

Relationships between federal, and state and territory arrangements

- 9.1 Evidence received by the committee suggested that the harmonisation of federal, and state and territory political financing arrangements was seen as a feasible option to address concerns that arise in relation to having different systems in place. However, if this is not possible at this time, there is support for ensuring there is a clear distinction between the responsibilities of federal, and state and territory administering bodies, and for seeking opportunities for cooperation on specific matters.

Background

- 9.2 Currently, in addition to the Commonwealth arrangements, some of the Australian states and territories – New South Wales, Queensland, the Australian Capital Territory, Tasmania and Western Australia – have funding and disclosure schemes that apply to elections and related activities within their respective jurisdictions.
- 9.3 The *Electoral Reform Green Paper – Donations, Funding and Expenditure* (first Green Paper) discussed the issue of different systems operating at the federal, and state and territory levels. It was stated that:

These schemes have all largely developed by reference to each other and consequently are broadly quite similar in objectives and approaches. Nevertheless, there are some significant differences that have evolved independently of each other in response to local factors. An important point of difference arises in the disclosure thresholds that apply, with the major deviation being in the

federal scheme's current threshold of \$10,900 which is many times higher than that applying in any of the state or territory schemes.¹

- 9.4 It has been argued that having two different layers of arrangements can be confusing and impose additional administrative burdens on groups and individuals with reporting obligations – and in some cases on the administrators of those systems. There is also the challenge in a federal system such as Australia's that changes made to arrangements at one level of government may have implications for another. This is a particular concern in cases where a decision taken at one level restricts or imposes a burden on individuals or groups engaging in the political process at other levels.
- 9.5 It is generally agreed that harmonisation of political financing arrangements between federal, and state and territory levels of government is desirable. However, achieving greater consistency between these systems has proven to be challenging when it comes to electoral matters. With options for reform still under consideration at the federal level, and significant reforms already undertaken and continuing in New South Wales and Queensland, as outlined in Chapter 2, Australia's systems for funding and disclosure seem to be diverging rather than harmonising.

Support for harmonisation

- 9.6 Submitters to the inquiry suggested that different system requirements can create confusion amongst groups and individuals with reporting obligations, especially if disclosure and reporting requirements are different at the federal, and state or territory level. The administrative burden on responsible persons in keeping up with and meeting the requirements was also raised as a concern.
- 9.7 It was suggested that one of the effects of the different Commonwealth, and state and territory arrangements has been the potential overlap between disclosure requirements and their administration in the different jurisdictions.

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

9.8 The Australian Electoral Commission (AEC) expressed concern about potential overlap between different jurisdictions, stating that:

Perhaps more fundamentally than possibly seeking harmonisation, consideration will need to be given to the effects of overlapping provisions.²

9.9 This concern emerged at the Joint Standing Committee on Electoral Matters (JSCEM) Roundtable discussion on the first Green Paper. For example, a participant expressed his concern about the element of confusion that can be associated with the current arrangements and commented that:

Harmonisation is essential for no other reason than you look at the definition of 'expenditure' and that blurs or includes state or federal politicians. Just speaking on behalf of the punter in our office who has to do the returns, it is a very annoying compliance cost to get your head around the different regimes and to try to comply with them all. It would be good if we could do one set of compliance.³

9.10 At the hearing on 14 September 2011, Mr Paul Neville MP, the Member for Hinkler appeared in a private capacity to share his experience of having the details of specific payments queried by the Electoral Commission of Queensland. The payment queried that is relevant to this discussion is a fee that Queensland Liberal National Party members pay to their head office for administrative purposes. Mr Neville commented that:

I have no problems with transparency and accountability, but I felt that that was an intrusion. Those are arrangements between me, a federal member of parliament, and my state head office over matters federal. I do not know exactly where the Electoral Commission of Queensland got the information from. They either got my returns from the federal election or the LNP party's returns, went through them, picked items out and then went about querying them. To me, that is almost a form of double jeopardy. Do we accept a situation where the state electoral commissions can double-guess the federal process?⁴

2 Australian Electoral Commission, *Submission 19*, p. 15.

3 Dr Gregory Ogle, The Wilderness Society, Roundtable discussion on the first Electoral Reform Green Paper – Donations, Funding and Expenditure, *Committee Hansard*, 16 April 2009, p. 42.

