
The Parliament of the Commonwealth of Australia

Advisory report on
Schedule 1 of the
Tax Laws Amendment
(2008 Measures No. 1)
Bill 2008

Joint Standing Committee on Electoral Matters

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Chair's Foreword

The committee supports the discontinuation of tax deductibility for political donations and recommends that Schedule 1 of the Tax Laws Amendment (2008 Measures No. 1) Bill 2008 be passed by the Senate without amendment.

The policy of discontinuing tax deductibility for political donations was taken to the 2007 federal election by the Australian Labor Party. The Tax Laws Amendment (2008 Measures No. 1) Bill 2008 will give effect to this pre-election commitment and deliver ongoing savings of over \$10 million per year. Delaying the passage of this legislation will lead to these savings disappearing from the budget bottomline.

The savings estimates prepared by Treasury represent the best available estimate given the lack of information from tax returns, donations to political parties and political party membership.

While some inquiry participants argue that tax deductibility should be considered as part of a broader inquiry, it is doubtful that the future political financing landscape will retain such an unbalanced and inequitable scheme.

Tax deductibility for political donations was introduced in an ad hoc way in 1991 following amendments to electoral legislation in the Senate by the Coalition parties and the Australian Democrats. While initially only applying to donations by individuals and their party membership fees to a cap of \$100 per year, in 2006 the government extended tax deductibility to businesses and lifted the threshold to \$1,500 per year.

Discontinuing tax deductibility for these payments, with an exception for individual taxpayers where the payments are related to earning taxable income, will remove the inherent inequity of the tax system which provides higher income earners a larger subsidy for contributions to political parties. Abolishing tax deductibility for business taxpayers will remove a loophole under which payments by businesses to political parties are subsidised by the taxpayer to the tune of 30 per cent.

There is no evidence to suggest that removing tax deductibility will necessarily lead to reduced participation in political activities – members of the community will still be free to join political parties and individuals and businesses will still be free to donate to political parties and candidates for public office. However, the inequity created by the tax system will be removed and provide a fairer basis for political participation.

I would like to thank the Members and Senators of the committee for their contribution to the report and those that participated in the inquiry by making submissions or appearing at the public hearing. I would also like to thank the committee secretariat for their work in preparing this report and the parliamentary library for their background research on tax deductibility.

Daryl Melham MP
Chair



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Membership of the Committee

Chair Mr Daryl Melham MP

Deputy Chair Mr Scott Morrison MP

Members Mr Michael Danby MP

Mr Jon Sullivan MP

Hon Bruce Scott MP

Senator Simon Birmingham

Senator Bob Brown

Senator Carol Brown

Senator Steve Hutchins

Senator the Hon Michael Ronaldson

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Terms of reference

On 19 March 2008, the Senate agreed to the following resolution:

That the provisions of Schedule 1 of the Tax Laws Amendment (2008 Measures No. 1) Bill 2008 be referred to the Joint Standing Committee on Electoral Matters for inquiry and report by June 2009.



Recommendation

The underlying inequity of tax deductibility for political contributions and gifts, which confers advantages and disadvantages to taxpayers on the basis of their taxable income, should be discontinued. The committee rejects the view expressed by some inquiry participants that forthcoming reviews of political party funding should examine tax deductibility for political contributions and gifts in a broader context.

Recommendation 1

The committee supports the removal of tax deductibility for contributions and gifts made to political parties, members and independent candidates and recommends that the proposed Bill be passed by the Senate without amendment.

Introduction

- 1.1 This chapter provides a background to the inquiry and sets out the current arrangements regarding tax deductibility for political donations. A brief history of tax deductibility policy and some of the changes proposed and implemented are presented. Arrangements in other selected jurisdictions are also summarised.

Background to the inquiry

- 1.2 On 19 March 2008 the Senate referred Schedule 1 of the Tax Laws Amendment (2008 Measures No. 1) Bill 2008 to the Joint Standing Committee on Electoral Matters for an advisory report. The Senate resolution required the committee to report by June 2009.¹
- 1.3 The committee is also currently undertaking an inquiry into the 2007 federal election and related matters, which was referred by the Special Minister of State on 27 February 2008. A later reference from the Senate specifically requested that the committee examine a range of matters relating to the financing of political parties as part of the inquiry.² No reporting date was specified in any of these references.
- 1.4 While the committee considered the option of including the review of Schedule 1 of the Tax Laws Amendment Act (2008 Measures No. 1) Bill 2008 as part of its broader 2007 election inquiry, it was decided to

1 Senate, *Journals of the Senate*, No. 9, Wednesday 19 March 2008, p. 291.

2 Senate, *Journals of the Senate*, No. 5, Wednesday 12 March 2008, p. 210.

conduct the review separately and report to the Senate as soon as practicable.

- 1.5 The committee announced that it would commence the inquiry into Schedule 1 of the Tax Laws Amendment Act (2008 Measures No. 1) Bill 2008 on 28 March 2008 and an advertisement was placed in The Australian newspaper on 2 April 2008. Letters were sent to the major parties and academics with an interest in political finance issues on the same day.
- 1.6 The committee received 10 submissions. A public hearing was conducted on 29 April 2008. All organisations making submissions and the major political parties were given the opportunity to appear at the public hearing.
- 1.7 Details of the submissions and the public hearing are listed in appendix A and B respectively. Full copies of the submissions and public hearing transcript can be found at the committee's website: www.aph.gov.au/house/committee/em/taxlawbill/index.htm.
- 1.8 This inquiry is being carried out during a period where there is significant policy debate over the future shape of political party financing more generally. Parliamentary inquiries into campaign financing in several jurisdictions have been announced or are in the process of gathering evidence.³ Further, the federal government has also announced a program of legislative reform and the initiation of a green paper process to consider broader reforms to political funding and disclosure.⁴
- 1.9 Tax deductibility can be seen as part of the overall framework of political party financing. Alternatively, it can be viewed in isolation of other mechanisms. The committee looks more closely at some of the potential links with other aspects of political party financing in chapter 2.

3 See NSW Parliament's Legislative Council Select Committee inquiry into electoral and political party funding (<http://www.parliament.nsw.gov.au/partyfunding>), the Victorian Parliament's Electoral Matters Committee inquiry into political donations (<http://www.parliament.vic.gov.au/emc/>) and the Tasmanian Parliament's Working Arrangements of the Parliament Committee inquiry into campaign financing (<http://www.parliament.tas.gov.au/ctee/wparl.htm>).

4 Senator the Hon John Faulkner, Special Minister of State, 'Electoral Reform', media release, 28 March 2008.

Current arrangements

- 1.10 Individual taxpayers and businesses can currently claim a tax deduction for political contributions and gifts when they complete their tax returns at the end of a financial year.
- 1.11 Contributions and gifts to political parties include payments for political party membership fees and donations. The Treasury explained that:
- A gift has common-law meaning in general. Basically, a gift is where generally there is no expectation of or wanting something in return. 'Contribution' again is an undefined term, so we use its common meaning, which is an amount contributed to or added to the fund and those sorts of things.⁵
- 1.12 There are two methods under which political contributions and gifts to political parties and can be claimed as a tax deduction:
- a general deduction to taxpayers for expenses that are incurred in gaining or producing assessable income. There is no limit applied to the general deduction and it applies to individual taxpayers and businesses;⁶ and
 - a specific deduction for certain contributions and gifts to registered political parties, independent candidates and members. Contributions and gifts must be at least \$2 and there is a limit of \$1500 on the total amount deductible in an income year. The specific deduction is available to both individual taxpayers and businesses.⁷
- 1.13 In the case of the specific deduction, the deductibility limit applies separately to political parties and independent candidates, allowing taxpayers to claim up to \$3,000 per income year. Guidelines produced by the Australian Taxation Office provide the following example:
- During the 2006-07 income year, John contributes \$500 and \$1500 respectively to two registered political parties. He also gifts \$200, \$600 and \$1,100 respectively to two independent candidates and one independent member.
- John may claim a tax deduction of \$3,000 in his 2006-07 tax return:

5 Coles T, The Treasury, transcript, 29 April 2008, p. 7.

6 Income Tax Assessment Act 1997, s. 8-1.

7 Income Tax Assessment Act 1997, s. 30-241.

- \$1500 in relation to the \$2,000 contributed to political parties; and
 - \$1500 in relation to the \$1,900 gifted to the independent candidates and the independent member.⁸
- 1.14 The availability of the specific deduction to individual taxpayers and businesses also means that some taxpayers are able to ‘double dip’. For example, a small business operator may make a contribution or gift to a political party of \$1500 as an individual and \$1500 as a business and claim a tax deduction for each amount.⁹
- 1.15 The underlying tax principle regarding the general deduction is based on a relationship between expenses incurred by a taxpayer and their taxable earnings. The Treasury explained that:
- it is a general concept that, where a person incurs expenditure in the course of gaining and producing their assessable income, those expenditures are deductible, which is the general tenet of section 8.1 of the Income Tax Assessment Act 1997. ... Where those expenses are incurred in gaining and producing the assessable income that that person derives, then the general tenet of taxation policy is that those deductions should be allowable.¹⁰
- 1.16 While this underlying principle around the general deduction appears to be relatively straightforward, assessing the link between earning assessable income and any contributions to political parties, members and independent candidates can be complex.
- 1.17 The following examples, drawn from guidelines and advice provided by the Australian Taxation Office and The Treasury, illustrate this complexity in practice in relation to direct and indirect contributions to political parties:
- Contributions and gifts that involve entertainment, access to politicians and/or meals – The components relating to meals and entertainment are typically not deductible and the amount over and above these items may be considered as a donation;¹¹
 - Payments for goods and services by a business to a political party at above commercial rates – The component relating to the

8 Australian Taxation Office, Political contributions and gifts – GiftPack, viewed on 26 March 2008 at www.ato.gov.au/print.asp?doc=content/61195.htm.

9 Orr G, Democratic Audit of Australia, transcript, 29 April 2008, p. 26.

10 O’Conner M, The Treasury, transcript, 29 April 2008, p. 12.

11 Hardy M, Australian Taxation Office, transcript, 29 April 2008, p. 8.

commercial value of the good or service would generally be deductible as a business expense. Any component above the market value would be deductible within the current ceiling of \$1500 per annum for contributions and gifts.¹²

- Union membership and levies – Periodic subscriptions paid by a person for membership of a trade, business or professional association are deductible where the principal activities of the trade, business or professional association are relevant to the gaining or producing of assessable income by the member, or the carrying on of a business by the member for the purpose of gaining or producing assessable income. However, the following levies, which may be imposed by associations from time to time are *not* tax deductible:
 - ⇒ payments to, or to assist, a political party
 - ⇒ payments to provide overseas relief
 - ⇒ payments to assist families of employees suffering financial difficulties as a result of employees being on strike or having been laid off by their employers
 - ⇒ payments by salaried elected trade union officials into a general fund for the election of union officials.¹³

1.18 While the Australian Taxation Office provides advice to business and individual taxpayers on the deductibility of contributions and gifts to political parties in the form of guidelines and taxation rulings, a definitive interpretation for each taxpayer may require a case by case examination of individual transactions.

