that those funds did not include prohibited donations would be likely a considerable undertaking, particularly if it was to extend to third parties with complex and disparate structures.

Third Parties

Beyond the general challenges of contemporaneous enforcement of compliance with donation and expenditure caps is a specific concern over the involvement of third parties. The concerns that generally arise with the involvement of third parties are twofold. First 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

[1] Subsection 316(6) carries this penalty for the offence of giving evidence, in purported compliance with a notice of investigation issued under this section, that is to the knowledge of that person false or misleading in a material particular.

have the potential to relegate the primary players in an 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. Secondly there is a concern that third parties may be used by the primary players themselves to circumvent the donation and expenditure caps imposed on political parties and candidates. 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.

In concert with extending donation and expenditure caps to third parties, a recurring element in such schemes is the introduction of a registration scheme for third parties who incur electoral expenditure above a minimum threshold which is regarded as being material. In some overseas schemes, notably that in the United Kingdom, a third party that intends to incur above a set threshold in campaign expenditure must first register with the appropriate electoral body. A central aim of a registration scheme is to reveal publicly, in advance, the identities of those persons and organisations beyond political parties and candidates who or which intend to become active to a significant extent in an election campaign. What is less clear is what constraint, if any, this is meant to impose unless there are to be conditions placed on who can be registered (such as, for example, a requirement that only persons currently enrolled to vote at a federal election, or entities with an Australian Company Number (ACN) and/or Australian Business Number (ABN), will be admitted to the register).

A registration scheme for third parties seems to also carry the implication that it will in some way admit only certain participants to an election campaign while weeding out those created to circumvent restrictions placed on other participants or disguise the real identities of those behind a campaign. The experience of the United States of America with Political Action Committees and the like is illustrative of how a scheme of caps and bans can become effete when the operations of third parties cannot also be curtailed.

If this form of filtering is an objective of a scheme of third party registration, then it faces a number of practical challenges. Any such process will require some degree of vetting to be performed prior to registration. The difficulties here are twofold. First, it is by no means clear exactly what does and does not constitute a ‘legitimate’ third party and the means by which they would be identified. It would likely be an extremely complex, if not impossible, task to attempt to identify legislative criteria that could be readily, transparently and uniformly applied to achieve the objective, especially if they are not to be so onerous to meet such that they might prevent legitimate third parties from participating in an election campaign. Secondly, a vetting process would necessitate some verification of the identity and details submitted by an applicant and this potentially could cause delays of

days and possibly weeks in at least some cases, which again could deny a late applicant third party from being able to participate in an election campaign.

As discussed above, it is considered axiomatic 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. But there are considerable challenges in designing regulation of third parties that won't in time descend into the concerns that have been the experience in the United States of America as shown by such cases as the Citizens Voice case in 2010. Also playing into such deliberations will be considerations relating to the appropriateness of regulations that inhibit the implied freedom of political communications under the Constitution flowing from such cases as the High Court decisions in *Australian Capital Television Pty Ltd v Commonwealth* (1992) 177 CLR 106 and *Lange v ABC* (1997) 189 CLR 520. Beyond the actual level of any proposed expenditure caps, the period in which those caps are to apply will also be an issue if it is intended to extend beyond the formal campaign period that runs from the issue of the writ until the close of polling in an election.

Challenges for enforcing compliance

As a general rule 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. For instance, to exclude certain categories of transactions from caps or disclosure opens the possibility that receipts that otherwise would be subject to regulation will be 'repackaged' under an exempt category. An example here which has previously been in issue for the AEC is the matter of membership fees and the setting of these fees in a manner that circumvents the donation caps. Under the original arrangements for annual disclosures under the Electoral Act in 1984, membership fees did not need to be disclosed in the returns. However, this led to moves in some quarters to create tiered rates of membership with annual fees heading into sums of five figures.[2]

Convoluted rules governing the permissibility of transactions not only impair enforcement, but will also inevitably increase the risks of inadvertent non-compliance. Together these outcomes have the potential to undermine public confidence that the scheme is operating effectively to achieve the policy aims of reforms in this area.

While it is difficult for the AEC to speculate on specific challenges for compliance without knowing the full details of a proposed scheme, observations of schemes in other jurisdictions operating donation and expenditure caps suggest that enforcement faces considerable difficulties. A couple of illustrative examples are briefly discussed below.

[2] The exemption on disclosing membership receipts was removed after the first two annual disclosure periods and so took away the incentive for political parties to develop these membership models.

Limits on third parties' involvement in an election campaign may not prevent an overseas based entity from mounting a campaign and running election advertisements free from the constraint of an expenditure cap. This is a particular risk with the use of the Internet and social media and the growing phenomenon of messages, film clips etc going 'viral' on the internet to the point where their origins become very difficult to pinpoint, especially where the websites are hosted on servers located outside Australia. The use of an entity domiciled offshore is also a potential means to circumvent donation caps or a ban on foreign monies being used to fund election campaigns.

