

## Public funding

### Background and current arrangements

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

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

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

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

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

- 6.5 Some states and territories also provide public funding for state elections. Each has its own separate funding rate.
- 6.6 The initial federal public funding scheme that was introduced in 1984 operated as a capped reimbursement scheme. Funding was limited to reimbursing political parties, candidates and Senate groups for actual proven expenditure up to the maximum entitlement.
- 6.7 The current direct entitlement scheme for public funding was introduced in 1995. Political parties and candidates no longer need to substantiate campaign expenditure to receive public funding; rather the public funding entitlement is calculated purely on the number of first preference votes received, once the minimum of four per cent of first preference votes has been obtained.
- 6.8 Where a disclosure based scheme is in place there are generally two key options for public funding:
- a reimbursement scheme whereby actual expenditure or expenditure incurred (depending on the precise scheme in place) is reimbursed; or
  - payment of public funding according to a per vote formula, with either a low or high threshold for entitlement.
- 6.9 Under the current public funding model in operation at the federal level, there are some options providing flexibility in the way in which public funding is divided between political parties with branches.<sup>4</sup> However, the amount of public funding that a political party may obtain is not capped or limited in any manner.
- 6.10 Public funding issues are intertwined with private funding and expenditure issues in the consideration of electoral reform. Accordingly, this aspect of the political financing regime may be better determined incidentally to the broader scheme itself. Similar arguments are raised in Chapter 7 regarding the regulation of third parties. For example, donation and expenditure cap schemes in other jurisdictions invariably offset the resulting loss of income to parties through the provision of additional ongoing public funding.
- 6.11 In the context of a broader system for regulating political financing, the public funding system plays a revised role, in that it serves to offset the loss in income to political parties that results from limitations on the
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4 See of the *Commonwealth Electoral Act 1918*, division 3, part XX.

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

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

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

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

## The effectiveness of a public funding scheme

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

### Full public funding

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

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

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

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

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

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

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

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

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

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

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

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

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

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

### No public funding

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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



## Conclusion

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

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

**Recommendation 15**

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

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

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

**Election funding**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

## A higher threshold

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

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

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

election, 34 fewer candidates would have qualified for public funding.<sup>29</sup> The first Green Paper also referenced AEC figures indicating that total public funding entitlements would have decreased by approximately \$482 000.<sup>30</sup>

- 6.56 A common-sense analysis indicates that regardless of the higher threshold, the major parties are likely to obtain the minimum requirement to qualify for direct entitlement election funding, even if the threshold is increased. The AEC pointed out in its submission that ‘around 98% of election funding entitlements at the last two general elections were paid to the Labor, Coalition and Green parties’.<sup>31</sup>
- 6.57 In its report following the inquiry into the conduct of the 2004 federal election, the Joint Standing Committee on Electoral Matters (JSCEM) recognised the potential for ‘profiteering’ under the current public funding model. While the option to revert back to a reimbursement scheme was not supported due to the administrative burden, and the argument that profiteering could still be undertaken was not supported, there was support for implementing a higher threshold for public funding to be paid.<sup>32</sup>

## Conclusion

- 6.58 Increasing the threshold for public funding could be perceived as unfair, as it will reduce the chances of smaller and newer political parties of qualifying for public funding of their election campaigns. There are ongoing issues pertaining to the funding of new and emerging political parties that require particular consideration in the design of an appropriate public funding scheme for the Commonwealth.

## A reimbursement scheme

- 6.59 Public funding at the Commonwealth level is currently paid to parties following an election if they obtain four per cent of the formal first preference vote.

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

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

31 Australian Electoral Commission, *Submission 19*, p. 10.

32 Parliamentary Library, ‘Commonwealth Electoral Amendment (Political Donations and Other Measures) Bill 2010’, *Bills Digest No. 43, 2010-2011*, 17 November 2010, p. 11.