- 1.19 When taxpayers complete their tax returns, amounts paid to registered political parties, members and independent candidates need to be claimed under the general deduction (as with other expenses) or under the specific deduction:
- If amounts are claimed as a general deduction, they are included as work-related expenses (for individuals) or an expense (for businesses) on the taxpayer's tax return form. There is no cap on the general deduction;
 - If amounts are claimed under the specific deduction, they are included in the 'Gifts and Donations' category on the taxpayer's tax

12 Coles T, The Treasury, transcript, 29 April 2008, p. 20.

13 Australian Taxation Office, Taxation Ruling TR 2000/7, Income tax: subscriptions, joining fees, levies and contributions paid to associations by individuals, clauses 6 and 12.

return form. This category also includes gifts and donations to eligible entities endorsed by the Australian Tax Office or listed in the Income Tax Assessment Act. A cap of \$1500 applies to the specific deduction.

- 1.20 The aggregation of contributions and gifts to political parties within broader categories of expenses or donations in tax returns means that there is no administrative data available to determine how many taxpayers claim a deduction, how much they contribute or other characteristics such as their age, gender and postcode. Estimates of the overall cost of the deduction (in terms of potential revenue foregone) are based on other information (see chapter 2).

Background to existing arrangements

- 1.21 Tax deductibility for expenses related to the earning of assessable income has been a long-standing principle of income tax arrangements, with personal taxpayers able to claim deductions for work-related expenses since 1915.¹⁴ While the tax law explicitly mentions some types of payments for which a deduction cannot be claimed – including bribes to public officials, expenditure relating to illegal activities and recreational club membership expenses¹⁵ – the general deductibility principle applies to those transactions that are related to a taxpayer's income generating activities.
- 1.22 Specific deductibility for a range of causes and organisations, albeit on a more limited scale, has also been part of commonwealth income tax law since 1915.¹⁶ Current tax law provides that donations to more than 15,000 specified organisations across a range of groups including social, recreational, educational and cultural organisations are tax deductible.¹⁷
- 1.23 Specific deductibility for contributions and gifts to political parties registered under the Commonwealth Electoral Act was introduced in 1991 with significant amendments made in 2006. The issue of tax deductibility for such contributions has been examined by the Joint

14 Baldry J (1998), 'Abolishing income tax deductions for work-related expenses', *Agenda*, vol 5, no 1, p. 49.

15 See Division 26 of the Income Tax Assessment Act 1997.

16 Income Tax Assessment Act 1915, s. 18.

17 business.gov.au/abn/lookup/Deductible_gift_recipients, viewed on 6 May 2008 at [www.abn.business.gov.au/\(xwjo5z45slyzlx55zz52rr55\)/content.aspx?page=dgrListing](http://www.abn.business.gov.au/(xwjo5z45slyzlx55zz52rr55)/content.aspx?page=dgrListing).

Standing Committee on Electoral Matters on a number of occasions as part of its federal election and other inquiries.

1991 introduction of tax deductibility

- 1.24 Specific tax deductibility for donations and gifts to registered political parties was first introduced in 1991 with the passage of the Political Broadcasts and Political Disclosures Bill 1991.
- 1.25 Tax deductibility for donations to political parties was not part of the original bill. After passing through the House of Representatives, the Senate moved amendments to include tax deductibility for contributions to parties registered under the Commonwealth Electoral Act of \$2 or more (moved by the coalition parties) with a further amendment setting a maximum allowable deduction of \$100 (moved by the Democrats).
- 1.26 These amendments in the Senate were made after consideration by a Senate select committee. The committee's report, which also canvassed a wide range of issues included in the Bill such as political advertising, public funding for elections and disclosure of donations, was largely divided along party lines over the issue of tax deductibility for donations to political parties.
- 1.27 The majority report did not include any discussion or recommendations about tax deductibility. The dissenting report by coalition members noted that:

The Majority Report - which is an expression only of the Labor Party's viewpoint - indicates that there is no real intent to level the playing field or it would contain the essential recommendation that ALL political donations be tax deductible.

While we recognise that this in itself will not level the playing field as it relates to unions enjoying tax exempt status, it would tackle one major component of the tax advantage discrepancy between the ALP and other political parties and as such should have been a recommendation of the Committee.¹⁸

- 1.28 The House of Representatives accepted the Senate amendments and the Bill was carried on 19 December 1991 and received royal assent on

18 Senate Select Committee on Political Broadcasts and Political Disclosure (1991), *Report*, p. 84.

the same day. Taxpayers were able to claim a deduction for donations made from 1 July 1991.¹⁹

- 1.29 A ruling by the Commissioner for Taxation in 1992 resolved uncertainty over some of the terms used in the Bill by issuing a determination that:
- ‘contributions’ included membership subscriptions;
 - ‘testamentary’ contributions and gifts, that is, those made under a will, were not deductible; and
 - a ‘contributor’ cannot be a company.²⁰

- 1.30 The issue of tax deductibility for political donations had been considered by the Joint Standing Committee on Electoral Matters on several occasions prior to it being included in the (amended) Political Broadcasts and Political Disclosures Bill 1991. A report by the committee in 1989 noted that:

The ALP submission claimed that additional funds raised by political parties with tax deductibility advantage would alleviate any pressure for increased levels of public funding, encourage political parties to continue to seek direct support from the public, and help them more adequately fulfil their necessary social functions. However, the Liberal Party submission expressed the view that tax deductibility of political donations (with a ceiling on deductible donations) is a preferable alternative to the existing system of public funding but could not advocate that tax deductibility should be an addition rather than an alternative to public funding.²¹

2006 amendments

- 1.31 There were no changes made to the tax deductibility provisions of political contributions and gifts until 2006, when the government also made a number of other changes to electoral law. Major changes to the tax deductibility provisions introduced with the passage of the Electoral and Referendum Amendment (Electoral Integrity and Other Measures) Bill 2005 included:

19 Political Broadcasts and Political Disclosures Act 1991, Part 6, s. 38(2).

20 Australian Taxation Office, Taxation determination, 92/114.

21 Joint Standing Committee on Electoral Matters (1989), *Who pays the piper calls the tune*, p. 91.

- lifting the threshold for a tax deduction from \$100 to \$1500;
 - allowing deductibility for contributions made to political parties registered under State and Territory electoral legislation;
 - allowing deductibility for contributions and gifts to members and independent candidates; and
 - extending deductibility for contributions and gifts from companies.²²
- 1.32 The cost of expanding the coverage of deductibility provisions and increasing the threshold was estimated by the government to be \$4.9 million in 2007-08, \$6.5 million in 2008-09, \$5.4 million in 2009-10 and \$5.7 million in 2010-11.²³
- 1.33 The Bill became law on 22 June 2006. For the financial year covering the period 1 July 2005 to 30 June 2006, individual taxpayers were able to claim a deduction of \$100 for contributions and gifts to political parties registered under the Commonwealth Electoral Act up to 21 June 2006. For the remaining 8 days of the financial year to 30 June 2006 individual taxpayers and businesses were able to claim contributions and gifts to a wider range of political parties and candidates up to a maximum of \$1500.
- 1.34 While these provisions were not passed by the parliament until 2006, the government made several attempts to include some of the measures in 1998 and 1999.²⁴ In both cases however, the Bill passed the House of Representatives but lapsed in the Senate.²⁵
- 1.35 The Joint Standing Committee on Electoral Matters considered the issue of tax deductibility on numerous occasions in the period between the introduction of tax deductibility in 1992 and the 2006 amendments as part of its reports on federal elections and other inquiries.
- 1.36 The committee's report on the 1996 election included a recommendation that the tax deductibility threshold be lifted to \$1500 and that donations from corporations also be tax deductible. In its

22 Electoral and Referendum Amendment (Electoral Integrity and Other Measures) Bill 2005, Explanatory Memorandum, p. 16.

23 Electoral and Referendum Amendment (Electoral Integrity and Other Measures) Bill 2005, Explanatory Memorandum, p.3.

24 Parliamentary Library, *Taxation Laws Amendment (Political Donations) Bill 1999*, Bills Digest No. 134 1998-99, p. 1; *Taxation Laws Amendment (Political Donations) Bill 1998*, Bills Digest No. 237 1997-98, p. 1.

25 Senate, Notice Paper, no 194, p. 30; Senate, Notice Paper, no 216, 27 September 2001, p. 8.

submission to the inquiry, the Liberal Party of Australia considered that the tax deductibility threshold should be lifted to \$10,000 while the Australian Labor Party had nominated an increase to \$1500. A recommendation expanding tax deductibility for donations to independent candidates was also included.²⁶

- 1.37 While the Liberal Party of Australia's submission to the 1998 election inquiry again supported lifting the threshold to \$10,000, the committee considered that an increase from \$100 was not necessary at the time.²⁷
- 1.38 The committee's report on the 2004 election recommended that the tax deductibility threshold should be lifted to \$2000 and adjusted annually for inflation. In its submission, the Liberal Party of Australia argued for a 'significant increase' on the \$100 limit, the Nationals supported an increase and the Australian Labor Party (ALP) opposed any increase.²⁸ The minority report from the four ALP members noted that:

The Majority recommendation that tax deductibility for political donations be raised from \$100 to \$2000 is an unjustified attempt to transfer private political donations into a taxpayer subsidy. The [ALP] supports public funding for the electoral process which is transparent and reflects the votes gained by political parties. We believe that a general tax-deductibility clause as outlined by the Majority will encourage individuals and other entities to make extensive political contributions, in secret, and at taxpayer expense. The potential to undermine the integrity of the political process under these changes is clear.²⁹

- 1.39 The most recent inquiry by the Joint Standing Committee on Electoral Matters to consider tax deductibility was its inquiry into disclosure of donations to political parties. A report for the inquiry was tabled in February 2006. A bill lifting the tax deductibility threshold to \$1500

26 Joint Standing Committee on Electoral Matters (1997), *The 1996 Federal Election: Report of the Inquiry into the conduct of the 1996 election and matters related thereto*, pp. 103–104.

27 Joint Standing Committee on Electoral Matters (2000), *The 1998 Federal Election: Report of the Inquiry into the conduct of the 1998 election and matters related thereto*, p. 133.

28 Joint Standing Committee on Electoral Matters (2005), *The 2004 Federal Election: Report of the Inquiry into the conduct of the 2004 election and matters related thereto*, p. 340.

