

Submission

on

Schedule 1 of the Tax Laws Amendment (2008 Measures No.1) Bill 2008 - Political Contributions and Gifts

to the

Joint Standing Committee on Electoral Matters

Department of House of Representatives

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1. Introduction

On 19 March 2008 the Senate resolved to refer the provisions of Schedule 1 of the Tax Laws Amendment (2008 Measures No.1) Bill 2008 to the Joint Standing Committee on Electoral Matters for inquiry and report by June 2009.

The Committee has called for public submissions addressing the terms of reference to be received by Friday 18th April 2008.

Festival of Light Australia is a national organisation which, among other things, has a longstanding interest in democracy, the rule of law, constitutionalism and the separation of powers. It is independent of all political parties.

2. Tax deductibility for political contributions and gifts

For contributions made before 22 June 2006, the tax law allows a non-corporate taxpayer to deduct a contribution (which includes a membership subscription as well as a gift) of \$2 or more to political parties registered under Part XI of the Commonwealth Electoral Act 1918. The total deductions allowable to the taxpayer are subject to a maximum level of \$100 in an income year.

For contributions and gifts made on or after 22 June 2006 donors (including companies) can claim up to \$1,500 for contributions and gifts to political parties, and up to \$1,500 for contributions and gifts to independent candidates and members in each income year.¹

Schedule 1 of the Tax Laws Amendment (2008 Measures No.1) Bill 2008 amends the Income Tax Assessment Act 1997 and the Income Tax Assessment Act 1936 to remove tax deductibility for contributions and gifts to political parties, members and candidates. It would take effect from 1 July 2008.²

3. Democratic principles

The funding of political candidates and parties in elections is an integral element of a democratic system of government. The way in which elections are funded is of critical importance to the integrity of the electoral process and the strength of parliamentary democracy as a whole. Consequently, election funding law should facilitate the kind of representative democracy cherished by the Australian people.

3.1 Individual freedom

As Professor Lumb points out in his book *Australian Constitutionalism*, the roots of the modern Australian system of government lie in the debates and battles in earlier centuries over providing a system of effective constraints on government power.³ The idea of the rule of law, or limited government, overturned the earlier doctrine of unlimited sovereignty under which people were subject to the arbitrary will of the ruler.

The core idea of the Australian system of government is recognition of the right of the citizen to freedom under the law. This fundamental freedom is expressed in many ways, including the right to stand for election and vote, and also through the right of a citizen to use his financial resources to further his political objectives. Any constraint on the freedom of a citizen to fund political candidates or parties needs to be fully justified.

Reasonable measures to encourage citizens who wish to fund political candidates or parties needs could be seen as fostering political freedom.

This recognition of individual freedom emerges from the Judaeo-Christian understanding of mankind being made in the image of God and therefore being entitled to respect and dignity.⁴

3.2 Freedom of association

Another central element of the dignity of mankind is the recognition that people are inherently relational and naturally join with others in groups of various kinds.

In a political context this involves “recognition of the fact that between the ruler and the mass of the citizenry there are a variety of groups to which the citizens belong. They may be occupational (guild, union, association), religious (church), educational (school, university), cultural and social. Certainly, in earlier periods, battles over authority and allegiance were often fought between an overweening State (Monarch) and the Church anxious to preserve the rights of its members but also at times encroaching on such rights. The concept of limited sovereignty recognises that claims to allegiance or obedience may arise from a number of groups...”⁵

Political parties are among the kinds of association which citizens should have the freedom to form or to join. Furthermore, political parties should have the freedom to raise funds and use them in political campaigns, subject only to constraints which have strong justification.

3.3 Civil society

Freedom of association provides the basis for civil society, which has been defined by the London School of Economics Centre for Civil Society as follows:

*Civil society refers to the arena of uncoerced collective action around shared interests, purposes and values. In theory, its institutional forms are distinct from those of the state, family and market, though in practice, the boundaries between state, civil society, family and market are often complex, blurred and negotiated. Civil society commonly embraces a diversity of spaces, actors and institutional forms, varying in their degree of formality, autonomy and power. Civil societies are often populated by organizations such as registered charities, development non-governmental organizations, community groups, women's organizations, faith-based organizations, professional associations, trade unions, self-help groups, social movements, business associations, coalitions and advocacy groups.*⁶

The links between civil society and democracy were explored by Alexis de Tocqueville and developed by 20th century theorists like Gabriel Almond and Sidney Verba, who identified civil society as having a vital role in a democratic order.⁷ They argued that many civil society organisations facilitate better awareness and a more informed citizenry, who make better voting choices, participate in politics, and hold government more accountable as a result. Such organisations also accustom participants to the processes of democratic decision making.