- 6.60 Election funding at the Commonwealth level previously operated as a reimbursement scheme whereby parties lodged claims for expenditure with the AEC which were then able to be reimbursed. The first Green Paper stated that the scheme was changed to a direct entitlement scheme in an attempt to guarantee more timely payments.<sup>33</sup>
- 6.61 The revised public funding scheme proposed in the Commonwealth Electoral Amendment (Political Donations and Other Measures) Bill 2010 (2010 bill) includes a reimbursement scheme for actual 'electoral expenditure'.
- 6.62 The 2010 bill proposes that a definition for electoral expenditure be included in section 287(1) of the Electoral Act.<sup>34</sup> It includes matters such as broadcast during the election period of advertisements relating to the election and the display in cinemas and theatres during the election period of advertisements relating to the election. The revised definition also incorporates suggestions made in the first Green Paper that additional staffing or travel costs be included.<sup>35</sup>
- 6.63 The rationale for returning to a reimbursement for actual expenditure is that it is less likely to result in a continual increase in spending than the application of a 'per vote' formula that has no linkage to actual, proven expenditure.
- 6.64 Emeritus Professor Colin Hughes expressed support for a return to a reimbursement scheme if the public funding system is to be retained. He argued that 'the present situation brings discredit to the wider process by allowing the occasional abuse'.<sup>36</sup> The NSW and Australian Greens also supported having a reimbursement component in the public funding system provided there is also adequate public funding for party administration expenditure. The payment of funding through a reimbursement scheme thus appears to be a key feature of frameworks with a range of mechanisms in addition to disclosure.
- 6.65 The AEC stated that 'long-standing calls' to return to a reimbursement scheme also stem from the need to prevent 'profiteering' from the payment of public funding. However, the AEC noted that:

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33 Commonwealth of Australia, *Electoral Reform Green Paper – Donations, Funding and Expenditure*, December 2008, p. 38.

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

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

36 Emeritus Professor Colin Hughes, *Submission 16*, p. 7.

Election campaign expenditure reimbursement schemes can be opened up to manipulation by various means, not least from the necessity that expenditure need only be incurred, not paid, allowing invoices to be submitted to support a claim, reimbursed, but then never settled.<sup>37</sup>

6.66 While acknowledging there was some appeal in a move back to a reimbursement scheme, the AEC questioned the role such a move would feasibly play in reducing election costs, stating that:

The AEC's experience of the previous reimbursement scheme was that less than 1% of election public funding entitlements were not paid, with only \$413, or 0.004% of total entitlements, not paid at the 1987 election.<sup>38</sup>

6.67 It is noted that at the Commonwealth level, as well as in Queensland before the implementation of a cap scheme, reimbursement schemes have operated effectively as a feature of disclosure based systems.

6.68 The Canadian political financing scheme involves a public funding scheme that draws on a combination of features from a reimbursement scheme and a per vote formula. Under that scheme, candidates winning at least 10 per cent of the popular vote are reimbursed for 60 per cent of their election expenses and registered parties winning two per cent of the national vote or five per cent of the vote in the districts where the party ran candidates are entitled to 50 per cent reimbursement of election campaign expenses.<sup>39</sup>

6.69 Criticisms of reimbursement schemes often stem from the precise reimbursement model that is in operation. In this respect, arguments regarding reimbursement schemes accord with those regarding public funding generally.

6.70 The reimbursement scheme proposed in the 2010 bill provides reimbursement for 'electoral expenditure'. It seeks to level the playing field by preventing 'double dipping' by those that receive parliamentary entitlements, allowances (except remuneration) or benefits. The explanatory memorandum stated:

As sitting members of Parliament may be able to meet some electoral expenditure by way of allowances, entitlements or benefits paid by the Commonwealth in some circumstances, it is

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37 Australian Electoral Commission, *Submission 19*, p. 11.

38 Australian Electoral Commission, *Submission 19*, p. 10.

39 See in general *Canada Elections Act*, ss. 464-468.

not appropriate that his electoral expenditure is claimed for public election funding purposes.<sup>40</sup>

## Conclusion

- 6.71 A reimbursement scheme is not necessarily immune to the practice of profiteering. However, in the context of the current system, there is significant appeal in the notion of a reimbursement scheme for minimising the perception of misuse or abuse.
- 6.72 Flexibility is an important feature of a public funding scheme. However, this needs to be balanced with broader considerations such as limiting election spending levels and the integrity of the democratic process.
- 6.73 The committee supports the measures in the Commonwealth Electoral Amendment (Political Donations and Other Measures) Bill 2010 that propose payment of election funding based on the lesser of reimbursement for actual expenditure and payment per vote once a minimum of four per cent of the first preference vote has been made.