29 Joint Standing Committee on Electoral Matters (2005), *The 2004 Federal Election: Report of the Inquiry into the conduct of the 2004 election and matters related thereto*, p. 378.

and broadening deductibility to companies and independent candidates was before the parliament at the time.³⁰

- 1.40 The committee's report did not include any specific recommendations on tax deductibility, noting that the committee 'did not find the need to add to the recommendations that it made in its report on the 2004 election'.³¹ The Labor members of the committee dissented from the majority report, noting that the ALP platform, as amended at the January 2004 Conference is that 'Labor will abolish the tax deductibility of political donations'.³²

Changes proposed by the bill

- 1.41 The policy of removing tax deductibility for political donations was first announced by the Hon Kim Beazley on 3 October 2006 and was included as part of a plan to save \$3 billion from the federal budget released by the Hon Lindsay Tanner on 2 March 2007.³³
- 1.42 The policy was initially adopted by the Australian Labor Party in its National Platform and Constitution in 2004.³⁴ The policy to abolish the tax deductibility of political donations was also included as part of the National Platform and Constitution in April 2007.³⁵
- 1.43 The overall purpose of Schedule 1 of the Tax Laws Amendment (2008 Measures No. 1) Bill 2008 is to remove tax deductibility for contributions and gifts to political parties, members and candidates.³⁶
- 1.44 Introducing the Bill in the House of Representatives, the Assistant Treasurer, the Hon Chris Bowen MP noted that:

30 The Electoral Matters and Referendum Amendment (Electoral Integrity and Other Measures) Bill 1995 was introduced in the House on 8 December 2005 and passed the House on 11 May 2006. The Bill was introduced in the Senate on 13 June 2006 and passed the Senate on 21 June 2006.

31 Joint Standing Committee on Electoral Matters (2006), *Funding and Disclosure: Inquiry into disclosure of donations to political parties and candidates*, p. 14.

32 Joint Standing Committee on Electoral Matters (2006), *Funding and Disclosure: Inquiry into disclosure of donations to political parties and candidates*, p. 18.

33 Hon Kim C Beazley MP, Leader of the Opposition, 'A nation building role for the public service, *The Don Dunstan Oration*, Adelaide, 3 October 2006; Hon Lindsay Tanner MP, Minister for Finance and Administration, 'Labour's \$3 billion savings plan', media release, 2 March 2007.

34 Australian Labor Party (2004), *National Platform and Constitution 2004*, p. 272.

35 Australian Labor Party, submission 1, p. 2.

36 Tax Laws Amendment (2008 Measures No. 1) Bill 2008, Explanatory Memorandum, p. 3.

this government is honouring its election commitment to remove tax deductibility for donations made to political parties, candidates and members. This commitment was made as part of 'Labor's \$3 Billion Savings Plan', which was announced ... on 2 March 2007.³⁷

- 1.45 The government expects that removing tax deductibility for contributions and gifts to political parties, members and candidates will save \$31.4 million over the four years to 2011-12, with savings commencing in 2009-10. The costing methodology for the policy is discussed in chapter 2.
- 1.46 Schedule 1 of the Tax Laws Amendment Act (2008 Measures No. 1) Bill 2008 proposes several amendments to the Income Tax Assessment Act 1997 and the Income Tax Assessment Act 1936.
- 1.47 The proposed amendments remove the ability of all taxpayers – individual taxpayers and business taxpayers – to claim specific deductions for contributions and gifts to registered political parties or independent candidates and members.
- 1.48 The proposed amendments also remove the general deduction available to businesses for donations to political parties, members and independent candidates. The amendments also preclude such contributions and gifts from forming part of the cost base or reduced cost base of any capital gains tax asset.
- 1.49 Individual taxpayers will be able to continue their current practice of claiming contributions and gifts to political parties, members and independent candidates as a tax deduction where it relates to earning their taxable income.
- 1.50 The Bill proposes that these arrangements would apply from the day on which the Bill receives the Royal Assent. If the Bill is passed and given royal assent before 30 June 2008 then these measures would apply to contributions and gifts made on or after 1 July 2008. This would allow the arrangements to apply for the full financial year 2008-09 which is the normal taxation period for most taxpayers.

Structure of the bill

- 1.51 The most substantive elements of Schedule 1 of the Tax Laws Amendment Bill (2008 Measures No. 1) are found in clauses 3 and 9.
-

37 Hon Chris Bowen MP, Assistant Treasurer, House of Representatives Debates, 13 February 2008, p. 207.

The remaining changes proposed by the Bill are largely consequential in nature.

- 1.52 Clause 9 of the Bill proposes to repeal the part of the Income Tax Assessment Act 1997 (subdivision 30DA) that currently includes the specific provisions for political donations. This is the main element of the Bill, with the remaining parts included to: allow the continuation of deductibility for individual taxpayers under the general deduction provision; prevent businesses claiming political donations under the general deduction provision; and amend the capital gains tax provisions to ensure that such expenses do not form part of the cost base or reduced cost base for capital gains purposes.
- 1.53 Clause 3 of the Bill proposes that a new section be inserted in Division 26 of the Income Tax Assessment Act 1997. This division of the Act sets out some amounts that are not deductible, or that are not deductible in full. Examples of payments covered in this section of the Act include amounts payable by way of a penalty under Australian or foreign law, bribes to foreign public officials and expenditure relating to illegal activities.³⁸
- 1.54 Clause 3(1) of the Bill, reproduced below, inserts a new section into Division 26 of the Income Tax Assessment Act 1997, that removes the ability of taxpayers to claim as a general deduction political contributions and gifts (including a membership fee):

You cannot deduct political contributions or gifts

(1) You cannot deduct under this Act:

- (a) a contribution (including a membership fee) or gift to a political party that is registered under Part XI of the *Commonwealth Electoral Act 1918* or under corresponding State or Territory legislation; or
- (b) a contribution or gift to an individual when the individual is a candidate in an election for members of:
 - (i) an *Australian legislature; or
 - (ii) a *local governing body; or
- (c) a contribution or gift to an individual who is a member of:
 - (i) an Australian legislature; or
 - (ii) a local governing body.

- 1.55 Clauses 3(3) and 3(4), reproduced below, relate to this clause 3(1), as they define when an individual becomes a candidate or a member:

38 Income Tax Assessment Act 1997, Division 26.

Starting and stopping being a candidate

- (3) For the purposes of this section, an individual:
- (a) starts being a candidate when the individual's intention to be or attempt to be a candidate for the election is publicly available; and
 - (b) stops being a candidate at the earlier of:
 - (i) the time when the result of the election is declared or otherwise publicly announced by an entity (an *electoral official*) authorised under the relevant electoral legislation; and
 - (ii) the time (if any) when the individual's intention to no longer be a candidate for the election is publicly available.

Starting being a member

- (4) An individual who becomes a member as a result of an election (including an election that is later declared void) is taken to start being a member when the individual's election as a member is declared or otherwise publicly announced by an electoral official.

1.56 Clauses 3(2) of the Bill inserts provisions in the same section of the Income Tax Assessment Act 1997 that provides an exception to non-deductibility for individual taxpayers – defined in the tax law as employees or office holders – thereby allowing individual taxpayers to continue to claim a general deduction for contributions and gifts to political parties:

Exception for employees and office holders

- (2) However, subsection (1) does not apply to a loss or outgoing incurred in gaining or producing assessable income from which an amount is required to be withheld under section 12-35 or 12-45 in Schedule 1 to the *Taxation Administration Act 1953*.

Note: The provisions of the *Taxation Administration Act 1953* require amounts to be withheld from income of employees and office holders.

1.57 By implication, the lack of an exemption given to business taxpayers in clause 3(2) provides for the discontinuation of the general deduction for donations to political parties, members and independent candidates by business taxpayers that are not part of normal commercial transactions.

- 1.58 The interpretation of what is considered a normal commercial transaction is complex and will be determined by the Australian Taxation Office if the Bill becomes law. The Australian Taxation Office advised the committee that:

It is difficult to give you a definitive answer until we see the final shape of the legislation from an interpretive point of view. In the hypothetical context of a lobbying enterprise being involved in political luncheons, if the tax office had sufficient concern that in fact this was really fundraising and donation work as opposed to legitimate business activity – and that is a terribly fraught interpretive space – we would possibly pursue some questions about the deductibility of some aspects of those expenses. But it is very difficult to answer a hypothetical question on legislation that is not in place.³⁹

- 1.59 The capital gains tax provisions are also amended so that such expenses prevented from being deducted by the new section 26-22 do not form part of the cost base or reduced cost base for capital gains tax purposes. This ensures that no capital loss or reduced capital gain can arise from such contributions and gifts.⁴⁰ These would be added to a range of existing exclusions including bribes and penalties.⁴¹

Examples of changed arrangements

- 1.60 The Explanatory Memorandum prepared for the Bill includes several examples to demonstrate the impact of the proposed amendments on different types of taxpayers for a range of contributions and gifts (table 1.1).

39 Hardy M, Australian Taxation Office, 29 April 2008, p. 19.

40 Explanatory Memorandum, Tax Laws Amendment (2008 Measures No. 1) Bill 2008, p. 9.

41 Income Tax Assessment Act 1997, s. 110-38.

Table 1.1 Impact of proposed amendments on selected taxpayers and contributions and gifts

Taxpayer type	Example
Individual	Mary wishes to support a registered political party, and consequently makes a \$1,000 gift to the party. The gift is not deductible.
Individual	Bob earns his income by being employed as an engineer and is a member of a political party for which he pays \$50 a year in membership fees. The membership payment is not incurred in earning his assessable income, and is therefore not deductible.
Individual	A Member of Parliament pays a compulsory levy to retain their party membership. This would generally be deductible.
Individual	A Member of Parliament pays for a ticket to attend a fundraising event hosted by their party where a substantial sit-down dinner is provided. The ticket price generally would not be deductible.
Business	XYZ Ltd is a proof reading company specialising in political publications. XYZ Ltd is looking to maintain its corporate profile, and to this end makes contributions to political parties. This amendment ensures that XYZ Ltd is unable to claim these contributions as a loss or outgoing necessarily incurred in carrying on its business or for the purpose of gaining or producing its assessable income.

Source Explanatory Memorandum, *Tax Laws Amendment (2008 Measures No. 1) Bill 2008*, pp. 8–9.

1.61 The Treasury noted the types of individual taxpayers that were likely to be able to continue to claim membership of a political party as a general deduction for income tax purposes would include members of parliament, the staff of members of parliament and party employees.⁴²

International practice

1.62 The use of a tax concession to provide an incentive for taxpayers to contribute to political parties is a feature of some western democracies, including the United States, Canada, Italy and the United Kingdom.⁴³

1.63 The type of tax concession varies across countries and can include mechanisms such as tax check offs, tax credits and deductions at source. The choice of which system to use is partly related to the

42 Coles T, The Treasury, transcript, 29 April 2008, p. 15.

43 Committee on Standards in Public Life (1998), *The funding of political parties in the United Kingdom*, Fifth Report of the Committee, vol. 1, pp. 94–95; Sempill S and Tham J, submission 9, pp. 3–4; Thompson N, submission 8, p. 2; Democratic Audit of Australia, submission 6, pp. 2–3.

administrative aspects of a country's tax system including whether they require taxpayers to complete annual tax returns.⁴⁴

- 1.64 Several inquiry participants referred to the use of tax credits in Canada, where individual and corporate taxpayers receive a tax credit for monetary contributions to political parties based on a sliding scale (table 1.2).⁴⁵

Table 1.2 Canadian political contribution tax credit

Amount of contribution	Tax credit
C\$0 to C\$400	75 per cent of contribution. For example, C\$150 credit for \$200 contribution.
C\$401 to C\$750	C\$300 + 50 per cent of amount of contribution exceeding C\$400. For example, C\$400 credit for C\$600 contribution.
Over C\$750	C\$475 + 33 ¹ / ₃ per cent of amount of contribution over C\$750 or C\$650, whichever is the lesser amount. For example, C\$650 credit for C\$1,000 contribution.

