

30 September 2011

Ms Samantha Mannette
Inquiry Secretary
Joint Standing Committee on Electoral Matters
PO Box 6021
Parliament House
CANBERRA ACT 2600

Dear Ms Mannette

Inquiry into the Funding of Political Parties and Election Campaigns

Thank you for your invitation to make a submission to the Joint Standing Committee on Electoral Matters (JSCEM) inquiry into the funding of political parties and election campaigns.

Please find attached a submission to the inquiry made on behalf of The Nationals.

Yours sincerely



Brad Henderson
Federal Director

The Nationals

Submission to the Joint Standing Committee on Electoral Matters Inquiry into the Funding of Political Parties and Election Campaigns

September 2011

Preface

This submission is made on behalf of The Nationals.

The Nationals welcome the opportunity to contribute to the Joint Standing Committee on Electoral Matters (JSCEM) Inquiry into the Funding of Political Parties and Election Campaigns and provide this submission for the Committee's consideration.

We trust this submission and the Committee's deliberations assist in the achievement of further enhancements to the integrity of Australia's electoral processes and the fair, efficient and effective funding of political parties and election campaigns.

Summary

The Nationals acknowledge the need for and are willing to consider genuine, bipartisan campaign finance reform that:

- promotes further public confidence and integrity in our electoral system;
- recognises the costs of communicating with voters and the constraints to cost-effective communication;
- is fair and equitable to all political parties and does not restrict a candidate or party's ability to communicate with voters relative to another candidate or party;
- encompasses "third party" participants in the electoral process, such as trade unions and GetUp!
- provides a common regime across all State and Federal jurisdictions, and efficient, low-cost administration by participants in the electoral process; and
- is enforceable.

The Nationals have been concerned with the piecemeal progression of campaign finance laws federally and in a number of states.

Changes to campaign finance regulation should ideally be considered and agreed collectively, then progressed on a genuinely bipartisan basis and adopted collectively and uniformly across all (Federal and State) jurisdictions. Such an approach would provide genuine transparency and uniformity of regulation, as well as going a considerable way toward promoting further public confidence in Australia's electoral processes.

That this has not occurred to date has exacerbated some of the shortcomings that have emerged in the funding arrangements for political parties and election campaigns over the last decade and elevated the need for urgent reform.

Electoral Reform Green Paper (Donations, Funding and Expenditure)

The Nationals have previously contributed to the discussion on the issue of campaign finance in our submission on the Electoral Reform Green Paper (Donations, Funding and Expenditure).

That submission on the Green Paper stands and this latest submission is designed to complement that with further information on The Nationals' views on the funding of political parties and election campaigns.

The role of third parties in the electoral process

Registered political parties and candidates are the primary participants in the electoral process, given that it is they who seek election by voters and a mandate to form government.

However, consistent with the implied freedom of political communication in the Australian Constitution, The Nationals believe that third parties and individuals have a legitimate right to participate in the electoral process.

While such third party participation has long been a feature of Australian politics, a clear trend has emerged in recent elections where that participation is increasing, in terms of the number of third party participants and in the scale of their individual and collective investment in the electoral process.

While their participation in the electoral process has been increasing, third parties are not subject to the same regulation as political parties and candidates. This is illogical, inequitable and threatens the integrity of the electoral process.

Some organisations and the union movement are now spending very large sums of money on election campaigns that are at least comparable to those of the major parties and well in excess of smaller parties. For instance, at the 2007 election the union movement spent some \$37.6 million to assist the election of the Labor Government.

A common interest is not unusual or untoward and so, therefore, is the collective advancement of an argument.

There is some evidence in recent elections of apparent collusion between third parties or between some third parties and registered political parties. Practically, this can manifest itself in many ways, such as the coordination of advertising scheduling.

The Nationals believe that if political parties are regulated, third party participants in the electoral process must also be similarly regulated.

The Nationals believe such regulation should not compromise the primary role of registered political parties and candidates in the electoral process. It should also reflect the fact that third parties do have a legitimate right to participate.

Such regulation needs to be carefully crafted so as not to disenfranchise legitimate third party participation in the electoral process. It must also ensure sufficient protection against the circumvention of the regulation by registered political parties, third parties or individuals.

The transparency and accountability of the funding regime

The Nationals believe a transparent and accountable funding regime is integral to promoting public confidence in, and the integrity of, Australia's electoral system.

