

Introduction

Background to the inquiry

- 1.1 On 18 June 2008 the Senate referred the Commonwealth Electoral Amendment (Political Donations and Other Measures) Bill 2008 ('the bill') to the Joint Standing Committee on Electoral Matters for 'inquiry and report on 30 June 2009 in conjunction with the committee's inquiry into the 2007 federal election'.¹
- 1.2 The committee's 2007 federal election inquiry was referred by the Special Minister of State on 27 February 2008. On 12 March 2008 a separate Senate resolution specified a number of matters that the committee give particular reference, which included some issues relating to funding and disclosure.²
- 1.3 While the committee considered the option of reporting on the bill as part of its broader 2007 election inquiry, the committee decided that a separate advisory report be presented to the Senate as soon as practicable.
- 1.4 The committee advertised for submissions to the inquiry into the Commonwealth Electoral Amendment (Political Donations and other Measures) Bill 2008 in an advertisement in *The Australian* newspaper on 9 July 2008. All of the major parties were invited to appear at public hearings held in Canberra on Monday 22 September 2008 and Friday 26 September 2008. In addition, the committee has drawn on broader evidence collected as part of its 2007 federal election inquiry.

1 Senate, *Journals of the Senate*, No. 16, Wednesday 18 June 2008, p. 513.

2 Senate, *Journals of the Senate*, No. 5, Wednesday 12 March 2008, pp. 210-211.

- 1.5 Details of the submissions and hearings drawn on for this advisory report are listed in appendix A and B respectively. Full copies of the public hearing transcripts can be found at the committee's website at www.aph.gov.au/em.

Conduct of the inquiry

- 1.6 In addition to the committee's 2007 election review, funding and disclosure arrangements are being examined at a federal level through the development of a green paper process.

- 1.7 The federal government's green paper on funding and disclosure, originally scheduled for release in July 2008, has been delayed. Announcing the green paper, the Special Minister of State noted the broad range of funding and disclosure issues that it would cover:

.. a number of people - some in the states and territories, some in coalition political parties, some commentators, even journalists - have raised a range of suggestions about reform to funding, disclosure, expenditure, receipts.

Now obviously there is, you know, a critical relationship between receipts to political parties and expenditure, and some people have suggested limitations and bans on funding, and a range of people have also suggested limitations on expenditure, and in a range of other countries you see both of these approaches in practice.

So I don't want to have a situation where we go through a very thorough and exhaustive process with a green paper and don't look at all the options. So I think expenditure is important, as, clearly, are receipts, as is the disclosure and funding regime. There is a relationship between these things. It deserves and warrants proper consideration.³

- 1.8 The introduction of the Commonwealth Electoral Amendment (Political Donations and other Measures) Bill 2008 to the parliament in the midst of the committee's own inquiry, and prior to the conclusion of the green paper process, was seen by the Liberal Party of Australia and The Nationals in their submissions to the committee's 2007 election inquiry as

3 Senator the Hon John Faulkner, Media interview transcript, 28 March 2008, viewed on 23 September 2008 at http://www.smos.gov.au/transcripts/2008/tr_20080328_electoral_reform.html.

a reason to delay the consideration of parts of the overall funding and disclosure system until the system had been considered as a whole.⁴

1.9 The Liberal Party of Australia stated that:

The Government's decision to introduce bills to remove the tax deductibility of political donations and to amend several other aspects of political finance without waiting for this Committee to conduct its inquiry and to consider all aspects of the issues involved is piecemeal and knee-jerk. It is also confusing as the Government has also announced that it will release a Green Paper on electoral change, in two parts, later in the year. This of course does not sit readily with the deadline for submitting submissions to this Inquiry. It means that the Parliament, when considering the Bills currently before it, is doing so without a clear indication of the direction in which the Government intends to take the electoral framework.

... We believe the sensible approach is for the Government to withdraw the current bills and wait until the Green Paper appears, so that all issues are considered in a comprehensive way. The Liberal Party also points to the fact that no problems have been identified with the changes which were legislated in the last Parliament. The current system is working and the case for change has not been demonstrated. We caution against reversing reforms that have in our view improved the operation and effectiveness of the Act.⁵

1.10 This view was recently re-stated to the committee by the Liberal Party of Australia in a submission to this inquiry.⁶

1.11 The question of whether the parliament should, or should not, delay consideration of this bill until the finalisation of broader reviews was also raised by several inquiry participants. The Democratic Audit of Australia noted that:

The Government's desire to reduce the \$10,000 disclosure threshold before this financial year was understandable. But there is something to be said for rolling this bill into the legislation that emerges from the Green Paper process, and debating them as a whole. Campaign finance has been marred by ad hocery since

4 Liberal Party of Australia, submission 156 to the 2007 election inquiry, pp. 1-2; The Nationals, submission 145 to the 2007 election inquiry, pp.6-7.