Source Sempill S and Tham J, submission 9, p. 3.

- 1.65 Some of the arguments raised in favour of using tax concessions in a 1998 review in the United Kingdom included:
- That it provides an incentive to political parties to attract a larger number of small donations and therefore broaden political parties' funding base; and
 - That it also offers an incentive to individuals to get involved in politics by contributing to the democratic process. This incentive, it is also argued, may encourage a more active participation in political parties generally.
- 1.66 Some of the arguments against the use of tax relief included:
- That it discriminates between income tax payers and non-taxpayers because a donation by a taxpayer facing a higher marginal tax rate can donate at less net cost to themselves compared to those on lower marginal rates or non-taxpayers;
 - Tax relief favours parties whose members have higher incomes and can therefore afford larger donations;
 - There is an opportunity cost involved in tax concessions whereby the tax which is recovered by political parties represents public

44 Committee on Standards in Public Life (1998), *The funding of political parties in the United Kingdom*, Fifth Report of the Committee, vol. 1, pp. 94-95.

45 Thompson N, submission 8, p. 2; Sempill S and Tham J, submission 9, p. 3; Democratic Audit of Australia, submission 6, p. 3.

money denied elsewhere. Therefore, although individuals using the tax concession scheme are exercising choice, all other individuals would be forced to suffer the consequences of a reduction in the sum total of public revenue; and

- The extension of charitable-type tax relief to political parties could lead to increased pressure for similar tax treatment for non-profit organisations that do not currently qualify for tax relief on their donations because their objects are regarded as 'political' and therefore not exclusively charitable.⁴⁶

1.67 These arguments were re-examined in another review in the United Kingdom in 2004. In this review, a submission to the Electoral Commission noted that poorer supporters of political parties would be disadvantaged, since the scheme would only apply to taxpayers:

It is a form of political participation which is not available to citizens on an equal basis, and it is a form of public funding of the parties which discriminates between parties according to the bank balance of their members and supporters rather than the depth or breadth of their electoral support.⁴⁷

1.68 Nevertheless, the Commission did not believe that the denial of a concession to non-taxpayers' donations was a good reason for not introducing such a scheme. The Commission favoured the introduction of a tax concession scheme that was limited to amounts of less than £200 (or the first £200 of larger donations) and that tax relief should be given on membership subscriptions and cash donations, but not on benefits-in-kind or on payments which involve a potential benefit to the donor.⁴⁸ To improve fairness to non-taxpayers, the Commission also considered that any tax relief scheme should be extended to them, through a match-funding system.⁴⁹

1.69 The use of tax concessions in other countries needs to take account of cultural factors and other laws around party finance. For example, in Canada, corporate and union donations are now banned and

46 Committee on Standards in Public Life (1998), *The funding of political parties in the United Kingdom*, Fifth Report of the Committee, vol. 1, pp. 94-95.

47 UK Electoral Commission (2004), *The funding of political parties: Report and recommendations*, p. 100.

48 UK Electoral Commission (2004), *The funding of political parties: Report and recommendations*, p. 101.

49 UK Electoral Commission (2004), *The funding of political parties: Report and recommendations*, p. 101.

donations from individuals are capped at C\$1100 to a party and its candidates.⁵⁰

- 1.70 The practices and policies in other jurisdictions can offer some guidance to policy makers in Australia. However, appropriate emphasis needs to be placed on the relevant cultural factors, the administrative features of the tax system and political factors that are features of political participation and financing in Australia.

50 Democratic Audit of Australia, submission 6, p. 3.

Implications of the proposed changes

- 2.1 This chapter examines issues raised by inquiry participants about discontinuing tax deductibility for political contributions and party membership subscriptions. These are arranged according to their impact on different interests including the government, individual taxpayers, business and community participation in political activities.
- 2.2 The committee's broad conclusion and recommendation regarding tax deductibility can be found at the end of the chapter.

Projected savings generated by the proposed changes

- 2.3 As noted in chapter 1, taxpayers can currently claim a deduction as part of their annual tax returns for certain contributions and gifts to political parties, members and candidates.
- 2.4 Schedule 1 of the Tax Laws Amendment (2008 Measures No. 1) Bill 2008 will remove deductibility for these payments by corporations. In addition, individual taxpayers will no longer be able to claim contributions and gifts to political parties, members and independent candidates unless it is incurred in gaining or producing assessable income.
- 2.5 The explanatory memorandum to the Bill indicates that the proposed amendments will save the government \$31.4 million over the four years to 2011-12, with savings commencing in 2009-10 (table 2.1).

Table 2.1 Financial impact – abolition of tax deductibility for contributions and gifts to political parties, members and independent candidates (\$million)

Financial Year	2009-10	2010-11	2011-12
Savings (\$ million)	\$10.1	\$10.3	\$11.0

Source *Tax Laws Amendment (2008 Measures No. 1) Bill 2008, Explanatory Memorandum, p. 3.*

- 2.6 Most of the expected savings will come from tax deductions claimed for donations or party memberships by individuals, with donations by business accounting for about one third of the projected savings. Treasury estimates that in 2009-10, savings from individual taxpayers would total \$6.5 million with savings from business totalling \$3.6 million. These savings were expected to rise to \$7.2 million and \$3.8 million respectively in 2011-12.¹
- 2.7 At the public hearing held in Canberra, representatives of the Treasury were asked how these savings had been calculated. The Treasury indicated that there were two elements to Treasury's costing methodology: the contributions element, and costing in respect of memberships of political parties.²
- 2.8 Treasury used the records of donations to political parties which are publicly available on the Australian Electoral Commission's website for the contributions element:
- ... in terms of the contributions ... because the \$1,500 threshold had been in place for 2003-04 and 2004-05, we had to make significant adjustments. There were only a few donations declared below that threshold to the data, but we could cost accurately in terms of the implications above it.³
- 2.9 Treasury found that exact numbers for 'membership of parties is something that is ... closely guarded'⁴ so it used 'the most up-to-date study⁵ that we could find that attempted to estimate membership of political parties'. Treasury told the committee that it believes the

1 The Treasury, submission 10, p. 5.

2 Gallagher P, The Treasury, transcript, 29 April 2008, p. 3.

3 Gallagher P, The Treasury, transcript, 29 April 2008, p. 3.

4 Gallagher P, The Treasury, transcript, 29 April 2008, p. 4.

5 Treasury acknowledged the 2004 study by Jaensch D, Brent P and Bowden B entitled *Australian political parties in the spotlight*, Australian National University (exhibit 1).

party membership number it used 'appears to be somewhat conservative'.⁶

- 2.10 Treasury agreed with a suggestion by the committee that 'at best' the number used may be a 'guesstimate':

... because essentially the thesis in the article [used by Treasury] is that parties do not give out numbers, because membership may be declining and they do not want to reveal that.⁷

- 2.11 The committee also suggested that the Treasury's estimate might be an overestimate. Agreeing that it might be, Treasury noted that when it published election costings it included a warning that:

... it should be noted that actual outcomes may vary from these estimates if assumptions or behaviour change from our expectation. In particular, data on political party membership fees received is poor and data on donations below the [Australian Electoral Commission] disclosure threshold is also poor.⁸

- 2.12 Treasury told the committee that in reaching its figures it:

... used the best data available on memberships to get some idea of what the costing is. ... but we have admitted that the idea is imprecise because of the availability of information.⁹

- 2.13 Treasury has not done any costings based on the assumption that tax deductibility was returned to the previous cap of \$100. However, it noted that the average membership subscription to a political party was calculated to be sixty-two dollars per annum and, therefore:

... the average membership fee is below \$100 and, if membership remained deductible, that is the amount of revenue that would become deductible.¹⁰

- 2.14 Treasury was questioned about the apparent discrepancy between its costings on savings if tax deductibility ceases to exist, and costings by the Australian Labor Party (ALP) which showed savings of \$8.4 million in 2009-10 and \$8.7 million in 2010-11. In response, Treasury noted that the ALP had not included membership fees —

6 Gallagher P, *The Treasury*, transcript, 29 April 2008, p. 5.

7 Gallagher P, *The Treasury*, transcript, 29 April 2008, p. 5.

8 Gallagher P, *The Treasury*, transcript, 29 April 2008, p. 6.

9 Gallagher P, *The Treasury*, transcript, 29 April 2008, p. 7.

10 Gallagher P, *The Treasury*, transcript, 29 April 2008, p. 5.

the savings costed related only to savings made by removing tax deductibility from political donations and Treasury referred the committee to page 3 of its official costing:

The original ALP costing request did not mention the loss in tax deductibility for membership subscription fees.