The Nationals support the principle of disclosure for political donations as a means of enhancing transparency.

The current federal arrangements, including a requirement for the disclosure of significant donations and the provision of public funding based on the votes earned at an election has served Australia reasonably well. Compliance with disclosure law is high and deliberate breaches are rare.

Debate on these issues predominantly now centres on the appropriateness of the disclosure threshold and the frequency of reporting. There has also been debate about the appropriateness of foreign donations and, federally and in states such as New South Wales, the appropriateness of donations from certain individuals, groups or sectors.

Consistent again with the implied freedom of political communication in the Australian Constitution, The Nationals believe that individuals and third parties have a legitimate right to participate in the electoral process by donating to a registered political party or candidate.

Restrictions on which individuals or third parties are or are not allowed to donate infringes on the implied freedom of political communication. The practical limitations of defining those individuals and third parties are another problem. For example, the restrictions in New South Wales on allowable donors, particularly the prohibition on donations from property development corporations and their "close associates", are not defined with sufficient clarity. Businesses and individuals are often unsure whether the subjective provisions of the New South Wales restrictions apply to them, most notably in the case of them having made a regular or routine planning application. This lack of certainty is equally challenging for candidates and political parties in ensuring compliance.

If a transparent system of disclosure is in place, there is no logical reason why an individual or a business or organisation operating within the law should be restricted from participating in the electoral process. The appropriateness of accepting any donation should be the prerogative of the intended recipient. Their judgment will be determined by their own values which, together with their policy platform, the voting public is provided the opportunity to cast judgment on at every election.

Disclosure law should recognise the fine balance that exists between the public interest and an individual's right to privacy. Disclosure provisions should not be so onerous as to discourage individual participation in the political process.

The Nationals have supported the current indexed disclosure threshold as providing an appropriate balance between protecting (a) the privacy of those making donations of modest scale and (b) the public interest in the disclosure of large donations.

Increasing the frequency of reporting donations has been cited by some as a panacea for improving transparency. As with many calls for added regulation, there has been less debate about the practicalities of doing so and the added administrative and cost

burden imposed, particularly for smaller parties and individual candidates. The recent campaign finance reforms in New South Wales and Queensland are a case in point, where a massive new cost and administrative burden has been imposed on registered political parties and candidates. These new compliance costs have a disproportionate impact on smaller parties such as The Nationals, which needs to be taken into account when assessing the impact they have on parties.

This leads to the need for broader discussion around imposing further regulatory burden on registered political parties and candidates or capping donations as some have canvassed; that is, the adequacy of public funding to meet the shortfall that will be created – either through the imposition of more cost or through limiting current income streams.

Limiting the cost of elections

There has been much discussion on the escalation of election campaign spending, particularly in recent elections, which some have dubbed an ‘arms race.’ There are various reasons why this is cited as a problem. For smaller parties like The Nationals, it is the ability to remain competitive with the larger Liberal and Labor parties.

The ‘solution’ that has been most readily identified in the debate so far is a system of caps on expenditure and/or donations such as those that have been employed overseas in countries like the USA, United Kingdom and Canada.

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.

Registered political parties should be treated fairly and equitably. Any restrictions on political expenditure should respect registered political parties as individual entities and should not restrict their ability to communicate with voters relative to another party.

While the theory does not always prevail, there is a correlation between campaign spending and electoral success. This means there is an inherent motivation for political contestants to raise more money to allow them to spend more on communicating their message.

However, this alone does not explain the rising cost of election campaigns. A range of other contributing factors must be fully considered in any discussion on limiting campaign spending. These include:

- inflation, particularly in regard to advertising and other communication tools such as mail;
- media consolidation and news syndication; and
- electorate size.

Media inflation between the 2004 and 2007 elections far outstripped CPI increases. The increases continued in 2008, before the media market deflated in 2009, then soared again in 2010 by 10.2 percent (TV), 11.2 percent (newspaper) and 9.5 percent

(radio)¹. Postage costs between the 2007 and 2010 elections increased from 50 cents to 60 cents².

In regional Australia, the impact of election campaign cost increases is compounded by the large and increasing size of most regional electorates. Large electorates cost more in time, fuel and other transport costs to campaign across. Large electorates force a greater reliance on advertising and mail communication relative to metropolitan electorates where candidates and voters enjoy ready mutual access. Large electorates also feature multiple media markets, which multiplies the overall cost of communicating a message to voters in the electorate.