4 Mr Paul Neville MP, Member for Hinkler, Private capacity, *Committee Hansard*, 14 September 2011, p. 1.

- 9.11 Mr Neville confirmed that once the nature of the payment had been explained the matter was resolved. However, he felt the incident highlighted the need for greater clarity between state and federal requirements and administrative responsibilities.
- 9.12 Subsequent discussion at the hearing also indicated that the incident could also be viewed in a positive light – as an example of transparency at work, where the state administering body had identified and queried the nature of a specific payment, and then accepted the answer when it was explained to be a matter for federal jurisdiction.⁵
- 9.13 Mr Andrew Murray, a former Democrats Senator, in his submission to the first Green Paper, argued that while harmonisation represented a challenge for reformers, it was possible. He observed that:

...in the Green Paper is expressed the hope that if electoral reform does not achieve harmonisation, at least it might result in greater consistency. Such a minimalist hope is undoubtedly prompted by the difficulty facing any reformer of achieving significant change in the field of electoral matters, where vested interests hold such strong sway.

Such a view may be too pessimistic. As in other countries, the institutional self-interest of the political establishment can be overcome to advance the reforms required to implement a much improved system of accountability and transparency in political funding and disclosure. There are already signs of willingness to consider meaningful change in Australia, consequent to media and public pressure, and to internal party calls for reform.⁶

- 9.14 The Liberal Party of Australia also highlighted the importance of considering options for harmonisation when undertaking the broader process of reform:

It would assist in simplifying the administration of political parties if any changes at the federal level were administered in a way which did not lead to unnecessary duplication and complexity in compliance obligations between State and Federal levels.⁷

5 See discussion in *Committee Hansard*, 14 September 2011, pp. 1-2.

6 Mr Andrew Murray, *Submission 5* to the Electoral Reform Green Paper – Donations, Funding and Expenditure, December 2008, p. 9.

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

Key issues

Consensus

- 9.15 While a system developed by consensus between the Commonwealth, and states and territory governments was presented as the 'ideal' option, its proponents, in the course of this inquiry and in the wider debate, generally conceded that this was not likely at the current time.
- 9.16 A single national funding and disclosure system with a single administering body could help address concerns about confusion; the administrative burden on individuals, political parties and other groups with reporting obligations; and federalism issues. Mr Murray argued that such an arrangement would also have practical and cost saving benefits, commenting that:
- Savings and efficiencies would result from one rather than nine laws and nine electoral commissions. A similar argument applies for the regulation of political participants and for funding and expenditure.⁸
- 9.17 Mr Murray acknowledged that such an approach would need the agreement of all parties in order to be effective. He stated that:
- Political parties could be forced into a federal regulatory regime by the simple device of requiring all parties desirous of public funding to be an incorporated entity subject to the federal Corporations law. Such a course of action would be unwise if there was a strong reaction and resistance from the states and territories. Permanent change is achieved when the transfer of powers is consensual and based on sound policy considerations.⁹
- 9.18 Further, Professor Twomey outlined three benefits that could be derived if such consensus could be achieved:
- Firstly, it would eliminate some of the constitutional problems that could arise;
 - Secondly, a uniform approach would be more effective in addressing some of the potential for circumventing requirements that exists when

8 Mr Andrew Murray, *Submission 5* to the Electoral Reform Green Paper – Donations, Funding and Expenditure, December 2008, p. 10.