## Funding for new political parties

- 6.74 New political parties do not receive funding from the Commonwealth unless they qualify by receiving a minimum of four per cent of the first preference vote at a federal election. This threshold can be very difficult to obtain for new entrants to the political process.
- 6.75 The key justification for ongoing funding of newer parties is to level the playing field for new entrants to the political and democratic process.
- 6.76 In its first appearance before the committee for this inquiry, the AEC commented on the issues that arose for new parties in tying the public funding eligibility requirements to a per vote formula, noting that:

The current process is tied to the voting threshold of four per cent, so it would make it difficult for a new party to come in and obtain funding at that stage. It also has to be remembered that public funding is post the event. So part of the issue is making commitments to enter into incurring costs; if you are a smaller

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40 Explanatory memorandum, Commonwealth Electoral Amendment (Political Donations and Other Measures) Bill 2010, p. 4.



party or a new player, you have no guarantee of actually receiving public funding.<sup>41</sup>

6.77 Similar arguments would apply where a reimbursement scheme for public funding is in place. Smaller parties logically have less money to spend on election expenses, and will therefore be reimbursed for a lesser amount than larger parties with large amounts of their budget dedicated to election expenses.

6.78 There are two ways by which new parties could be additionally funded:

- through the payment of election funding 'up-front'; and
- through the payment of additional ongoing funding.

6.79 The AEC raised the concept of payment of election funding up-front as a means to negate the clear advantage that larger parties have in relation to qualifying for public funding. It indicated that:

We have received feedback from a couple of parties in the past where they have made a comment to us in effect saying that if they receive public funding up-front they would be able to run a good enough campaign to achieve the four per cent which is then the qualifier for them to get public funding.<sup>42</sup>

6.80 The AEC acknowledged there were complexities involved with the criteria and means by which election funding would be paid up-front.<sup>43</sup>

6.81 NSW has a funding scheme in place for newer political parties. The state's legislation allows for the provision of 'policy development funding'. The NSW policy development fund was established as a response to concerns that capping donations could potentially hamper the development of new political parties seeking to contest elections.

6.82 A political party is only eligible to receive policy development funding under the NSW scheme if it is not eligible to receive administrative funding. This funding is paid annually, and the amount paid is that which was actually expended on policy development up to a maximum amount. That is, the policy development fund operates as a capped reimbursement scheme. A new political party would be eligible for policy development funding of at least \$5 000 for the first eight years.<sup>44</sup>

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

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

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

44 *Election Funding, Expenditure and Disclosures Act 1981* (NSW), s. 97I(5).

6.83 The Greens NSW proposed that newly registered and very small political parties and state divisions be able to obtain funding as follows:

..the greater amount of \$10,000 per annum indexed, or 50 cents per vote received in a state or territory plus 10 cents per vote nationwide for the federal division of the party.<sup>45</sup>

6.84 However, additional funding for new entrants to the political process may prove difficult to obtain support for in the context of the current system involving direct entitlement to public funding.

## Conclusion

6.85 There is a risk that if election funding was paid prior to the election based on factors that may include the number of MPs and opinion polls, for example, there is likely to be greater disparity in the amount of public funding paid between larger political parties, smaller and emerging political parties, and Independents, than if funding was based on the actual vote.

## Elected candidates and funding

6.86 Another issue raised with the committee is the case where a member is elected who has not gained four per cent of the first preference vote. At the 2010 federal election, the Democratic Labor Party (DLP) candidate John Madigan received 2.33 per cent of the first preference vote, and following the distribution of preferences obtained the full quota and was elected a Senator for Victoria.

6.87 Senator Madigan noted that while other unsuccessful candidates, such as Family First in South Australia received 4.08 per cent of the vote and were eligible for public funding, he as an elected Senator only received a refund of his \$1 000 nomination fee.<sup>46</sup> An earlier example was the 2004 federal election, in which Senator Steve Fielding was elected as a Senator for South Australia with 1.88 per cent of the primary vote plus preferences.<sup>47</sup>

6.88 In his submission to the inquiry, Senator Madigan argued that:

...the criteria for funding [should] be altered to include the circumstances when a candidate receives less than 4% of the primary vote but is elected after distribution of preferences. This

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45 The Greens NSW, *Supplementary submission 18.1*, p. 1.