Media consolidation and the expansion of news syndication have gradually reduced the coverage of local political debate and the ability of political parties and candidates to use the media to communicate with voters in their electorate. Much of the media coverage that is provided to an election campaign by these syndicated news services is focused on the national political contest rather than the local political contest within an electorate or region. This “presidential” coverage focuses predominantly on the leaders of the two major political parties. In turn, this forces a further reliance by parties such as The Nationals on paid advertising to communicate with voters.

Australia’s system of public funding plays an important role in the electoral process, although in current form it does not fulfil the original objectives of reducing the political parties’ reliance on private fundraising. As costs have increased, so too has the rate of public funding. Yet the rate of public funding falls well short of the actual cost of even a modest election campaign. The current rate is insufficient to cover anymore than the cost of a couple of letters, let alone any other campaign expense or the costs of running and administering a party between elections.

Even with a system of expenditure caps introduced, unless there is significant reform of the public funding system, the need will remain for political parties and candidates to fundraise to meet the gap between the rate of public funding and the real cost of a campaign. This is particularly the case for the federal Nationals which do not enjoy the same access to public funding as the other parties, or to income streams like the union affiliation fees enjoyed by Labor.

Fundraising also plays a vital role in funding the administration of registered political parties, just one role of which is the fulfilment of regulatory compliance and reporting. If the compliance and reporting burden is increased, the experience in New South Wales and Queensland has shown there will be a dramatic and commensurate increase in the cost to registered political parties, in turn contributing to a further escalation in the cost of the electoral process.

The Nationals urge careful consideration of any further regulation that may restrict one driver of election cost increases, but which has the effect of then driving up costs in another area such as compliance and, in particular, the effect of it on smaller parties, relative to the larger parties.

The Nationals support improvement of the public funding system to help ensure a level playing field and to ensure that political parties and candidates are able to communicate their policies to voters and fulfil their compliance responsibilities. Any changes should treat registered political parties fairly and equitably on a per vote

¹ Source: CEASA/Aegis

² Source: Australian Competition and Consumer Commission

formula. The system should have the capacity to accommodate the carrying structures of the registered political parties and the varying structures that exist across the affiliates or divisions of those parties.

State and territory measures and the Commonwealth implications

The Nationals rely on a small administrative team and many volunteer members in many hundreds of branches spread across the nation. Varying reporting requirements across Australia's Federal and State jurisdictions currently impose significant administrative burden on the party's offices and volunteer members and also create confusion for donors and party members. The problem is pronounced in New South Wales and Queensland with the new reforms in those states, the administrative costs of which have already been noted in this submission.

A further issue relates to the capacity of Australia's various electoral commissions to fulfil their responsibilities, their interpretation of their responsibilities and the real or perceived overlap of their responsibilities.

Ideally, there should be harmonised disclosure provisions across all jurisdictions with a single disclosure system administered by a single electoral agency, most appropriately the Australian Electoral Commission (AEC). Such a system must be low cost, administratively efficient and cover all participants in the electoral process.

Failing the achievement of a single harmonised system, there should be clear distinction between the responsibilities of state and federal electoral commissions. In simple terms, state electoral processes should be the responsibility of state electoral commissions and federal electoral processes should be the responsibility of the AEC.

International practices for the funding of political parties and election campaigns

International practices for the funding of political parties and election campaigns have been well canvassed in the Electoral Reform Green Paper (Donations, Funding and Expenditure) and consideration of some of these may provide an opportunity for Australia to further refine its system for the funding of political parties and election campaigns.

In considering individual options, The Nationals urge JSCEM to have regard for their suitability for the Australian context and the unique aspects of our democracy.

Conclusion

There is a need for genuine, bipartisan campaign finance reform.

The piecemeal progression of campaign finance reform at federal and state level to date, and the shortcomings that have emerged at the federal level in the funding arrangements for political parties and election campaigns over the last decade have elevated the need for such reform.

A fair and equitable system that ensures the efficient and effective funding of political parties and election campaigns will instil further public confidence in the integrity of

Australia's electoral process and ensure that elections truly express the wishes of Australian voters.

The Nationals reserves the right to further consider any proposed changes to existing donations, funding and expenditure regulation during and subsequent to this JSCEM inquiry.