5 Liberal Party of Australia, submission 156 to the 2007 election inquiry, pp. 1-2.

6 Liberal Party of Australia, submission 2, p. 1.

1983. A systematic approach is important to constructing a regime that, from ground up, balances the principled goals of campaign finance regulation - political equality, political participation, adequate party funding and openness/accountability.⁷

- 1.12 Professor Tham acknowledged both sides of the argument in balancing up the desire to await the outcomes of a broader process, while at the same time assessing different parts of the existing framework:

I suppose one could see two versions of taking a holistic view on this matter. One is that you consider a particular measure, having an eye towards whatever exists in the political funding regime. Secondly, you could take a more demanding view of what requires political assessment – that is, everything has to be on the table before you discuss it. My view is that you need to take the former view; you need to consider one measure in its context. But you do actually have to have everything on the table before you can have a meaningful discussion.⁸

- 1.13 The committee notes the broader green paper process and sees a clear role for its own 2007 election inquiry in progressing the debate on whole-of-system reform of funding and disclosure arrangements. However, the committee does not believe that change cannot be progressed while we await the conclusion of the green paper process and its own 2007 election review.

- 1.14 The incremental reforms proposed by this bill are based on the overriding principle of greater openness and transparency in the financial transactions of participants in the electoral system. These principles will remain notwithstanding of any reforms which are progressed into the future.

- 1.15 While the Senate resolution requires that the committee report on the bill 'on' 30 June 2009, there is no requirement that the committee delay its consideration until this time. Under its resolution of appointment, the committee is able to report 'from time to time'. The Clerk of the Senate has noted that:

The rationale of this provision is that, in order properly to carry out their function of informing the Senate, committees should be able to make reports whenever they consider that their advice may be helpful, without being restricted by reporting dates which may

7 Democratic Audit of Australia, submission 1, p. 1.

8 Tham J, transcript, 12 August 2008, p.3.

be overtaken by events or by information that committees discover.

If a committee chooses to report its substantive conclusions on a matter referred to it by means of a report under this explicit authorisation in the standing order, there is nothing to prevent it doing so. Its report on the specified date could then simply refer to the earlier report.⁹

- 1.16 The committee accepts the Clerk's advice in relation to its ability to report before 30 June 2009 and believes that there is no reason to delay its consideration until this time. A copy of the Clerk's advice is provided in appendix C.

Existing arrangements

- 1.17 Part XX of the *Commonwealth Electoral Act 1918* includes provisions that detail the operation of public funding arrangements for federal elections. This part of the Act also includes the requirements for, and administration of, the disclosure arrangements for selected revenue and expenditure items incurred by participants in the federal electoral process.
- 1.18 The legislation establishing a funding and disclosure scheme was introduced in the House of Representatives in November 1983. This followed an inquiry by the Joint Select Committee on Electoral Reform, which had recommended the establishment of public funding and a disclosure regime.¹⁰
- 1.19 Presenting the Commonwealth Electoral Legislation Amendment Bill 1983, the then Special Minister of State, the Hon Kim Beazley MP, stated that disclosure was an "essential corollary" of public funding: "they are two sides of the same coin."¹¹ Mr Beazley argued that public funding was a small price to pay as insurance against the possibility of corruption:

it is essential for public confidence in the political process that no suggestion of favours returned for large donations can be sustained.

9 Evan H, Clerk of the Senate, Advisory notes, no 59, 31 July 2008.

10 Joint Select Committee on Electoral Reform (1983), *First Report*, September, pp. 145–178.

11 The Hon K Beazley, Special Minister of State, House of Representatives, *Hansard*, 2 November 1983, p. 2213.

The whole process of political funding needs to be out in the open so that there can be no doubt in the public mind. Australians deserve to know who is giving money to political parties and how much.¹²

1.20 Although there have been a number of changes to the operation of public funding and disclosure arrangements since 1983, the essential features are largely intact. Some key features of current arrangements include:

- Candidates and Senate groups are eligible for election funding if they receive at least 4 per cent of the formal first preference votes in the election they contested. Election funding is paid to the party where the candidate or Senate group is endorsed by a registered political party, and in other cases is paid direct to the candidate or Senate group (or their agent). Payments are calculated using an indexed sum per first preference vote. At the 2007 federal election, each first preference vote was worth 210.027 cents;
- The threshold for the disclosure of certain revenue and expenditure items is \$10,900 for 2008-09. The threshold is indexed to inflation;
- Selected participants in the electoral process (candidates, parties, associated entities, third parties) are required to complete returns to the Australian Electoral Commission on either an annual basis or after election events (or both) detailing certain transactions that are higher than the disclosure threshold;
- The disclosure returns are made available for public inspection by the Australian Electoral Commission some time after they are received. For example, returns for a financial year ending 30 June are available the following February; and
- Candidates and parties can accept donations from overseas. Anonymous donations less than the disclosure threshold may also be accepted.