Confirmation by the ALP led to this being included. The ALP had assumed that the loss of tax deductibility for donations under \$100 could represent a revenue gain of \$3 million per annum from 2009-10.¹¹

- 2.15 In arriving at their estimates, Treasury did not use the ALP figures regarding membership. Instead, Treasury used its own estimate of the number of members of political parties assuming an average donation of \$62; and a 90 per cent claim rate which makes some allowance for those people who do not claim membership as a tax deduction and those who are not able to claim it as tax deductible. An average tax rate of 35 per cent for those claiming deductibility was used. In this way Treasury arrived at a figure of \$4.3 million per annum for membership subscription costs.¹²

Conclusion

- 2.16 The committee is satisfied that the savings figures presented by Treasury represent the best available estimate of the projected savings that would be generated by the proposed changes. However, it is mindful that the figures used may be overestimated due to the difficulty encountered in accessing exact party membership numbers. In this regard the committee noted Professor Orr's observation that :

... on a seat-of-the-pants assumption, if you are talking about \$10 million per year you are talking about \$30 million of donations at, say, a marginal rate of 30 per cent, which is roughly the corporate rate. Thirty million dollars is a lot of \$1,500 contributions or party memberships.¹³

11 Gallagher P, *The Treasury*, transcript, 29 April 2008, p. 10.

12 Gallagher P, *The Treasury*, transcript, 29 April 2008, p. 11.

13 Orr G, *Democratic Audit of Australia*, transcript, 29 April 2008, p. 33.

Impact of changes on individual taxpayers

- 2.17 Individual taxpayers can currently claim a tax deduction for political contributions and gifts when they complete their tax returns at the end of a financial year.
- 2.18 The committee heard that 'a key purpose of limited tax deductibility is to encourage smaller scale donations and hence political participation'. Soliciting smaller donations is a way for parties to interact with the wider public.¹⁴
- 2.19 However, the committee found no clear evidence to prove that tax deductibility actually does encourage people to become members of political parties or to make donations to parties. In the 2005 '*Giving Australia*' study, it was noted that:
- Greater taxation incentives are regularly advocated as the required catalyst to increased giving, but givers regularly report that they are not motivated by tax incentives and awareness of their very availability appears to be low.¹⁵
- 2.20 The committee heard differing opinions about the equity of tax deductibility as a policy. A recent academic paper on political finance in Australia suggested that tax deductibility can have regressive effects and hence, undermine political equality:
- The present system of tax relief ... favours the wealthy because, having more disposable income, they are more able to take advantage of the subsidy. Further, for the same amount of political donation, the wealthy, being subjected to higher income tax rates, receive a greater amount of public subsidy.¹⁶
- 2.21 The committee noted that more than 2.1 million individual taxpayers in 2005-06 had a taxable income less than the tax free threshold of \$6000 (table 2.2). These taxpayers receive no benefit from tax deductibility for political contributions and gifts. Currently, taxpayers below the threshold are unfairly treated compared to the 910,000 taxpayers earning more than \$80,000 – who are able to claim

14 Democratic Audit of Australia, submission 6, p. 1.

15 Lyons M, McGregor-Lowndes M and O'Donoghue P (2006), 'Researching Giving and Volunteering in Australia' in *Australian Journal of Social Issues*, Vol.41 No.4, Summer 2006, pp. 385-397.

16 Young S and Tham J (2006), *Political Finance in Australia: A Skewed System*, Democratic Audit of Australia, ANU, Canberra.

a tax deduction of at least 40 cents for every dollar contributed to political parties up to the \$1500 threshold.

Table 2.2 No. of taxpayers by taxable income and age, 2005-06

Age	Below tax-free threshold (\$6000)	\$6001 to \$30,000	\$30,001 to \$80,000	\$80,001 to \$150,000	\$150,001+
65+	447,400	186,625	282,915	49,385	23,865
45-64	542,555	1,007,075	1,885,345	313,745	97,615
30-44	531,150	930,670	1,846,645	307,075	67,420
18-29	421,460	1,207,150	1,025,080	45,685	3,050
Under 18	201,030	78,050	2,115	185	60
Total taxpayers	2,143,595	3,409,570	5,042,100	716,075	192,010

Source Australian Taxation Office, *Tax Stats, Personal tax table 11*, viewed on 5 May 2008 at http://www.ato.gov.au/content/downloads/00117625_2006PER11.pdf.

2.22 With taxpayers facing marginal tax rates of between \$0 for taxable incomes of less than \$6,000 and \$0.45 for taxable incomes greater than \$150,000 there can be a significant difference in the out-of-pocket contributions for individual taxpayers (table 2.3).

Table 2.3 Income tax rebates to individual taxpayers based on \$1500 donation, by income (2007-08 tax scales)

Taxable income	Marginal tax rate (2007-08)	Tax rebate	Out of pocket cost to donor
\$150,000	45%	\$675	\$825
\$100,000	40%	\$600	\$900
\$50,000	30%	\$450	\$1050
\$25,000	15%	\$225	\$1275
\$0	0%	\$0	\$1500

Source Committee estimates based on a donation of \$1500 and the relevant tax rates applying for the financial year 2007-08 from the Australian Taxation Office website at (<http://www.ato.gov.au/individuals/content.asp?doc=/content/12333.htm&pc=001/002/046/002/002&mnu=1045&mfp=001/002&st=&cy=1>).

2.23 However, others disagreed that it is regressive to offer a tax deduction because some people cannot take advantage of it:

We think it unwise to close off avenues encouraging small-scale grassroots donating. With due respect, it is doctrinaire to say that tax deductibility is regressive because it is not open to, say, pensioners who might pay no tax. If that were

true, it would be unfair to give charities tax-deductible status at all.¹⁷

2.24 Several submissions noted that the current high levels of tax deductibility have been found to favour wealthy people both because wealthy people have more disposable income, so they are more able to take advantage of the subsidy; and because for the same amount of political donation, being subjected to higher income tax rates, wealthy people receive a larger deduction.¹⁸

2.25 This was borne out by evidence from a recent study conducted about the use of tax deductibility for political contributions in Canada:

The almost half of all Canadian tax filers whose income fall into the lowest bracket comprise only 10 per cent of all [the scheme's] claimants, while the 3 percent of tax filers in the highest bracket make 18 percent of all claims. The pattern is even more skewed when one compares the value of the tax credit for low and high income earners, as the latter are prone to make large contributions. Despite its other merits, then, the [scheme] reinforces an inequitable pattern of giving to parties and candidates.¹⁹

2.26 Mr Sempill and Dr Tham also observed the inequity of a tax relief scheme in Quebec:

The data for 1997 indicated that while taxpayers earning C\$20,000 or less per annum constituted 54% of all taxpayers, they only constituted 15% of those who claimed a credit under the Quebec system. Those earning C\$50,000 or more, on the other hand, represented 43% of those who claimed the credit while only constituting 10% of all taxpayers.²⁰

2.27 However, The Nationals' submission put forward an opposing point of view, noting that 'it cannot be reasonably argued, nor has it been demonstrated, that the threshold engenders any level of political influence on political parties or skews any political influence to the wealthy in society.'²¹

17 Orr G, Democratic Audit of Australia, transcript, 29 April 2008, p. 23.

18 Orr G, Democratic Audit of Australia, transcript, 29 April 2008, p. 23; Honoré-Morris D, submission 5, p. 3; Sempill S and Tham J, submission 9, p. 3.

19 Young L (2005), 'Regulating Campaign finance in Canada: Strengths and weaknesses', cited in Sempill S and Tham J, submission no. 9, p. 4.

20 Sempill S and Tham J, submission no. 9, p. 4.

21 The Nationals, submission 3, p. 4.

- 2.28 The Liberal Party of Australia noted its belief that ‘... the tax deductibility provisions for political donations are operating as intended by the legislation and, without evidence to the contrary, changes would disadvantage donors’.²²
- 2.29 Several submissions to the inquiry suggested that the best outcome for individuals would be a reversion to the previous threshold of \$100 tax deduction thereby continuing to encourage small-scale grassroots donating. In Dr Thompson’s opinion ‘totally removing any tax relief for political contributions from individuals is a short-sighted saving in Australia’s upcoming budgets’.²³
- 2.30 On the other hand, some submissions and witnesses favoured removing tax deductibility completely. For example, the Australian Labor Party noted:
- While there are some arguable benefits in increased civic participation in the political process which are foregone in abolishing deductibility, there exist many more avenues for that participation to occur, without facing the risk of distortion in the Australian electoral system.²⁴
- 2.31 The committee was told that inequity is the most likely result of any provisions granting tax deductibility for party membership and donations and inequity is exacerbated with the current high threshold of \$1500. This high threshold provides, according to one submission, ‘tax relief for political donations that is out of reach of ordinary Australians’.²⁵
- 2.32 Only taxpayers who are in a position to pay membership fees or make donations are advantaged by tax deductibility so by removing tax deductibility for membership fees and donations it would remove the advantage that only some taxpayers receive.²⁶ Among those who are not advantaged by tax deductibility are ‘job seekers, retirees without income, full-time parents and students not engaged in paid work’.²⁷

22 The Liberal Party of Australia, submission 2, p. 1.

23 Thompson N, submission 8, p. 2.

24 Australian Labor Party, submission 1, p. 2.

25 Sempill S and Tham J, submission 9, p. 5.

26 Honoré-Morris D, submission 5, p. 3.

27 Sempill S and Tham J, submission 9, p. 3.

Taxpayers who must join parties and/or donate to earn their living

- 2.33 For some individual taxpayers, membership of a political party and/or the payment of a party 'levy' is an accepted and/or expected part of their employment.²⁸ It is also likely, for tax purposes, that these payments are directly related to earning assessable income.²⁹
- 2.34 The committee heard from Treasury that members of parliament, staff of members of parliament and party employees would all still be able to claim membership fees or compulsory levies as deductions under the proposed amendments.³⁰
- 2.35 When drafting the Bill, the provisions allowing office holders and employees to retain their tax deductibility for expenses incurred in the course of gaining and producing their assessable income were retained because it is 'the general tenet of section 8.1 of the Income Tax Assessment Act 1997'.³¹ Treasury noted that there are many professions where expenses are incurred in gaining and producing the assessable income that a person derives and 'the general tenet of taxation policy is that those deductions should be allowable'.³²
- 2.36 Some discussion ensued at the public hearing about the tax deduction available for membership in trade unions. The Australian Taxation Office confirmed that only membership in those unions which directly relate to a person's employment are allowed as a tax deduction.³³ Where members of trade unions, or other similar organisations, can be said to receive some advancement of their employment prospects from their involvement with that association, membership fees are tax deductible when related to gaining or producing assessable income.
- 2.37 One submission argued that the exemption in relation to 'employees' and 'office-holders' can not be justified. Mr Sempill and Dr Tham stated:

28 Tham J and Young S (2006), *Political finance in Australia: A skewed and secret system*, Democratic Audit of Australia, ANU, Canberra, pp. 44–45.

29 Australian Taxation Office, Draft taxation ruling TR 1999/D6, Income tax and fringe benefits tax: Members of parliament – allowances, reimbursements, donations and gifts, benefits, deductions and recoupments, para 251.

30 Coles T, The Treasury, transcript, 29 April 2008, p. 15.

31 Gallagher P, The Treasury, transcript, 29 April 2008, p. 12.

32 Gallagher P, The Treasury, transcript, 29 April 2008, p. 12.

33 Hardy M, Australian Taxation Office, transcript, 29 April 2008, p. 16.

Tax relief given to these workers in relation to political contributions, even if incurred in earning income, shares the same vices as tax relief for the political contributions of non-workers: it is still inefficient and inequitable.³⁴

Conclusion

- 2.38 While the retention of tax deductibility for contributions and gifts to political parties, members and independent candidates is only likely to apply to a relatively small number of individual taxpayers, the committee considers that it is important to uphold the principle that individual taxpayers can deduct expenses related to earning their income. Therefore, the committee supports the retention of tax deductibility for individual taxpayers as proposed by the Bill.
- 2.39 The committee heard a range of arguments for and against tax deductibility for party membership fees and donations. Most opinions heard by the committee agreed that a high threshold such as currently exists favours the wealthy and should be reduced. However, opinions were divided as to whether it would be better to keep a low threshold for tax deductibility or to abolish tax deductibility altogether.
- 2.40 The committee considers that the underlying inequality of tax deductibility for political contributions and gifts is the most important issue for individual taxpayers. This inequality will be ‘front and centre’ to the committee’s overall assessment of the Bill.