46 Senator John Madigan, Commonwealth Senator for Victoria, *Submission 26*, p. 1.

47 Senator John Madigan, Commonwealth Senator for Victoria, *Submission 26*, p. 1.

would confirm the importance we give to the preferential system by demonstrating that parliamentarians elected on preferences other than first preferences are as validly elected as those elected only on first preferences.<sup>48</sup>

- 6.89 In Canada, the reimbursement of election expenses extends to both candidates that are simply elected, and those that achieve at least 10 per cent of the vote. A move towards paying election funding to those who are elected would bring Australia into line with international approaches in the area.

## Conclusion

- 6.90 In cases where members are elected with less than four per cent of the first preference vote, they should be eligible for reimbursement of their expenditure. It can be hard for newer entrants to the political arena to secure four per cent of the first preference vote, but their election to the seat is sufficient evidence of community support to justify receiving some public funding support.
- 6.91 Election to Parliament should serve as a threshold for election funding entitlement. However, by applying reimbursement up to the level of the per vote entitlement for the number of first preference votes received, should assist in providing some financial support for this category of candidate but not serve as a financial windfall for those with lower spending levels.
- 6.92 The committee believes this is a worthwhile change to ensure that this category of persons receives appropriate financial support, even if a wider reimbursement scheme is not adopted.

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48 Senator John Madigan, Commonwealth Senator for Victoria, *Submission 26*, p. 1.

## Recommendation 16

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

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

## Payment of election funding

6.94 In its report on funding and disclosure in relation to the 2010 federal election, the AEC raised an issue regarding the operation of provisions governing the payment of election funding for parties that are formally recognised in more than one, but not all states. The AEC cited the example of the Family First party as being formally recognised as having state branches in Victoria, Queensland and South Australia.

6.95 Section 299(1)(d) of the Electoral Act states that election funding for a candidate in a particular state is paid to the state branch of a political party agent of that state branch. Section 287(4A) provides that in relation to a political party that does not have state branches, or only carries on activities in one state or territory, a reference to the state branch of the party is a reference to the party itself. However, where a party carries on activities in more than one, but not all states, it is not covered in the terms of the legislation.

6.96 The AEC listed the relevant of the formal recognition process, and stated that it was required in order to identify:

- branches of registered political parties with an obligation to lodge their own financial disclosure returns under ss.314AB(1) and be paid election funding,
- entitlement to elector information which is made available to a registered political party under s.90B, and

- entitlement to electronic lists of postal vote applications which are made available to a registered political party under s189A.<sup>49</sup>
- 6.97 The AEC stated that the operation of section 287(4A) in conjunction with section 299 cast doubt over its ability to pay election funding to parties that carry on activities in more than one, but not all states, should they qualify.<sup>50</sup>
- 6.98 The AEC provided an example to demonstrate the problem:
- At the 2010 federal election, the Family First Party endorsed candidates in New South Wales, Western Australia and Tasmania as well as the three states in which the party's branches are formally recognised. If the Family First Party was entitled to receive election funding in any state where the party is not recognised as having a branch established there is some doubt as to whether the AEC could pay election funding to the party for that state due to the operation of s. 299(1)(d) of the [Electoral] Act. The Democratic Labor Party (DLP) of Australia also endorsed candidates in a state where they are not formally recognised and therefore could also have been affected in regard to election funding entitlements for its endorsed candidates in that state.<sup>51</sup>
- 6.99 To rectify the issue, the AEC recommended that the Electoral Act be amended to ensure that 'the payment of election funding entitlements for eligible candidates and Senate groups can be made to the party whether or not the party is organised on the basis of a particular state or territory'.<sup>52</sup>

## Conclusion

- 6.100 The committee recognises the importance of ensuring that the provisions for the payment of election funding are easy to administer and clear. It is imperative that all candidates and parties that qualify for election funding are able to be paid their entitlement.

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49 Australian Electoral Commission, *Election Funding and Disclosure Report: Federal Election 2010*, Commonwealth of Australia, p.13.

