



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).¹

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.²

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’.³
- 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’.⁴
- 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’.⁵
- 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.⁶

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.⁷

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.⁸

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.⁹

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.¹⁰

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.¹¹ 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.¹²

- 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)¹³

- 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.¹⁴

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.¹⁵

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.¹⁶
- 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 1983.¹⁷ 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.¹⁸

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'.¹⁹
- 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;²⁰ 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'.²¹

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'.²²

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.²³

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 42nd 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 43rd 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'.²⁴ 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.²⁵

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.²⁶

- 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.²⁷
- 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.²⁸

- 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 discussion²⁹ 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 submitters³⁰ 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.³¹

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.

43rd 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 43rd 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.³²
- 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.³³

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> 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.³⁴

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.³⁵
- 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> 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).³⁶

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.³⁷

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> 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.³⁸

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:³⁹

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 funding⁴⁰ 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.⁴¹

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.⁴²

- 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.⁴³ 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 2010.⁴⁴

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.⁴⁵

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.⁴⁶

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

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'.⁴⁸
- 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.⁴⁹
- 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.⁵⁰
- 2.80 In October 2011 the Victorian Premier Ted Baillieu, released a *Fundraising Code of Conduct* for Ministers, Parliamentary Secretaries and Government
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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> viewed 31 October 2011.

Members, to reform fundraising practices in the state.⁵¹ 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.⁵²
- 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.⁵³
- 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’.⁵⁴

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> 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.⁵⁵
- 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 2011.⁵⁶
- 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.⁵⁷
- 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.⁵⁸ 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.⁵⁹

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.⁶⁰

2.91 Submitters to this inquiry similarly saw international practices in this area as a source from which Australia can draw in reforming – or refining⁶¹ – 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.⁶²

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.⁶³

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.⁶⁴

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.⁶⁵

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.⁶⁶
- 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.⁶⁷
- 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.⁶⁸
- 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.⁶⁹

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.

⁶⁹ Liberal Party of Australia, *Submission 25*, Attachment A, p. 4.