Impact of changes for business

- 2.41 Businesses donate to political parties for a range of reasons including altruism, management self promotion, corporate social responsibility, to express political free speech and to maximise profit. However, there is limited evidence available to test the importance of each of these reasons.³⁵

34 Sempill S and Tham J, submission 9, p. 6.

35 Ramsay I, Stapleton G and Vernon J (2002), *Political donations by Australian companies*, University of Melbourne Faculty of Law Public Law and Legal Theory Working Paper No. 25, pp. 4–15.

- 2.42 Self interest is highly likely to be at the forefront of these decisions.³⁶ This is particularly so for public companies where company law requires directors and senior executives to act in good faith in the interests of the company – implying that there needs to be an obvious benefit for political contributions (direct or indirect) for the company’s shareholders.³⁷
- 2.43 Corporations have been able to claim a tax deduction for political donations since 22 June 2006. Businesses may also have claimed some of these payments under the general deductibility provisions of the tax law.³⁸
- 2.44 The Democratic Audit told the committee that there are four reasons why it believes extending tax deductibility of donations to corporations is controversial:
- Firstly, corporations are not holders of political rights, but essentially profit-making concerns which make political contributions for self-interested motivations;
 - Secondly, corporate donations overwhelmingly follow power and therefore only the major parties tend to benefit from them. This creates a form of inequality with minor parties and independents which rely on individual donations;
 - Thirdly, proprietors of businesses could effectively have annual tax deductible donations of \$3,000 if they donate both individually and via their company; and
 - Lastly, corporations can also claim the purchase of political access as a business deduction, for example purchasing tickets to/tables at party fundraisers, or sponsoring session at party conferences.³⁹
- 2.45 The Democratic Audit support the provisions of the Bill designed to close off ‘business expense’ deductibility for political donations in the form of buying access/tables at fundraisers. It told the committee that this would close a loophole on previously uncapped deductions.⁴⁰

36 Democratic Audit of Australia, submission 6, p. 2.

37 Ramsay I, Stapleton G and Vernon J (2002), *Political donations by Australian companies*, University of Melbourne Faculty of Law Public Law and Legal Theory Working Paper No. 25, p. 19.

38 Democratic Audit of Australia, submission 6, p. 2.

39 Democratic Audit of Australia, submission 6, p. 2.

40 Democratic Audit of Australia, submission 6, p. 4.

- 2.46 The committee heard that provisions allowing corporations to claim tax deductions for their political contributions runs contrary to the aim of reducing the influence of ‘big money’ in politics:

Because corporate money tends to go overwhelmingly to the major parties, subsidising corporate contributions threatens to deepen the financial divide between the major and minor parties.⁴¹

Conclusion

- 2.47 The committee did not hear, nor did it receive any opinions strongly in favour of maintaining tax deductibility for business.
- 2.48 While business can, and will continue to, contribute to political parties under existing law, the committee considers that it is not necessary to subsidise business contributions and gifts to political parties through the tax system – especially when it is likely that most businesses are making these contributions to support their own interests. The committee therefore supports the discontinuation of tax deductibility for political donations by business.

Impact of changes on political participation

- 2.49 The committee heard that political involvement ‘through traditional vehicles’ is changing in Australia. Most people no longer ‘go out to political party meetings and public rallies’ as they once did, rather ‘we are moving much more to a culture based upon online and transactional engagement with politics.’⁴²

- 2.50 Ms Foskey, MLA, told the committee that:

Making donations tax deductible simply added to the advantage enjoyed by those people who can afford to make the donation. It has simply encouraged and legitimised an uneven playing field.⁴³

- 2.51 However, Ms Foskey believes that if a tax deduction of about \$100 existed, it would have the effect of ‘inviting tax payers to become active citizens, and invest in the political parties for whom they will
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41 Sempill S and Tham J, submission 9, p. 5.

42 Orr G, Democratic Audit of Australia, transcript, 29 April 2008, p. 26.

43 D Foskey MLA, submission 7, p. 1.

- vote.’ This would in turn encourage a broader political participation and thus more representative political parties.⁴⁴
- 2.52 If tax deductibility was removed from party membership and donations it would not in effect disenfranchise people from participation as people would still be entitled to make small-scale donations, however, for some people the incentive to make those donations may have been removed.⁴⁵
- 2.53 Professor Orr noted that although there is no research to indicate whether or not party membership would decline sharply as a result of loss of tax deductibility, the fact that many political party membership forms make no mention of tax deductibility indicates that most people do not take out membership based on its availability.⁴⁶
- 2.54 It is not clear what proportion of party members actually claim a tax deduction for their party membership fees. A review of political party websites by the committee confirmed that they do not generally include information about tax deductibility on their websites or membership forms (table 2.4).
- 2.55 Overall, the Australian Democrats and the Australian Greens are more likely to provide information to new members on the tax deductibility of party membership fees and donations on their websites.

44 D Foskey MLA, submission 7, p. 2.

45 Orr G, Democratic Audit of Australia, transcript, 29 April 2008, p. 29.

46 Orr G, Democratic Audit of Australia, transcript, 29 April 2008, p. 31.

Table 2.4 Information provided by parties to potential members on tax deductibility for donations and membership fees

	NSW	Vic	Qld	SA	WA	ACT	Tas	NT
Liberal Party of Australia								
Membership	X	X	NA	✓	X	X	X	X
Donations	X	X	✓	X	✓	X	✓	NA
The Nationals								
Membership	X	NA	X	✓	X			
Donations	X	✓	✓	NA	X			
Australian Labor Party								
Membership	X	X	✓	✓	X	X	NA	X
Donations	✓	X	X	NA	X	X	NA	NA
Australian Greens								
Membership	✓	✓	✓	X	X	✓	✓	✓
Donations	✓	✓	✓	✓	✓	X	✓	✓
Australian Democrats								
Membership	✓	✓	✓	✓	✓	✓	✓	✓
Donations	✓	✓	✓	✓	✓	✓	✓	✓
Family First Party Australia								
Membership	X	X	X	X	X	X	X	X
Donations	✓	✓	✓	✓	✓	✓	✓	✓
One Nation Party								
Membership	X	NA	X	X	NA			
Donations	X	NA	X	NA	NA			

✓ = Tax deduction mentioned X = Tax deduction not mentioned NA – Not available

Source Committee review of party websites, 8 April 2008.

Political parties and independent candidates

- 2.56 The committee heard arguments both for and against using tax deductibility of membership fees and donations as a way of funding political parties.
- 2.57 It was argued that offering tax deductibility for political membership and donations as a way to adequately fund parties, is not being achieved because ‘the money provided from the public purse goes to taxpayers rather than the parties’ and thus, the parties are only being funded in a ‘rather indirect and limited fashion’.⁴⁷ Furthermore:

[the existing] system places an incentive to make contributions and to take out membership on the taxpayer

47 Sempill S and Tham J, submission 9, p. 2.

much more so than on the parties themselves to solicit contributions and membership. A system of public subsidy that relies more directly on strengthening incentives faced by the parties may very well be more effective.⁴⁸

2.58 However, Professor Orr argued that tax deductibility is necessary to give new and small parties a boost because the current form of direct public funding after elections shuts out new political parties as well as minor parties who might not achieve a four per cent threshold.⁴⁹

2.59 The ALP considered that 'removing tax deductibility remains the best policy option for promoting integrity in the political system'.⁵⁰ If small contributions and party memberships decline as a result of tax deductibility being withdrawn:

The challenge [will be] to devise a system of public funding that is efficient and equitable.⁵¹

2.60 The Nationals argued that public funding provided to parties and candidates is not nearly sufficient to cover the escalating costs of modern political campaigning. The Nationals told the committee that 'political party membership fees and particularly political donations have played an ongoing and increasing role in financing party administration and election campaigns'⁵² and therefore, suggested that the removal of tax deductibility for political party membership fees will discourage participation in the democratic process. In defence of tax deductibility, the Nationals told the committee:

The current tax deductibility arrangements of party membership apply equally to all parties and candidates, whether independent or party-affiliated, providing no advantage to any party or individual over another.⁵³

2.61 The Nationals noted that one of the funding and disclosure scheme's fundamental objectives is that 'a level playing field should operate between political parties and independent candidates'. The Nationals told the committee that in its view, the current arrangements for tax

48 Sempill S and Tham J, submission 9, p. 2.

49 Orr G, *Democratic Audit of Australia*, transcript, 29 April 2008, p. 24.

50 Australian Labor Party, submission 1, p. 2.

51 Sempill S and Tham J, submission 9, p. 6.

52 The Nationals, submission 3, p. 3.

53 The Nationals, submission 3, p. 3.

deductibility serves to achieve that objective, 'as well as encouraging greater participation in the democratic process'.⁵⁴

2.62 The Democratic Audit told the committee that its research has found that:

Australian parties are already considering new approaches to fund-raising, particularly based on internet marketing to online networks.⁵⁵

Conclusion

2.63 Arguments were presented to the committee both for and against tax deductibility as a way of funding political parties. Tax deductibility is seen to be one way to encourage small-scale funding of parties although some argue that it is inequitable and parties still need to fund-raise in other ways.

2.64 It was argued that while the major parties can and do raise funds in a variety of ways, new and small parties rely on tax deductibility to use as an incentive to generate much needed funding, at least until they can achieve the four per cent threshold to receive public funding.

2.65 Discontinuing tax deductibility for political contributions and gifts does not disenfranchise citizens and restrict their capacity to make a contribution to a political party if they wish to do so.

2.66 In the committee's view, there is no strong evidence to support assertions that party membership will be adversely affected by the discontinuation of tax deductibility of party membership fees.

Tax deductibility and its relationship with political party financing

2.67 Inquiry participants held a number of different views on whether the committee's consideration of Schedule 1 of the Tax Laws Amendment (2008 Measures No. 1) Bill 2008 should be combined with future broader inquiries into political financing issues including this committee's inquiry into the 2007 election and the federal government's green paper on political finance and disclosure issues.

54 The Nationals, submission 3, p. 2.

55 Democratic Audit of Australia, submission 6, p. 4.

2.68 These views were also expressed by members of non-government parties during debate on the Bill in the House of Representatives and by opposition members of the committee at the public hearing.⁵⁶

2.69 The Liberal Party of Australia did not support the Parliament considering tax deductibility at this time, commenting that:

... The Government has indicated its intention to bring forward a Green Paper later this year considering a range of issues including the funding of political parties. As tax deductibility of political donations is only one part of the legislative and policy framework in this area, it would not be in the interests of good public policy for this matter to be dealt with in isolation from other matters expected to be canvassed by the Green Paper.