50 Australian Electoral Commission, *Election Funding and Disclosure Report: Federal Election 2010*, Commonwealth of Australia, p.13.

51 Australian Electoral Commission, *Election Funding and Disclosure Report: Federal Election 2010*, Commonwealth of Australia, p.13.

52 Australian Electoral Commission, *Election Funding and Disclosure Report: Federal Election 2010*, Commonwealth of Australia, p.13.

## Recommendation 17

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

## Administrative funding

- 6.102 At the Commonwealth level, there is no ongoing administrative funding for political parties. Public funding in Australia is based only on election campaigns and calculated according to a 'per vote' formula.
- 6.103 The idea of providing ongoing funding to political parties emerged in a number of submissions. Generally, suggestions and support for this was linked to a proposal for a broader set of reforms. In cases where substantial reform to funding and disclosure systems occurs, one rationale for ongoing funding of parties by the state is to ensure parties have sufficient funds to operate when stricter limits on other sources of finance are in place.
- 6.104 Targeted administrative funding also has application under the current funding and disclosure system. The Australian Labor Party argued that parties were already feeling the pressure of meeting their administrative obligations, stating that:

The cost and burden of administration and compliance is already significant and would in our view justify the consideration of public funding for party administration as has already occurred in some Australian states. Increasing administrative costs associated with Australia's electoral laws becoming more restrictive and placing increased burdens on political parties in terms of reporting and disclosure would have the effect of significantly adding to these pressures.

In response to this challenge Australia has begun the process of moving towards the provision of administrative financing alongside a system of election financing for political parties.<sup>53</sup>

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53 Australian Labor Party, *Supplementary submission 21.1*, p. 4.

6.105 The Liberal Party of Australia agreed that meeting disclosure obligations can be challenging for political parties that are broad based organisations with large volunteer wings often with limited resources.<sup>54</sup> It argued that:

...should any changes to funding and disclosure obligations proposed at the federal level further add to the reporting and compliance obligations on parties appropriate regular funding for administrative purposes would assist parties in meeting their increased compliance obligations.<sup>55</sup>

6.106 The Australian Labor Party identified the four features that it saw as essential to an effective Commonwealth administrative funding model. It indicated that it would support a model that:

- Provides a level of certainty for parties with quarterly payments to those parties achieving more than 4% of the vote over a three-election cycle, or that have five or more seats in the House of Representatives. The ALP believes that existing political parties represented in the current Commonwealth Parliament should qualify for funding under any extension of public funding for party administration.
- Creates a central Administrative Fund based on the total number of voters enrolled with a set dollar amount per voter. The ALP believes that a central administration fund provides the best model from the experience in state jurisdictions for party administration funding.
- Allocates funding based on the proportion of the popular vote received by a political party, over a three-election cycle. The ALP believes that the popular vote is the best reflection of the standing of a political party, particularly when applied over a three election cycle. As stability is a key objective of party administration funding, this would ensure that funding reflects enduring electoral appeal for a party.
- Supports independent members of parliament and smaller political parties. The ALP believes that Independent members and smaller parties should be recognised under any extension of public funding, as has occurred in state jurisdictions.<sup>56</sup>

6.107 The Australian Greens linked the notion of ongoing funding for political parties to the concepts of education, involvement and access to the political process. On the issue of ongoing public funding generally, the party stated that:

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54 Liberal Party of Australia, *Submission 25*, p. 3.

55 Liberal Party of Australia, *Submission 25*, p. 3.

56 Australian Labor Party, *Supplementary submission 21.1*, p. 7.

Our...goal of access to political process, which will enable an increase to the diversity of opinions, can be supported through public funding of election campaign expenses, plus public funding and support for the activities of political parties between elections. This type of explicit operational support would not be unique in Australia if introduced as part of a federal public funding regime as it is currently available in the state funding arrangements in Queensland and New South Wales. Support of political parties between elections provides a further means by which the voting public can be educated and involved in the political process.<sup>57</sup>