The ability to self-fund campaign expenditure complicates identifying the true source of those funds, with the task becoming more difficult where it involves complex and interrelated legal entities. Beyond the obvious problem of tracing the source of those funds, it opens other opportunities for masking donations. In addition to membership fees discussed above, other arrangements could include 'selling' of products or services at inflated prices, transfer pricing arrangements (to also get around foreign capital restrictions), etc.

Indeed, self-funding of an election campaign can be operated as a proxy for accepting and utilising prohibited funds while nevertheless remaining compliant with the legislation. If a candidate, political party or third party is allowed to accept such funds under the premise of having them quarantined to be used to fund activities other than a federal election campaign, this has the effect of freeing up other funds that would otherwise have been committed to those other activities (e.g. rent and salaries) to fund the campaign expenditure. The effect is the same as if the prohibited funds were directly used to fund the campaign expenditure.

Another matter for consideration is whether the activities of third parties that have been set up for the sole or overwhelming primary purpose of participating in an election campaign should be restrained. This would particularly target front groups operating on behalf of another participant, lobby groups and third parties being used as conduits for extending the expenditure cap of another. One possible means of limiting their participation could be to impose limits on campaign spending to a percentage of their gross/net income or gross expenditure, thereby effectively making a condition of a third party's involvement in an election campaign that it undertakes some other primary business.

There is also the issue of political parties, candidates and third parties running coordinated campaigns. The vexing element in this issue is the question of under what circumstances should persons running campaigns that advocate similar positions on issues be considered to not be acting independently of each other. While in some cases formal relationships can be readily established, this does not necessarily mean that their

campaigns are always complementary or even in close agreement. In other cases the links will be less direct, being matters of overlap in membership or officeholders, shared aims and objectives, and the like. On the practical level, establishing that two campaigns are formally coordinated will be extremely difficult in many instances as it essentially demands evidence of intent. Without documented agreements or arrangements, obtaining evidence meeting the criminal law standard of 'beyond reasonable doubt' will be difficult to achieve.

Public funding

As mentioned above, the Commonwealth scheme of election funding has operated as an entitlements scheme from the 1996 general election onwards. This is an area in which there have been long-standing calls to return the scheme to one that reimburses proven campaign expenditure to prevent 'profiteering'. This leads to the issue of whether there should be a requirement for the recipients to provide an acquittal of any public funding that may be provided to support the ongoing administration of political parties and independent members of the federal Parliament.

In broadening out the discussion, it should be recognised that around 98% of election funding entitlements at the last two general elections were paid to the Labor, Coalition and Green parties. It is normally assumed, probably quite correctly, that under any reimbursement scheme proposed these parties will be able to substantiate campaign expenditure up to their full entitlements. Accordingly, the reintroduction of any reimbursement scheme will in reality only be aimed at protecting 2% of the current election funding entitlements. 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.

On past experience, therefore, only a comparatively small sum of election public funding would be curtailed through the reintroduction of a reimbursement scheme. This is to be weighed against both the cost of administering such a scheme (both to the Commonwealth and to political parties and independent candidates who will need to substantiate expenditures incurred) and the implications to some smaller political parties and candidates carrying unpaid campaign bills and debt of likely delays in settling payments that could stretch for many months with a merit review process. Depending on the levels of public funding in any reform package, it is quite likely that the cost to the Commonwealth in administering a revised reimbursement scheme will be greater than savings realised on funding entitlements withheld.

Nevertheless from a policy perspective, a reimbursement scheme has some appeal on the grounds of denying the payment of Commonwealth funds when not justified.

However, a reimbursement scheme will not guarantee that profiteering cannot occur. 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.

Proposals advocating low value caps on donations often anticipate a significant impact on the revenues of political parties. If donation caps are limited to the funding of election campaigns, as is the case with the recently introduced Queensland scheme, the potential loss in revenues may be offset partially or even entirely with the introduction of a campaign expenditure cap, where that cap addresses the high cost of election campaigns by being set below the high watermark expenditures of recent elections. Depending upon the relativities of those caps, however, political parties and candidates may find they are unable to mount a campaign up to the value of their expenditure cap without an increase in election funding. Perhaps paradoxically, such a move to public funding making up an even greater proportion of political parties' and candidates' campaign budgets arguably strengthens the case for a process that prevents profiteering while also accentuating the problems a return to a reimbursement scheme would entail.

Where donation/fundraising caps are to apply to all aspects of political parties' operations then, depending on their anticipated impact, there may be some need for ongoing public funding support to be also provided as is the case with the New South Wales scheme (although the Queensland scheme has also introduced significant biannual administrative funding even though no restrictions have been placed on non-State election campaign fundraising). Similar risks will exist of profiteering associated with the provision of ongoing funding to political parties and MPs as there are with election funding. 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, for instance.