... If tax deductibility is to be reviewed, this should only occur as part of an overall review of the laws governing political donations. [The Joint Standing Committee on Electoral Matters] has the task of doing just that as part of its review of the 2007 election, and any review of tax deductibility should only occur as part of that inquiry.⁵⁷

2.70 Similar sentiments were expressed by The Nationals, who also referred to other parliamentary committee reviews of political party funding in progress in other jurisdictions:

The Nationals oppose in principle the piecemeal progression of individual changes to the current rules for campaign finance ahead of, or independently from, a comprehensive and coordinated examination of campaign finance generally. The concern regarding the lack of such a comprehensive and coordinated examination is compounded by the separate inquiry currently being undertaken by the New South Wales Legislative Council's Select Committee on Electoral and Political Party Funding.

... The Nationals believe the changes proposed regarding tax deductibility of political gifts and contributions should be held over and considered as part of the Electoral Reform

56 Hon Malcolm Turnbull MP, House of Representatives Debates, 21 February 2008, p. 1117; Mr Michael Keenan MP, House of Representatives Debates, 21 February 2008, p. 1121; Mr Scott Morrison MP, House of Representatives Debates, 21 February 2008, p. 1130; Senator the Hon Michael Ronaldson, transcript, 29 April 2008, p. 1; Hon Bruce Scott MP, transcript, 29 April 2008, p. 1.

57 The Liberal Party of Australia, submission 2, p. 1.

Green Paper process, which it is understood will be initiated with the release of the Green Paper in July 2008.⁵⁸

- 2.71 The Australian Labor Party, while supporting the discontinuation of tax deductibility for political contributions and gifts, recognised that the move would be complemented by recent policy announcements regarding a reduction in the thresholds for disclosing political contributions and gifts:

By removing the deductibility provisions, rather than restoring them to their pre-2006 levels, the federal government is bringing the tax law relating to political parties into line with amendments already foreshadowed by the Special Minister of State on donation disclosure. These tax laws will further improve the integrity of the electoral system and will work in conjunction with the lowering of the disclosure threshold.⁵⁹

- 2.72 The Democratic Audit recommended retention of a \$100 cap on deductibility for individual taxpayers until the government and/or the committee settled proposals for any revamping of the broader system of political finance.⁶⁰ Professor Orr told the committee that:

We may be partly contradicting ourselves, because whilst we are saying we welcome the lowering of deductibility and taking it away from corporations – and I guess the government’s intention is to have this in place for the next financial year – we would not like there to be yet another change further down the track if the government or [the Joint Standing Committee on Electoral Matters] decide that you need to have some kind of tax deductibility measure to encourage small-scale donation. So I think it is premature to abolish it altogether.

... We are working on the assumption that so far the public debate on all sides of politics is to move towards a modest system. Our question would be: where is the money going to come from? We do not want in a liberal democracy to have a purely statist culture of direct public funding.⁶¹

58 The Nationals, submission 3, pp. 1-2.

59 Australian Labor Party, submission 1, p. 2.

60 Democratic Audit of Australia, submission 6, p. 4.

61 Orr G, Democratic Audit of Australia, transcript, 29 April 2008, p. 31.

2.73 Alternative policies to replace tax deductibility, including the use of tax credits and a 'matching' of private contributions to political parties with equivalent public funding, were also raised by other participants. Dr Thompson noted that:

Rather than allow a tax deduction on political donations I believe we should give tax credits for these contributions. This means that those in a higher tax bracket are not rewarded more than those in the lower brackets. Tax credits are more equitable than tax deductions.

A tax credit is generally more valuable than a tax deduction of the same magnitude because a tax credit reduces tax directly, while a deduction only reduces taxable income. A tax credit reduces the tax paid dollar-for-dollar. This amount of tax savings is not dependent on the rate the taxpayer pays.⁶²

2.74 Mr Sempill and Dr Tham raised some possible alternatives involving public funding that could be considered to tax deductibility:

The aims of encouraging small contributions and party membership while assisting the finances of parties remain sound and modest public funding should be devoted to them. The challenge is to devise a system of public funding that is efficient and equitable.

There are two options we wish to flag. First, public funding can be directly provided to parties registered under the [Commonwealth Electoral Act] based on the number of their party members (providing there is integrity of membership rolls). For instance, for each member, a registered party could receive \$5. Second, a system of matching funds could be put in place to encourage small contributions. For example, for each contribution of \$50 or less received per annum by candidates and registered parties, public funds could be provided at the amount of 10% of these contributions.

We emphasise that this system of matching funds not only should be limited to small contributions but also should only involve a modest public subsidy in total. Both are necessary in order to alleviate the risk of such a system being biased towards wealthy citizens and parties.⁶³

62 Thompson N, submission 8, p. 2.

63 Sempill S and Tham J, submission 9, pp. 5-7.

Conclusion

- 2.75 While links between tax deductibility and other aspects of political party financing can be drawn, it is not clear to the committee that assessments about the continuation of tax deductibility need to be made in a broader context.
- 2.76 The committee acknowledges that there are likely to be changes made or considered in a number of areas, including lower disclosure thresholds and greater accountability for public funding. It does not seem necessary to the committee that the mix of funding mechanisms should retain an unbalanced and inequitable system of political contributions through tax deductibility.

Committee recommendation

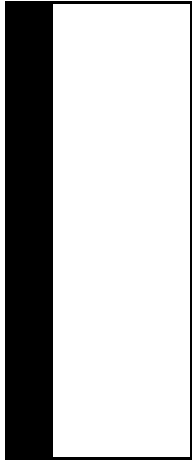
- 2.77 The committee considers that the underlying inequity of tax deductibility for political contributions and gifts, which confers advantages and disadvantages to taxpayers on the basis of their taxable income, should be discontinued.
- 2.78 The committee believes there is no evidence that discontinuing tax deductibility for political contributions and gifts will necessarily lead to reduced participation in political activities – members of the community will still be able to join a political party and individuals and businesses will still be free to donate to the political parties and candidates. However, the inequitable aspect of the tax deduction mechanism will be removed and provide a more equal framework for political participation.
- 2.79 The committee rejects the view expressed by some inquiry participants that this measure should be delayed and included in forthcoming reviews of political party funding.

Recommendation 1

- 2.80 **The committee supports the removal of tax deductibility for contributions and gifts made to political parties, members and independent candidates and recommends that the proposed Bill be passed by the Senate without amendment.**

**Daryl Melham MP
Chair**

26 May 2008



Minority Report—Mr Scott Morrison MP,
Senator the Hon Michael Ronaldson,
Senator Simon Birmingham, Liberal Party of
Australia, Hon Bruce Scott, The Nationals

Recommendation

Reform of our national system of campaign finance, in particular to address the recent revelations of serious illegal activity in Wollongong, NSW, cannot be addressed by any one measure in isolation. The Government's piecemeal approach to this issue, as represented in this Bill, is not supported by the Coalition Party members of the committee. Accordingly we propose that consideration of the tax deductibility measures contained in this Bill be deferred until they can be assessed as part of the committee's comprehensive review of campaign finance.

Recommendation 1

That consideration by the Senate of the proposal by the Government for the removal of tax deductibility for contributions and gifts made to political parties be deferred until such time that the committee has had the opportunity to conclude its broader inquiry into the 2007 federal election, including the extensive review of issues relating to campaign finance reform, furthermore no consideration should be given to the Bill until the Government makes its Green Paper public.

Coalition Party members oppose the recommendations of the majority report

The Coalition Parties have a deep and genuine commitment to address the crisis of confidence in the Australian political system caused by the revelation of alleged illegal activity involving ALP donors and ALP Councillors on Wollongong Council.

A key element of addressing this crisis is to undertake a thorough review of our campaign finance regime at both state and federal levels to ensure:

- a) that there are sufficient authorities, investigatory powers and enforcement measures to prevent such illegal acts in the future, and
- b) the removal of weaknesses in our legislative and regulatory frameworks that may give rise to an environment where such illegality could take place in the future.

To this end the Coalition put forward a motion in the Senate by Senator Ronaldson, for a comprehensive reference to the Joint Standing Committee on Electoral Matters to undertake an extensive inquiry into campaign finance.

This motion was opposed by the Government, but supported by all other parties in the Senate. The committee at its first meeting, agreed to deal with this reference concurrently with a general reference from the Special Minister of State, inquiring into the conduct of the 2007 federal election. The Special Minister of State has also announced a Green Paper process on these issues and introduced a Bill containing a number of measures relating to changes in campaign finance laws.

The Coalition believes in confronting this issue by dealing systematically and comprehensively with the challenges that flow from the illegal activity revealed in Wollongong.

By contrast the Government has embarked on a piecemeal approach, evidenced by their insistence to progress the Bill, in isolation to the broader review to be undertaken by the committee at the request of the Senate, or even the Government's own Green Paper process.

It should also be noted that the measures contained in this Bill were not identified by the Government in response to revelations of alleged illegal behaviour by ALP donors and Councillors in Wollongong. Rather the mandate for this Bill is drawn from the change to the ALP's Policy Platform at the National Convention in Sydney in 2004.

In identifying this change to ALP policy, no reference was made to revenue savings that might be achieved, rather the policy was based on securing a political advantage for the ALP. This is the true motivation for the Government's urgency relating to this Bill.

Coalition Party members of the Committee, together with Senator Bob Brown of the Greens, have opposed this inquiry proceeding in isolation, preferring that the matters referred by the Senate in relation to the Bill, be taken up as part of the committee's broader inquiry. This position was rejected by Government members of the committee on the casting vote of the Government Chairman.

As a result of the inquiry now being undertaken, Coalition Party members of the committee maintain their opposition to the progress of this Bill, until such time as other inquiries are completed to assess these issues in their entirety. Coalition Party members of the committee also believe the inquiry has failed to demonstrate the urgency of this matter and why it should be treated in isolation.

Government members of the committee are also ignoring the views of the community in relation to this matter.

In fact two thirds of the submissions received by the Inquiry either opposed the removal of tax deductibility or required such changes to be counterbalanced by other measures. In evidence before the Committee this position was well summarised by Associate Professor Graeme Orr from the Democratic Audit of Australia who said:

.. it is very premature to do away with a form of encouraging small scale donating at the same time as seriously considering, in a few months time, the banning of large corporate and organisational donations. That is going to lead to serious questions as to where parties get the money from and deductibility, or matching funds, is something that needs to be kept in the mix.¹

1 Orr G, Democratic Audit of Australia, transcript, 29 April 2008, p. 36.

In other words, we should not proceed with these measures in isolation. By addressing this matter in isolation the committee is unable to conduct a proper assessment of the comparative benefits or otherwise of these measures.

It is therefore impossible to reach the conclusion advanced in the majority report that 'it does not seem necessary to the committee that the mix of funding mechanisms should retain an unbalanced and inequitable system of political contributions through tax deductibility' (paragraph 2.76). The committee has undertaken no examination of 'the mix of funding mechanisms' in this review and therefore cannot comment either way.

Key issues for Coalition party members of the committee arising from the Inquiry are noted below.