- 6.108 Internationally, a number of jurisdictions provide financial support for the administrative costs of political parties. In Canada, a registered party that obtains at least 2 per cent of all valid votes cast at a general election, or at least 5 per cent of the valid votes cast in the electoral districts in which it ran a candidate in a general election, is eligible for an annual allowance. Eligible parties receive a quarterly allowance of approximately 43.75 cents per valid vote obtained, or \$1.73 annually per valid vote obtained, which is indexed to inflation.<sup>58</sup>
- 6.109 In the United Kingdom, financial assistance is provided to opposition parties. In the House of Commons, all opposition parties who have secured either two seats or one seat and more than 150 000 votes at the previous general election are eligible for 'short money' to assist parties to carry out its Parliamentary business, for travel and associated expenses, and to assist with the running costs of the Leader of the Opposition's office. A similar scheme exists in the House of Lords; 'Cranborne money' provides financial support to opposition parties and the crossbench.<sup>59</sup> Section 12 of the *Political Parties, Elections and Referendums Act 2000* also provides for Policy Development Grants, which are administered by the UK Electoral Commission.<sup>60</sup>
- 6.110 The ALP noted that in Europe public financing of election activity and party administration has been a feature of political systems there for decades. It commented that:

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57 Mr Brett Constable, *The Australian Greens, Committee Hansard*, 8 August 2011, p. 39.

58 Elections Canada website, *Information Sheet 8: Annual allowances for political parties*, <<http://www.elections.ca/content.aspx?section=res&dir=loi/inf&document=fs08&lang=e&textonly=false>> viewed 22 November 2011.

59 House of Commons Library, *Short Money*, Standard Note SN/PC/1663, pp. 3, 10-11, <<http://www.parliament.uk/documents/commons/lib/research/briefings/snpc-01663.pdf>> viewed 22 November 2011.

60 UK Electoral Commission website, <[http://www.electoralcommission.org.uk/party-finance/public\\_funding](http://www.electoralcommission.org.uk/party-finance/public_funding)> viewed 22 November 2011.



Germany, Netherlands, France, Portugal, Spain, Sweden, and Italy all have public funding programmes for political parties. This has included reimbursements for electoral expenses, as occurs in Australia, but also extensive party administration grants in many countries.<sup>61</sup>

- 6.111 In Australia, New South Wales and Queensland have administrative funding in place. Under the NSW scheme, parties with endorsed elected members are eligible to obtain administrative funding. They must satisfy the annual continued registration requirements. Unendorsed elected members are also eligible for payments from the administration fund.
- 6.112 Parties can apply for administrative funding on an annual basis, which is paid based on demonstrated expenditure, and are entitled to the lesser of \$80 000 for each elected member from that party or \$2 million per party.<sup>62</sup>
- 6.113 The NSW scheme also makes provision for new and smaller parties through the annual Policy Development Fund, when they are not eligible to obtain funds under the Administrative Fund. This alternative funding stream can provide a maximum of 25 cents for each first preference vote received by any candidate at the previous Senate election who was endorsed by that party. However, the policy development funding can only be claimed for up to eight years.<sup>63</sup>
- 6.114 The Queensland administrative funding system operates in a similar manner. Registered political parties with elected members are entitled to receive a regular amount of administrative funding to reduce their reliance on donations. The requirement to continue to qualify for registration is also a condition of the receipt of administrative funding with funding provided on a six-monthly basis.
- 6.115 GetUp expressed its support for the NSW public funding scheme. It acknowledged the need for funding models to be subject to continual review but expressed support for a move to a system of increased administrative funding, stating that:

...we believe a more effective use of taxpayer resourcing is to give ongoing public funding for party administration and to increase public funding for campaigns for a 5 year transitional period to help parties adjust with re-targeting their donations gathering

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61 Australian Labor Party, *Supplementary submission 21.1*, p. 6.

62 Australian Labor Party, *Supplementary submission 21.1*, p. 5.

63 Australian Labor Party, *Supplementary submission 21.1*, p. 5.

(towards smaller donations) and their campaigning (away from broadcast).<sup>64</sup>

6.116 The Greens NSW support a funding scheme involving ongoing funding for newer and smaller political parties. In its supplementary submission to the inquiry, it proposed a funding model based on elements of the new regime in NSW. It included administrative funding for registered political parties that qualify and policy development funding for new political parties.<sup>65</sup>