This perhaps then indicates that any such funding needs to 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.

It may also be appropriate to nominate thresholds of political party revenues that act to reduce progressively and/or completely eliminate the provision of public funds to those parties that are independently generating sufficient funds that enable them to be independently viable to undertake those core activities the public funding is meant to support. Otherwise those administrative funds simply displace other funds available to a political party freeing them up to be spent elsewhere, the effect of which is that the public

funds effectively may end up being spent for purposes other than those they were designed to support.

Another option would be to provide administrative funding as an interim measure only, affording political parties a transition period while they adapt to restrictions placed on traditional means of fundraising. This is almost certainly going to be the experience in Canada, with the Conservative Party having just recently won an outright majority in the Canadian Parliament with the removal of this funding in their policy platform since 2008.

It is also the case that if the purpose of administrative funding is to build and help support specific core operations that are considered essential for modern political parties to perform, then consideration will need to be given to the circumstances of newly registered political parties. These newer parties nearly always have extremely limited financial means and cannot usually support paid officials or engage consultants or other professional support even in setting up administrative support systems. Small and new parties (and some independent candidates) have sometimes made claims along the lines that public funding traps them in a "Catch-22 situation" as they don't have the financial resources to mount an election campaign effective enough to garner the 4% of the formal first preference vote that entitles them to the public funding that would in turn provide them with the necessary resources, and so find themselves in a 'political poverty trap'. Tempering that claim, however, is the historical reality that a significant proportion of small political parties that never qualify for election funding are unlikely to find much greater electoral success even with some more substantial financial support behind them. This presents a conundrum as to which or whether newly registered political parties should qualify for possible administrative funding.

Disclosure

Even with a move to a more regulated scheme the timeliness of financial disclosures will remain an issue for their effectiveness. As mentioned earlier, 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 would be for all disclosures to be made via an online lodgement system that then would allow 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.)

As with donation and expenditure caps, however, disclosure suffers the same issue of compliance. While the timing of disclosures may improve their value, the scheme can be

undermined should someone fail in his or her obligation to report transactions in the timeframe required, whether deliberately or through ignorance or poor management. This could again deny the voting public the opportunity to express their judgement on those transactions at the ballot box.

Registration of Political Parties

Moves to a scheme that imposes donations caps, allocates expenditure caps and provides public funding in support of the ongoing operations of political parties could have implications for the reform of the party registration scheme. Consideration would need to be given to tightening party registration provisions so that they work alongside the design of cap and expanded public funding schemes in minimising the potential for circumvention or exploitation.

There are two particular features relating to the current party registration scheme that may leave a system of donation and expenditure caps, as well as the funding arrangements, open to such exposures:

1. provisions that, in practice, allow for the unlimited registration of 'related parties'; and
2. provisions relating to the endorsement of candidates by registered political parties.

Related parties with similar names are permitted to appear on the *Federal Register of Political Parties* thus allowing political parties to separately register a federal body and individual state and territory branches without facing impediment from the restrictions on similar names imposed by section 129. It is the clear intent of the Electoral Act that parties be allowed to operate a federal structure limited to a federal body and a single branch in each state and territory. The clearest example of the Electoral Act's intention in this regard is the allowance under Part XX that a political party need only register its federal body but its unregistered state and territory branches will nevertheless be recognised and required to separately disclose.[3] (This is the model for registration that has always been followed by the Australian Democrats, for example.) This default recognition anticipates a federal structure providing for a maximum of nine political parties

[3] Further references in the Electoral Act support this position. Section 134A, which governs objections to the continued use of a party name, makes reference to 'parent parties', terminology that has clearly been influenced by corporations law, where the terms 'parent' is used to refer to the larger, 'overseeing' body of which the smaller bodies form a composite part.
Section 130 of the Electoral Act also provides for the registration of different 'levels' of a political party. The reference to 'levels' of a political party logically suggests an intention that there will be a federal 'oversight' body and then branches in each state in which the party is operating.
Section 90B(3) of the Electoral Act further supports the concept of a federal structure for political parties by granting access to roll information to registered political parties *only* where a branch or division of the party (impliedly subordinate to the registered body) is 'organised' on the basis of that State or Territory.

within the group, and does not make allowance for regional or sub-branches of the parent party.

Despite the intention to provide for the recognition and operation of federal party structures within the Electoral Act, the party registration provisions do not contain specific mechanisms to prevent the unlimited registration of related political parties, creating a potential for multiple registrations to be used if they present an opportunity to exploit donation caps, expenditure caps and public funding (in addition to the existent erroneous opportunity it provides, particularly for sitting members of Parliament, for the effective registration of alternative party names to use on ballot papers in selected electorates or to prevent another party registering a particular name).[4]

It is not possible to specifically address these potential exposures when a scheme is not yet proposed. However, they could possibly include the registration of additional political parties where:

- there is a base sum of ongoing administration funding offered to parties;
- the sum of ongoing administration funding offered to parties per sitting member is greater than the sum offered to an independent member;
- donation caps apply to individual parties rather than party groups; and
- expenditure caps are calculated on the number of endorsed candidates.