Consequently, election funding arrangements should facilitate, not hinder, the organisations which constitute civil society, including political parties, trade unions, business associations and advocacy groups.

3.4 Representative democracy

Australia’s system of representative democracy must be distinguished from direct democracy on the one hand and totalitarian democracy on the other.

Representative democracy is characterised by elected representatives who form a parliament charged with the responsibility of making decisions and acting in the public interest – without direct consultation with the electorate. This enables swift and resolute action in the face of changing circumstances.

Direct democracy involves decisions being made either by referendum or by delegates to a ruling body bound to vote in accordance with decisions made by a majority of their electors. Such a system is inherently slow and can be dominated by sectional interests.

In a totalitarian democracy, elected officials are bound to support an ideology independently of the views of the electorate. The ideology may be considered beyond the understanding of the electorate. The duty of the officials is to ensure that any inconsistent public or private activities are eliminated.⁸

Representative democracy works best when elected representatives maintain a close relationship with their constituents. While not being bound by their electorate, representatives are then able to take the views of the electorate into consideration when decisions are made in parliament.

Election funding arrangements should be designed to facilitate a close working relationship between representatives and their constituents.

3.5 Membership of political parties

While political parties in Australia are not obliged to release membership figures, and most have declined to do so in recent times, it is generally agreed that there has been a marked decline in membership numbers.

Researchers from the Australian National University examined the available evidence for the Democratic Audit of Australia. They concluded:

“In total, we estimate that membership of all Liberal, National, Labor and Democratic Labor Party in the 1960s and the Democrats since 1977 has declined, from 4 per cent of the electorate in the 1960s to less than 2 per cent in the late 1990s.”⁹

A halving of public participation in political parties over a thirty year period is not a positive development in a representative democracy.

Removing tax deductibility for political party membership dues would be an unhelpful measure in the light of this trend of declining membership.

Recommendation 1:

The provision of Schedule 1 of the Tax Laws Amendment (2008 Measures No.1) Bill 2008 which removes tax deductibility for membership fees of political parties is an unhelpful measure.

If the Committee reports before the Bill is passed by the Senate it should recommend to the Senate this provision be deleted from the Bill.

If the Committee reports at any time after the Bill has been debated by the Senate and passed with this provision intact the Committee should recommend that new legislation be introduced to restore tax deductibility for membership fees of political parties.

3.6 Political contributions and gifts

Since 22 June 2006, contributions and gifts to political parties and to independent candidates and independent members have been tax-deductible for amounts up to \$1,500 in each income year.

These are relatively modest amounts, not of a size likely to lead to concerns about undue influence on the political process. Rather donations of this size are a healthy measure of political participation.

An important effect of tax deductibility of donations generally is to strengthen the links between citizens and the associations and parties which make up civil society. In the case of political parties, tax deductibility of donations would facilitate the raising of private funds for campaign purposes and decrease reliance on public funding.

Public funding of political parties provides a conduit for funding which bypasses civil society and thereby weakens the representative nature of Australian democracy. Public funding increases the likelihood of celebrity candidates, who are disconnected from civil society, being elected.

Recommendation 2:

The provision of Schedule 1 of the Tax Laws Amendment (2008 Measures No.1) Bill 2008 which removes tax deductibility for political contributions and gifts is an unhelpful measure.

If the Committee reports before the Bill is passed by the Senate it should recommend to the Senate this provision be deleted from the Bill.

If the Committee reports at any time after the Bill has been debated by the Senate and passed with this provision intact the Committee should recommend that new legislation be introduced to restore tax deductibility for political contributions and gifts.

4. Endnotes

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1. *Political contributions and gifts – GiftPack*, Australian Tax Office, available at: www.ato.gov.au/nonprofit/content.asp?doc=/content/61195.htm.
 2. Tax Laws Amendment (2008 Measures No.1) Bill 2008: Explanatory Memorandum, p 3, www.aph.gov.au/house/committee/em/taxlawbill/taxlawbill08em.pdf.
 3. Lumb, RD: *Australian Constitutionalism*, Butterworths, 1983, Ch 1.
 4. Genesis 1:27.
 5. Lumb, *op cit*, p 5.
 6. *What is civil society?* Centre for Civil Society, London School of Economics, 1 January 2004.
 7. Almond, G, & Verba, S; *The Civic Culture: Political Attitudes And Democracy In Five Nations*, Sage, 1989.
 8. See the 1952 book *The Origins of Totalitarian Democracy* by Israeli historian J. L. Talmon.
 - 9 Jaensch, D., Brent P. and Bowden B. *Australian political parties in the spotlight*, Australian national university, 2004, p. 54.