6.117 Similarly to the arguments in the broader public funding debate, criticism of the notion of ongoing funding for political parties is intertwined with criticism of the way in which entitlements and amounts of such funding is calculated. In its supplementary submission to the inquiry, the Greens NSW raised a number of issues with the Queensland administrative funding scheme. They observed that:

Both the NSW and Queensland legislation determine qualification for administration funding and the amount of that funding based on the number of elected MPs who represent that party. The absence of a proportionally elected chamber in Queensland limits that funding to parties able to win single-member electorates, and works in an anti-democratic way against parties who secure substantial amounts of the state-wide vote but fail to win a seat.<sup>66</sup>

6.118 The Greens NSW further expanded on the issues relating to the applicable funding model at the federal level, noting that:

While the Senate is elected proportionally, the 14.28% quota is more than three times larger than the threshold for electoral funding of 4%. The Greens NSW feel a solely elected-member qualification would not result in a fair party administration funding outcome. Nevertheless, it is possible for Senators to be elected with primary votes below the 4% funding threshold, so a hybrid eligibility system could be desirable.<sup>67</sup>

6.119 Further concerns regarding administrative funding on an ongoing basis were raised by the AEC. It pointed out in its submission that similar risks for profiteering existed with administrative funding as existed with the provision of election funding. The AEC observed that:

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

65 The Greens NSW, *Supplementary submission 18.1*, p. 1.

66 The Greens NSW, *Supplementary submission 18.1*, p. 1.

67 The Greens NSW, *Supplementary submission 18.1*, p. 1.

Profits can perhaps even more easily be realised under such arrangements if there are no or very broad restrictions on the uses to which those funds can be put. Unless there are strict processes for acquitting the expenditure of administrative funding it may be impossible to stop such costs leaking out into election campaigns...<sup>68</sup>

- 6.120 These concerns give rise to the need to consider the way in which the use of administrative funding could or should be regulated. NSW and Queensland have approached the issue by requiring that a dedicated campaign bank account be set up. The deposits that can be made into the dedicated campaign account are strictly regulated.
- 6.121 The AEC outlined a number of broad fundamental qualities for a successful administrative funding scheme, which included that it be:
- well targeted;
  - supportive of identified, specific activities; and
  - relatively modest in scale so as to minimise the quantum of funds that could be used for other purposes.<sup>69</sup>
- 6.122 The AEC also stated that it may be necessary to nominate thresholds of party revenues to progressively or completely eliminate the provision of public funds to parties generating sufficient income to independently undertake those activities themselves.<sup>70</sup>
- 6.123 A further issue of significance in relation to administrative funding at the Commonwealth level is the payment of any funding entitlements to political parties. The most administratively feasible mechanism to carry out payment would be to direct all payments of administrative funding to the 'national office' or 'federal secretariat' of a registered political party. Where a registered party does not have a federal body but has more than one registered branch, alternative requirements will need to be devised.
- 6.124 Given that the election funding payments will be paid to one body of each political party, the national body of each political party will have an obligation to ensure the payments to state branches are only used for political activities at the Commonwealth level.

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68 Australian Electoral Commission, *Submission 19*, p. 11.

69 Australian Electoral Commission, *Submission 19*, p. 11.

70 Australian Electoral Commission, *Submission 19*, p. 11.

## Conclusion

- 6.125 If the recommendations in earlier chapters to decrease the disclosure threshold and increase the level of detail to be disclosed are accepted, this will increase the administrative burden on individuals and groups with reporting obligations, in particular political parties. Administrative funding is one way to provide assistance to political parties to ensure that they are appropriately resourced to develop an understanding of and can meet the increased demands that come with greater disclosure.
- 6.126 Administrative funding to assist political parties to meet the increased administrative demands that are likely to come with reforms to Australia's funding and disclosure system could be seen as a necessary measure to help improve transparency and accountability in Australia's democratic system.
- 6.127 Administrative funding should be paid by the AEC to the registered 'federal body' or 'national secretariat' of each political party. Parties without an 'official' federal body should be able to nominate the party to whom the funding is paid. The body that receives payment of the administrative funding has the responsibility to ensure the money is only used for Commonwealth political activities.
- 6.128 The Australian Government will need to liaise with the Australian Electoral Commission, political parties, Independents and other stakeholders to devise an appropriate model for administrative funding at the Commonwealth level.

### Recommendation 18

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