1.21 While independent of existing state and territory public funding and disclosure arrangements, federal arrangements can impact on practices in these jurisdictions and vice versa. Two jurisdictions, NSW and Queensland, have recently moved to make disclosure arrangements more transparent, largely implementing some of the proposals included in the bill at a state level.

12 The Hon. K Beazley, Special Minister of State, House of Representatives, *Hansard*, 2 November 1983, pp. 2213, 2215.

Proposed changes

1.22 In broad terms, the bill proposes a number of changes that will have the effect of increasing the transparency of financial transactions by participants in the political process by making more information available about the flow of money within a shorter timeframe. It also proposes to ban some types of donations and strengthen compliance and enforcement arrangements.

1.23 Introducing the bill, Senator the Hon Joe Ludwig (representing the Special Minister of State) noted that:

The Government is committed to restoring the integrity of our electoral processes and systems. I believe that the reforms contained in this Bill will significantly enhance the transparency and accountability of funding and donations to registered political parties, candidates and the other key political players in Australia. This is the first tranche of electoral reform measures that will restore the integrity of our electoral system and ensure that the health of our Australian democracy is maintained for future generations.¹³

1.24 The Explanatory Memorandum summarises the major changes to the Commonwealth Electoral Act to be:

- reducing the disclosure threshold from 'more than \$10,000' (indexed to the Consumer Price Index annually) to \$1,000 (non-indexed);
- requiring people who make gifts above the threshold to candidates and members of groups during the election disclosure period to furnish a return within 8 weeks after polling day. Agents of candidates and groups have a similar timeframe to furnish a return in relation to gifts received during the disclosure period;
- if they fall within the relevant provision, requiring people who make gifts, agents of registered political parties, the financial controller of an associated entity, or people who have incurred political expenditure to furnish a return within 8 weeks after 31 December and 30 June each year rather than following the end of each financial year;
- ensuring that for the purposes of the \$1,000 threshold and the disclosure of gifts, related political parties are treated as the one entity;

13 Senator the Hon Joe Ludwig, Minister for Human Services, Senate, *Hansard*, 15 May 2008, p. 1965.

- making unlawful the receipt of a gift of foreign property by political parties, candidates and members of a Senate group. It will also be unlawful in some situations for associated entities and people incurring political expenditure to receive a gift of foreign property;
- extending the current prohibition on the receipt of anonymous gifts above the threshold to prohibit the receipt of all anonymous gifts by registered political parties, candidates and members of a Senate group. It will also be unlawful in some situations for associated entities and people incurring political expenditure to receive an anonymous gift;
- providing that public funding of election campaigning is limited to declared expenditure incurred by the eligible political party, candidate or Senate group, or the sum payable calculated on the number of first preference votes received where they have satisfied the 4 per cent threshold, whichever is the lesser;
- providing for the recovery of gifts of foreign property that are not returned, anonymous gifts that are not returned and undisclosed gifts; and
- introducing new offences and penalties related to the new measures and increase the penalties for existing offence provisions.¹⁴

1.25 When the bill was introduced in the Senate on 15 May 2008, a commencement date of 1 July 2008 was provided for.¹⁵ This start date would apply if the bill were passed at some stage in the future, unless otherwise amended.

1.26 The committee notes that Senator Fielding has signalled an amendment to the bill in committee stage that would limit public funding to a political party whose members receive more than 4 per cent of the first preference vote and meet the requirements regarding electoral expenditure to a maximum of \$10 million.¹⁶ As this amendment is yet to be formally proposed, the committee has not examined this issue in this advisory report.

14 Explanatory Memorandum, Commonwealth Electoral Amendment (Political Donations and Other Measures) Bill 2008, p. 2.

15 Commonwealth Electoral Amendment (Political Donations and Other Measures) Bill 2008, clause 2.

16 Amendment to be moved by Senator Fielding on behalf of the Family First Party in committee of the whole, viewed on 3 October at http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22legislati on%2Famend%2Fs627_amend_074f29cb-22fd-4c12-a34f-6a25450a26fc%22;rec=0.

Report structure

- 1.27 This report is structured around the issues that are the subject of changes proposed by the bill:
- Public funding (chapter 2);
 - Disclosure thresholds and reporting (chapter 3);
 - Foreign and anonymous donations (chapter 4); and
 - Offences, penalties and compliance (chapter 5).
- 1.28 In each of these chapters, the committee reviews the historical background to the current proposals and examines the specific provisions in the bill in greater detail. The committee's analysis and conclusions in relation to each issue concludes each chapter.