The last dot point above requires some further explanation. There is another exposure beyond that afforded by political parties and related parties endorsing multiple candidates in single electorates. While some larger political parties contest federal elections Australia wide, this is not the case for many other parties which concentrate on particular electorates, regions or states. A party could, however, endorse candidates beyond its 'target' electorates, even across every electorate in Australia, for the single purpose of maximising its expenditure cap (that it will then use to mount a concentrated campaign in only those electorates where it has serious ambitions). While this exposure could be countered by restricting endorsement of candidates to only elections held in states where the party is registered, the current party registration provisions would make it a fairly simple matter, at least for some political parties, to circumvent this by registering related parties in selected additional states.

Because there is no proposal to critique, this discussion can only serve to alert the Committee to the potential need to consider the implications of the current party registration provisions on the introduction of much more extensive regulation of political funding. The two schemes will need to complement each other to maximise the success of donation and expenditure caps and to ensure that extended public funding is not open

[4] The prerequisite to registration for a political party to have 500 eligible members is waived for a party that has at least one member who is a member of the Commonwealth Parliament.

to exploitation and profiteering. Depending on the design of reforms to political funding, the party registration scheme may well also need to be reformed if this aim is to be realised.

A final consideration in addressing the party registration scheme is its potential to impact on ambitions for Commonwealth-State legislative harmonisation. The imposition of a federal structure in party registrations under the Commonwealth scheme will maximise direct commonality with parties registered for State and Territory elections.

Legislative Harmonisation

With New South Wales and Queensland in the last 12 months having adopted schemes featuring donation and expenditure caps along with increases in election funding and the introduction of ongoing funding support, any proposals to introduce a similar Commonwealth scheme should consider what degree of harmonisation can be achieved. Perhaps more fundamentally than possibly seeking harmonisation, consideration will need to be given to the effects of overlapping provisions.

Opportunities could arise to help overcome the difficulties encountered by those who find they have different obligations at the Commonwealth and State levels which can see some inadvertently committing a breach in one jurisdiction because of a confused understanding of their responsibilities. 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.

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.

ANNEX 1 – Changes to annual disclosure requirements

When annual disclosures were introduced for registered political parties and their state and territory branches for the 1992/1993 financial year, disclosure had to be made of the details of persons:

- from whom receipts aggregated to a sum above the threshold;
- to whom payments aggregated to a sum above the threshold; and
- to whom debts outstanding aggregated to a sum above the threshold.

The disclosure threshold at this time stood at $1,500.

Upon the introduction of these annual disclosures, regulations were in force under section 314AG of the Electoral Act. These regulations required receipts and payments to be broken down into specified categories as follows.

Amounts Received

- membership subscriptions and affiliation fees (no details were required to be disclosed of membership and affiliation receipts that exceeded the threshold)
- donations totalling $1,500 or more, along with the details of the sources of those funds
- donations totalling to less than $1,500
- fund-raising events broken down by individual party unit (e.g. by local branch or campaign committee)
- details of amounts received at fund-raising events at which $5,000 or more was received along with details of persons from whom $1,500 or more was received
- total receipts for fund-raisers at which less than $5,000 was received
- amounts received from assets (e.g. interest and dividends received) along with details of persons from whom $1,500 or more was received
- amounts received from the sale of goods and services along with details of persons from whom $1,500 or more was received
- total of all other receipts not listed in the above categories

Amounts Paid

- staff costs
- fund-raising events broken down by individual party unit
- details of expenditure at fund-raising events at which $5,000 or more was received along with details of persons to whom $1,500 or more was paid
- total payments for fund-raisers at which less than $5,000 was received

- amounts paid for assets along with details of persons to whom $1,500 or more was paid
- amounts paid in respect of goods and services sold along with details of persons to whom $1,500 or more was paid
- administration costs along with details of persons to whom $1,500 or more was paid
- expenditure on affiliations and gifts along with details of persons to whom $1,500 or more was paid
- broadcast media advertising broken further down into television and radio advertising along with details of persons to whom $1,500 or more was paid
- print media advertising broken further down into newspaper and magazine advertising along with details of persons to whom $1,500 or more was paid
- other advertising broken further down into display, published/printed and other/public relations advertising along with details of persons to whom $1,500 or more was paid
- total of all other payments not listed in the above categories

These regulations were repealed for the 1994/1995 annual returns onwards. The requirement to disclose details of persons to whom payments aggregated above the threshold was repealed for the 1998/1999 financial year.