9 Mr Andrew Murray, *Submission 5* to the Electoral Reform Green Paper – Donations, Funding and Expenditure, December 2008, p. 11.

different system are operating at the federal and state government levels, because 'if you impose limitations at one level and they do not exist at the other, the money comes back in through the back door and the regulation tends to be ineffective. That is the major problem in the United States.';

- Thirdly, it will improve administrative efficiency and reduce administrative burden, as 'a single political party that operates at the state and Commonwealth level only has one set of administrative rules to comply with, it is going to be much more efficient and easy for them to operate'.¹⁰

9.19 However, it is clear that, while desirable, much work remains to be done on reaching consensus between key stakeholders in obtaining comprehensive reform based on cooperation on these issues across Australia.

Constitutional and federalism issues

9.20 As discussed above, Professor Anne Twomey cautioned that constitutional issues could arise if the Commonwealth sought to impose a uniform system of funding and disclosure laws on the states.¹¹

9.21 Concerns about federalism issues – the need to consider the implications that changes at one level of government may have on the exercise of political freedoms at another level – were also raised. Banning donations from certain industry groups provides an example of the type of problems that may arise.

9.22 Professor Twomey noted that when New South Wales and Queensland were introducing bans on donations, they were careful to consider the possible implications at the Commonwealth level. She observed that:

...both of the states were very conscious of the fact that if they legislated to ban donations or do anything in a way that affected political parties supporting the Commonwealth campaigns that that would be problematic constitutionally. So they deliberately put in provisions to say that these limitations only applied with respect to special accounts that had to be established for the funding of state political campaigns.¹²

10 Professor Anne Twomey, Private capacity, *Committee Hansard*, 9 August 2011, p. 38.

11 Professor Anne Twomey, Private capacity, *Committee Hansard*, 9 August 2011, p. 38.

12 Professor Anne Twomey, Private capacity, *Committee Hansard*, 9 August 2011, p. 38.

9.23 When questioned about Senator Bob Brown's Commonwealth Electoral Amendment (Tobacco Industry Donations) Bill 2011, which seeks to create offences to prohibit political parties or candidates from receiving donations from manufacturers or wholesalers of tobacco products, Professor Twomey observed that the bill, as it currently stands, would have implications at the state level. She commented that:

I note that in the tobacco bill the proposal does not require particular Commonwealth political campaigns to be set up. So the ban in this proposed bill would apply to all the states and state political party branches with respect to their funding of state campaigns. That is when you start getting into trouble when your Commonwealth legislation is impinging on state elections and vice versa – if your state legislation is impinging on Commonwealth elections.¹³

9.24 This highlights some of the serious difficulties that may arise and the necessity to ensure that in a federal system any significant changes to funding and disclosure arrangements must take into account the implications on other levels of government.

9.25 In Australia's federal system, the relationship between the Commonwealth, and states and territories reflects the nature of the funding and disclosure system itself, as actors in the electoral arena cannot be easily compartmentalised and actions taken in one area may have unintended and unanticipated effects in another. The challenge for reformers and administrators is to adopt a holistic approach, wherever possible, to maximise desired objectives and minimise any negative effects.

9.26 Professor Twomey agreed that a single system addressing political financing issues would be desirable, but noted that there were challenges to address before greater harmonisation could be achieved.¹⁴ She advised the committee that:

Constitutionally, I do not think that can be imposed by the Commonwealth. Ideally, one would have a cooperative scheme where the states and the Commonwealth come together, reach an agreement and enact a form of uniform legislation, perhaps with one jurisdiction taking the lead and the others adopting mirror legislation – something of that kind.¹⁵

13 Professor Anne Twomey, Private capacity, *Committee Hansard*, 9 August 2011, p. 38.

14 Professor Anne Twomey, Private capacity, *Committee Hansard*, 9 August 2011, p. 38.

15 Professor Anne Twomey, Private capacity, *Committee Hansard*, 9 August 2011, p. 38.

9.27 However the genuine relevance of the concept of federalism to political financing regulation was questioned by Mr Murray. He further stressed the need to simplify the laws and outlined how the arguments put forward against harmonisation by proponents of federalism could be overcome. Mr Murray argued for a more comprehensive review of the federal and state relationship, stating:

I ask a fundamental question in my submission: what is national and what is federal? I actually think harmonisation is a bad second best in this particular circumstance. I argue that there is only one system that is genuinely federal, and that is electoral systems; constituencies, whether you have an Upper House or not with fixed terms and all that is up to the nine individual jurisdictions. But the conduct for elections, the regulation of political participants and funding and expenditure, I argue, all should be national. I would urge the minister to ask the Council of Australian Governments to step back and ask themselves the question: what is federal and what is national? And having agreed what is national, decide the principles that they would support in a national scheme. It is much easier and much simpler than trying to harmonise systems.¹⁶

Options for reform

- 9.28 The main themes arising in discussions during the inquiry for pursuing reform in this area were to:
- Develop a uniform national approach by consensus with the different levels of government, including simplify the laws;
 - Undertake reform at the Commonwealth level and act as a leader on these issues; or
 - Focus on developments in areas where some progress can be made, for example seeking agreement on disclosure thresholds and a shared electronic method for disclosure.

16 Mr Andrew Murray, Private capacity, Roundtable discussion on the first Electoral Reform Green Paper – Donations, Funding and Expenditure, *Committee Hansard*, 16 April 2009, p. 43.

9.29 Mr Murray argued that the ‘best way to eliminate (or at least drastically reduce) the negatives’ of the current system ‘is to have just one law, one administrator and one regulator’.¹⁷ Mr Murray suggested that ‘electoral matters’ can be divided into three categories; electoral systems, the conduct of elections, the regulation of political participants, and funding and disclosure. He proposes electoral systems should remain separately legislated in a federal system, but that the oversight of the other three categories can be managed under a national system. He argued that:

...there is no reason why the conduct of elections (federal, state, territory, local and organisational); the regulation of political participants (parties, associated entities, candidates, third parties); and funding and expenditure could not be under one electoral commission and one national set of laws.

Of course the principles and main policies need to be agreed by COAG and the States and Territories parliaments before a national regime replaces the federal system for these three parts, but once that is done it becomes a question of timing and implementation.¹⁸

9.30 Mr Peter Brent of the Democratic Audit of Australia agreed that considerable reform of administering bodies was required. He argued that:

[In] terms of what is essential, I agree with what has been said about harmonisation. What is desirable is to have no state electoral bodies, along the lines of what Mr Murray has been saying. Not one national body but possibly three national bodies – one that enforces things that we have been talking about, another that maintains the electoral roll and another that conducts the election. It would be desirable to have no state bodies. In terms of local government, I think most local government elections are run either by the AEC or the state commission. That part of what is desirable is already in place. I imagine the other part is such a can of worms that it is desirable as well to have uniform laws across all of the councils, but I imagine that would be very hard to put in place.¹⁹

17 Mr Andrew Murray, *Submission 5* to the Electoral Reform Green Paper – Donations, Funding and Expenditure, December 2008, p. 9.

18 Mr Andrew Murray, *Submission 5* to the Electoral Reform Green Paper – Donations, Funding and Expenditure, December 2008, p. 10.

19 Mr Peter Brent, Democratic Audit of Australia, Roundtable discussion on the first Electoral Reform Green Paper – Donations, Funding and Expenditure,, *Committee Hansard*, 16 April 2009, p. 44.

9.31 However, it has been suggested that pursuing cooperation on specific components of the funding and disclosure schemes may be a more feasible option. Accordingly, another approach the Commonwealth should consider is whether it wishes to take the lead and seek to influence change at the state or territory levels of government.

