

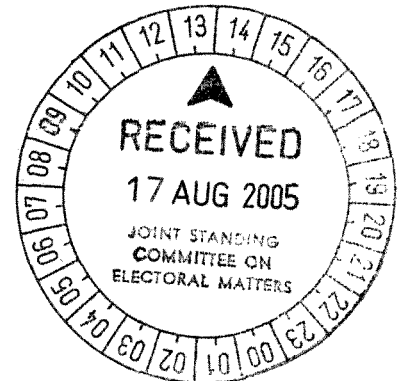


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11 August 2005

Joint Standing Committee on Electoral Matters	
Submission No.	196
Date Received	17/8/05
Secretary	S.D.

Mr Tony Smith MP  
Chairman  
Joint Standing Committee on Electoral Matters  
Parliament House  
Canberra ACT 2600



Dear Mr Smith,

From time to time concern is expressed in the community that trade unions and corporations use financial donations to exert influence over political parties.

This concern is probably overstated in most cases. As you know, our own party for example goes to elaborate lengths to ensure that financial donations have no influence over policy. Other parties would make the same the claim. Trade unions are very substantial donors to the ALP, and they do heavily influence the ALP's policies, although that influence is probably as much a function of the structure of the ALP as the level of their financial support. After all, the ALP and the trade unions are, respectively, the political and industrial wings of the labor movement.

Nonetheless as long as businesses and unions with vested interests can finance political campaigns real concerns will continue to be expressed. Some Australians will always have the perception, rightly or wrongly, that "he who pays the piper calls the tune".

In my submission, we have an opportunity to make a substantial change to the way Australian political parties and campaigns are financed. It is high time that we took that opportunity.

I recognise that there are many different models for campaign finance reform and I am sure your committee will examine several of them. I set out below one model which I trust you will find worthy of your committee's consideration.

Under our system of democracy only individuals can vote or stand for parliament. I propose that the law be changed so as to provide that only individuals can financially contribute to political campaigns.

The mechanism proposed is as follows:

The Electoral Act be amended so as to provide that candidates and political parties may not spend money for campaign electoral purposes other than:

(a) funds received from the Australian Electoral Commission as part of public funding,

(b) donations received directly from individuals who are Australian citizens or otherwise on the electoral roll and who certify that the funds contributed are from their own or spouse's resources.

Campaign electoral purposes would be broadly defined with the intention of catching all traditional campaign and electoral activities.

This would mean that political parties could not, for example, spend on a campaign funds which they had received from trade unions or from corporations.

An annual cap on individual donations could be considered. In order to encourage support of the political process, donations should be tax deductible, up to a certain limit.

A constitutional issue arises. A prohibition limiting the type of money that can be spent on a campaign **could** be challenged. given the High Court's doctrine of a constitutionally implied freedom of political communication as discussed in, among other places, David Lange v. Australian Broadcasting Corporation (1997) 189 CLR 520.

The constitutional test is comprised of two questions:

(a) Does the law effectively burden freedom of communication about government or political matters either in its terms, operation or effect?

If the answer to the first question is "Yes", then the second question is:

(b) Is the law reasonably appropriate and adapted to serve a legitimate end the fulfillment of which is compatible with the maintenance of representative and responsible government as set out in the Constitution.

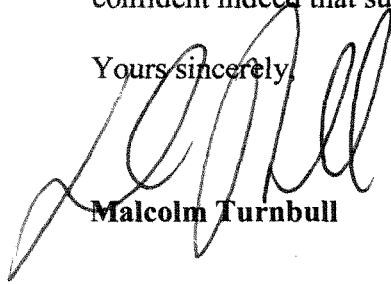
If the answer to the second question is "No" then the law does not offend the constitutional doctrine.

The law proposed above is likely to result in the Court answering the first question in the affirmative. In my view, the Court should conclude that the burden is a reasonable one and answer the second question in the affirmative also. It is worth noting that limitations on political activity have been accepted as constitutionally valid (cf Mulholland v. Australian Electoral Commission [2004] HCS 41 in which the Court upheld the 500 members requirement for party registration).

A modification to the broad proposal above to limit the burden would be to provide that the prohibition on spending moneys other than those from the two sources nominated is not absolute, but rather compliance with the new rule is *a condition of receiving public funding*. In other words a candidate or a party would be free to spend whatever money

from whatever source they like, but would forego public funding. I would be very confident indeed that such a modified prohibition would not fall foul of the High Court.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Malcolm Turnbull', written over the typed name below.

**Malcolm Turnbull**