1. Projected savings generated by the proposed changes

Treasury estimates of revenue savings are overstated and represent a bold guess. There is no reliable data on claim rates, levels of donation less than \$1,500 or current or the projected size of party membership. The absence of such data undermines the revenue estimates and therefore any argument for urgency, based on fiscal necessity, for this Bill.

Treasury estimates that the measures contained in the Bill will save \$31.4 million over four years to 2011-12 commencing in 2009-10. In their appearance before the committee, Treasury officials confirmed that the costing comprised two components, namely savings achieved by the removal of deductions for a) Party membership subscriptions and b) contributions.²

According to Treasury officials the membership component of the costing is \$4.3 million in each year, based on membership estimates obtained from a study undertaken by the Australian National University.³ In evidence Treasury officials qualified the veracity of these estimates as follows:

the thesis in the article is that parties do not give out numbers, because membership may be declining and they do not want to reveal that. **I do not know whether that is true or not** (emphasis added).⁴

2 Gallagher P, The Treasury, transcript, 29 April 2008, p. 3.

3 Gallagher P, The Treasury, transcript, 29 April 2008, p. 5.

4 Gallagher P, The Treasury, transcript, 29 April 2008, p. 5.

Furthermore, questions by the Chair confirmed that the \$4.3 million figure used by Treasury was based on estimates of a 90 per cent claim rate.⁵ No evidence was presented by Treasury or any other source to substantiate this assumption. In fact in response to a question on notice inquiring as to the behaviour of taxpayers in relation to making claims for political deduction they confirmed that:

The Australian Taxation office does not have data on the median deduction claimed for gifts and contributions or the number of taxpayers claiming any deduction.⁶

It is therefore not surprising that even in the majority report it is acknowledged that 'it is not clear what proportion of party members actually claim a tax deduction for their party membership fees' (paragraph 2.54).

In relation to donations, Treasury officials also confirmed in evidence the difficulties of estimating revenue savings relating to claims for gifts and donations:

In the data we have from the Australian Electoral Commission website for 2003-04 and 2004-05, the \$1,500 disclosure threshold was already in place and there were very few donations disclosed below that level; therefore, we have had to make assumptions about what the potential level of donations below that level was in order to take up that distribution to probably being about the actual size that it was.⁷

In other words, Treasury had no knowledge of the amount or value of donations less than \$1,500, which is the subject of this Bill. Treasury then derived an estimate based on a series of assumptions to arrive at a figure. While Coalition members of the committee do not doubt the internal logic of Treasury's reasoning, we conclude that the result is totally arbitrary as it relies completely on the reliability of the base data, which in this case was non-existent.

Treasury officials similarly acknowledged this point by drawing the committee's attention to their qualifications noted in the official published release of the election costings, namely:

Given the range of implicit and explicit assumptions used to produce these revenue estimates it should be noted that **actual outcomes may vary from these estimates** (emphasis added) if assumptions or behaviour change from our expectation. In particular, data on political party membership fees received is

5 Gallagher P, The Treasury, transcript, 29 April 2008, p. 11.

6 The Treasury, submission 10, p. 3.

7 Gallagher P, The Treasury, transcript, 29 April 2008, p. 6.

poor and data on donations below the AEC disclosure threshold is also poor.⁸

Treasury officials also later noted that 'It is not that we have no idea. We have some idea, but we have admitted that that idea is imprecise because of the availability of information'.⁹

The unreliability of the revenue estimates was also noted by Professor Orr, who drew attention to the implications for overall donation and claim rates, based on the estimates, which suggest the revenue estimates are unlikely:

.. if you are talking about \$10 million per year you are talking about \$30 million of donations at, say, a marginal rate of 30 per cent, which is roughly the corporate rate. Thirty million dollars is a lot of \$1,500 contributions or party memberships. I do not want to criticise the Treasury modelling without seeing it, but part of the problem we have is that we have not had a system where it is itemised on tax forms and we do not really have enough data on claiming, on where people's donations are going and so on.¹⁰

2. Impact of changes for individual taxpayers

Equity arguments advanced by those in favour of removing tax deductions that they confer greater value to people on higher taxable incomes are generic and not specific to this measure. Such arguments could be used to argue against any tax deductibility measure, including work related expenses, which the majority report continues to support.

The majority report relies heavily on the claimed inequity of these measures in forming its conclusion. At one point the report makes the bold claim in paragraph 2.31 that 'the committee was told that inequity is the most likely result of any provision granting tax deductibility for party membership and donations and inequity is exacerbated with the current high threshold of \$1,500'. This statement is not substantiated or referenced, yet appears in the report as a statement of fact.

The arguments for inequity were not raised unprompted in the hearing undertaken by the committee, and were raised only by the Chair late in the hearing, quoting from the submission received after deadline by Mr Sempill and Dr Tham as follows:

8 Gallagher P, The Treasury, transcript, 29 April 2008, p. 6.

9 Gallagher P, The Treasury, transcript, 29 April 2008, p. 7.

10 Orr G, Democratic Audit of Australia, transcript, 29 April 2008, p. 33.

the current provisions are inequitable on several counts. They discriminate against those who do not have to pay tax. Job seekers, retirees without income, full-time parents and students not engaged in paid work who make small contributions or take out party membership are denied the benefit of the current system.¹¹

In response to questioning by the Chair in relation to this statement, Professor Orr put this issue in its proper perspective:

As I said, you might as well say that any form of tax deductibility, including donations to charity, discriminate against such people.¹²

The only real argument advanced for this initiative in the majority report is an argument for the abolition of tax deductions in general. Coalition Party members of the committee do not believe such an argument can be accepted to justify the isolated progression of the measure contained in this Bill.

In further response to the Chairman's comments regarding inequity, the advantage to Members of Parliament over members of the community was highlighted in evidence given. Members of Parliament who want to donate heavily to their own political party, for example, for whatever reason, are allowed unlimited tax deductibility. A member of the general community who currently at least has limited access to tax deductibility will now be totally prohibited from claiming a deduction.

Senator RONALDSON – But under this legislation a member of the community who wants to make a donation to engage themselves in the political process cannot get a deduction.

Mr Coles – It goes back to the fundamental principles in tax law that an amount is deductible if it is incurred in gaining your assessable income. We are maintaining that principle for members of parliament, office holders and employees.¹³

The Coalition members of the committee believe that the inequity of the above situation is not conducive to a balanced approach to campaign finance reform.

3. Impact of changes for business

The Bill fails to deal with the real issue of fostering a culture of influence procurement, preferring to penalise small business donors, while allowing

11 Mr Daryl Melham MP, transcript, 29 April 2008, p. 32.

12 Orr G, Democratic Audit of Australia, transcript, 29 April 2008, p. 32.

13 Transcript, 29 April 2008, p. 15.

unions and other non tax paying entities to channel funds, tax free, to their political parties of choice.

The nature of alleged illegal activity involving ALP business donors and ALP Councillors on Wollongong Council, will not be impacted by the measures contained in this Bill. These are the issues that created what Professor Orr described in his evidence as the ‘crisis of confidence in the political campaign finance system’.¹⁴

The key issues associated with the illegal events in Wollongong had nothing to do with the availability of tax deductions. Yet this is the issue the Government believes must be most urgently addressed in relation to business donations.

In the hearing, Treasury officials confirmed that those involved in the business of securing influence will continue to be able to claim deductions under the general provisions, while small businesses will be denied.

Senator BIRMINGHAM – This might clear things up. Under existing laws, how are the expenses of a lobbyist company in particular – there are many of them out there – whose core business is lobbying and access to government, treated in relation to their engagement with political parties and politicians and government? That is without necessarily getting into meals, which I understand become a different component. Let us call it a stand-up, networking function with no meal provided. If a lobbying company attends a function with the Prime Minister or a premier, are they able to claim as an expense the entirety of that cost and up to what reasonable limit?

Mr Hardy – Basically, yes. If their business role is lobbying, networking and advocacy and they go to a function with political leaders in order to network, advocate and lobby, that will be just a business deduction for their business activity. There is no cap to that expense.¹⁵

Furthermore, supplementary responses from the Treasury to questions on notice reveal that while the Bill will deny businesses tax deductibility for donations, non tax paying entities such as unions and charitable organisations, are permitted to secure contributions from tax payers on a deductible basis, and pass these resources onto a political party, non capped and tax free in the form of a donation.

14 Orr G, Democratic Audit of Australia, transcript, 29 April 2008, p. 27.

15 Transcript, 29 April 2008, p. 21.

There are no special provisions in the tax law where the income of a tax exempt entity is taxed because that entity donates to a political party.

Schedule 1 of the Bill does not prevent not-for-profit organisations from donating to political parties – this includes not-for-profit organisations that receive funds that were tax deductible to the giver by way of either the general deduction provision, or because the organisation is a deductible gift recipient.¹⁶

Such anomalies highlight the lack of balance put forward in this Bill and why such measures must be considered as part of a broader review to ensure such inequities can be addressed in other measures, as part of boarder package of reforms.

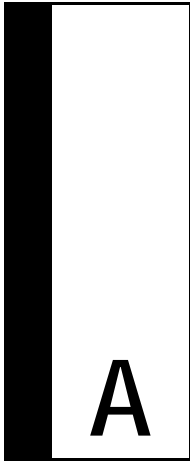
Mr Scott Morrison MP

Senator the Hon Michael Ronaldson

Hon Bruce Scott MP

Senator Simon Birmingham

¹⁶ The Treasury, submission 10, p. 2



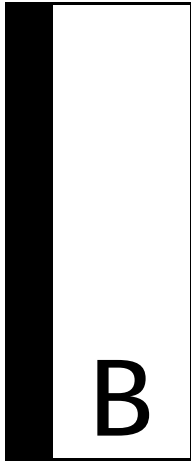
Appendix A

Submissions to the inquiry

- 1 Australian Labor Party
- 2 The Liberal Party of Australia
- 3 The Nationals
- 4 Festival of Light Australia
- 5 Mr Duncan Honoré-Morris
- 6 Democratic Audit of Australia
- 7 Deb Foskey MLA
- 8 Dr Norman Thompson
- 9 Mr Stephen Sempill and Dr Joo-Cheong Tham
- 10 The Treasury

Exhibit to the inquiry

- 1 The Treasury
Jaensch D, Brent P and Bowden B (2004), *Australian Political Parties in the Spotlight*, Democratic Audit of Australia, ANU, Canberra



Appendix B

Public Hearing and Witnesses

Tuesday, 29 April 2008 - Canberra

Australian Taxation Office

Mr Michael Hardy, Assistant Commissioner, Small & Medium Enterprises

The Treasury

Mr Mark O'Connor, Principal Adviser, Personal & Retirement Income Division

Mr Tony Coles, Manager, Personal & Retirement Income Division

Mr Phil Gallagher, Manager, Retirement & Intergenerational Modelling & Analysis

Democratic Audit of Australia

Associate Professor Graeme Orr, University of Queensland