9.32 In the first Green Paper the Australian Government indicated its commitment to working towards harmonisation of Australia's electoral systems and commented on what form this could take:

The Commonwealth is committed to working with the states and territories to achieve harmonisation of Australia's electoral systems. Harmonisation of the Commonwealth, state and territory systems could, for example, enable participants in the political process to lodge a single disclosure return rather than lodging separate and sometimes different federal, state and territory disclosure returns. Ultimately, harmonisation could enable the establishment of a single authority to administer a national disclosure system.²⁰

9.33 Professor George Williams argued that action should be taken on these issues, even if wider consensus is not reached between the different levels of government. He argued that:

Without [consistency]...the possibilities are opened up to work around one level of regulation by operating at a state or territory level. Nonetheless, my view is that there are still great advantages of proceeding, even if the federal parliament needs to do so initially and alone. It might actually provide a model that can then be adopted elsewhere, so we have a seamless network of regulation.²¹

9.34 Disclosure thresholds were identified in the first Green Paper as a point for cooperation. It was stated that:

Coordinating disclosure thresholds between the Commonwealth and the states and territories would be an important factor in achieving harmonisation of the schemes and would simplify compliance for those that may have disclosure obligations.²²

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

21 Professor George Williams, *Private capacity*, *Committee Hansard*, 9 August 2011, p. 29.

22 Commonwealth of Australia, *Electoral Reform Green Paper – Donations, Funding and Expenditure*, December 2008, p. 50.

- 9.35 The Nationals agreed that the Commonwealth, and states and territories could enhance their cooperation on disclosure matters, stating that:

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

Failing the achievement of a single harmonised system, there should be clear distinction between the responsibilities of state and federal electoral commissions. In simple terms, state electoral processes should be the responsibility of state electoral commissions and federal electoral processes should be the responsibility of the AEC.²³

- 9.36 The AEC saw potential for enhancing administrative efficiency if greater consistency of disclosure requirements could be achieved. It suggested:

If the various Commonwealth and State reporting and disclosure requirements are not fundamentally dissimilar, opportunities could exist for the establishment of a single, shared lodgement portal that could satisfy both Commonwealth and State requirements. The approach to online disclosure currently operated by the AEC that seeks information to be entered or uploaded following a “wizard” format could be adapted to seek all the information pertinent to both the Commonwealth and State obligations in a single operation, but then produce two disclosure returns each tailored to the individual legislative requirements. The shared disclosure portal could be accessed from both Commonwealth and State websites.²⁴

- 9.37 A shared electronic system such as that mentioned by the AEC could go some way to addressing concerns about overlap of administrative functions between federal and state electoral commissions. In setting up such a system consideration must be given to clarifying the categories of information and how the data could be organised into reports that meet the respective requirements of the Commonwealth, and the state or territory.

23 The Nationals, *Submission 24*, p. 6.

24 Australian Electoral Commission, *Submission 19*, p. 15.

9.38 The AEC also identified the area of administrative funding as one requiring consideration, stating:

Harmonising Commonwealth and State schemes also could present some quandaries beyond the more obvious ones of political parties and others having to operate under broadly similar schemes but to different rules designed to achieve those ends. One such issue would be where ongoing administrative funding is to be offered at both the Commonwealth and State levels to take account of the impact of rules that essentially have a singular impact.²⁵

9.39 If administrative funding were to be introduced at the Commonwealth level, then a review of what administrative funding is available in a given state or territory would be necessary to minimise the potential for parties 'double dipping' for administrative funding.

Conclusion

9.40 Harmonising political financing arrangements between the federal, and state and territory levels should be a goal of reforms in this area.

9.41 Significant reforms of funding and disclosure systems at one level of government that are isolated or not reflected at the other level of government may create confusion and impose a greater burden on those attempting to understand and meet their obligations under both state or territory and federal arrangements.

9.42 Greater consistency in federal, and state or territory arrangements would help improve clarity and provide greater opportunities for cooperation in the design, implementation and operation of these systems.

9.43 While harmonisation in Australia will take time, the Australian Government should pursue opportunities to enhance cooperation sooner rather than later. Technology supporting the operation of the funding and disclosure systems as an area in which more immediate gains can be made.

9.44 In particular, the committee notes with interest the AEC's advice about the possibility of a shared online disclosure lodgement portal that could be used to input information and produce returns to Commonwealth, and state and territory requirements. Such a mechanism could enhance the efficiency of the disclosure system and help to reduce the administrative

25 Australian Electoral Commission, *Submission 19*, p. 15.

burden on those with a reporting obligation and the AEC in administering the returns.