

JOINT STANDING COMMITTEE on ELECTORAL MATTERS

INQUIRY on TAX DEDUCTIBILITY of POLITICAL DONATIONS

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

SUBMISSION by the DEMOCRATIC AUDIT of AUSTRALIA

<http://democratic.audit.anu.edu.au/>

1. The Democratic Audit of Australia

- 1.1 The Audit is a project whose aim is to audit the strengths and weaknesses of Australian democracy. It has been twice funded by the Australian Research Council (ARC).
- 1.2 It is currently in transition between the Australian National University, its original host, and Swinburne University's Institute of Social Research.

2. Tax Deductibility of Political Donations in Australia

- 2.1 Prior to 2006, a taxpayer could claim a deduction for donations made to a registered political party of up to \$100 pa.¹ The Australian Taxation Office (ATO) interpreted this as including party memberships.²
- 2.2 The Howard government legislated to extend this deductibility: (a) to corporate donors, and (b) to \$1500pa.³ Less contentiously, deductibility was extended to donations to independent candidates.
- 2.3 Donations of money and property were covered. The law is explained at: <http://www.ato.gov.au/nonprofit/content.asp?doc=/content/61195.htm>
- 2.4 The present Bill will abolish deductibility altogether, as from 1 July 2008.⁴

3. The Philosophy and Rationale of Tax Deductibility

- 3.1 Some citizens might wonder why political donations should ever be tax deductible: parties are not charities. However, our system recognises that political parties play important public roles. Deductibility is just one form of public assistance, of which direct public funding is the most significant.
- 3.2 A key purpose of limited tax deductibility is to encourage smaller scale donations and hence political participation. A related purpose is to diversify funding sources. Like direct public funding, deductibility is designed to reduce reliance on large donations that may corrupt, involve the sale of access or increase cynicism about the political process.
- 3.3 Conservatives tend to favour deductibility more than social democrats.⁵ For example, the Liberal Party opposed direct public funding in the early 1980s, arguing for liberal tax deductibility instead. Deductibility, in encouraging

¹ Graeme Orr, *The Currency of Democracy: Campaign Finance Law in Australia* (2003) 26 UNSWL 1 at pp 9 and 22.

² ATO, Determination 92/114.

³ Current sub-division 30DA of the *Income Tax Assessment Act 1997* (Cth).

⁴ Proposed s 26-22(1) of the *Income Tax Assessment Act 1997* (Cth).

⁵ The UK debate is summarised in KD Ewing, *The Cost of Democracy: Party Funding in Modern British Politics* (2007) at pp 192-4.

contributions, encourages a form of political participation. It provides an extra incentive to parties to solicit smaller donations, in doing so encouraging parties to interact with the wider public.

- 3.4 Social democratic philosophy tends to be wary of tax deductibility. Deductibility inherently favours the political preferences of those with money to donate. Deductibility effectively discriminates against those with limited or no tax liability: many retired people and low income earners.
- 3.5 Extending deductibility to corporations was controversial for four reasons.
- 3.6 First, corporations are not holders of political rights, but essentially profit-making concerns. To date they have been free to make political contributions in Australia, but as they do so for self-interested motivations, it is hard to see why taxpayers should subsidise such activity.
- 3.7 Second, since corporate donations overwhelmingly follow power, only the major parties tend to benefit from this subsidy, setting up a form of inequality with minor parties relying on individual donations.
- 3.8 Third, proprietors of businesses could effectively have \$3000pa of donations supported by the public revenue - by donating individually *and* via their company.
- 3.9 Fourth, corporations have to date been able to claim the purchase of political access as a business deduction, just as they may claim the cost of lobbying generally. Such expenditure is voluntarily incurred: even if the business feels it is strategically well spent. Such deductions are uncapped. Examples include purchasing expensive tickets/tables at party fund-raisers, or sponsoring sessions at party conferences. This has been the subject of valid academic criticism.⁶ We note the Bill seeks to remove this deductibility, whether by organisations or individuals, unless the expenditure is a real or direct cost of earning their income.
- 3.10 There is also the issue of 'tithes' or levies on MPs, which are imposed by some parties, particularly social-democratic/leftist parties.⁷ Under general income taxation principles, this is clearly a cost of earning income to the individual MP, and is thus deductible. The Bill seeks to perpetuate this.⁸ It is more clearly deductible than say union dues, where the worker has a legal freedom to join or not join. The MP, who in a sense owes her electability to her party, is *bound* by the party to pay the levy.
- 3.11 Of course such money also forms a stream of income for the party which imposes the levy. On this basis, its deductibility was questioned in Parliament by a Liberal MP.⁹ Candidates of all backgrounds are often effectively required to expend private money on their campaigns: such expenditure is explicitly deductible.¹⁰ If levies on MPs are mandated by their parties, it would be unfair to the individual MP to treat them as non-deductible.

4. Overseas comparisons

- 4.1 Deductibility is available in some comparative countries, where it is often called tax 'relief' or 'credit'.

⁶ Graeme Orr, 'Political Finance Law in Australia' in KD Ewing and Samuel Issacharoff (eds), *Party Funding and Campaign Finance in International Perspective* (2006) at p 110.

⁷ Sally Young and Joo-Cheong Tham, *Political Finance in Australia: a Skewed and Secret System* (Democratic Audit of Australia Report # 7, 2006) at 43-44, especially Table 3.3.

⁸ Proposed s 26-22(2) of the *Income Tax Assessment Act 1997* (Cth).

⁹ Mr Keenan MHR (Stirling) in debate on this Bill, 21/2/2008.

¹⁰ *Income Tax Assessment Act 1997* (Cth) s 25-60 (parliamentary elections) and s 25-65 (local government candidates – limited to \$1000 per election).

- 4.2 The most significant is Canadian federal law. Tax credits were introduced in 1974. They now apply on a sliding scale, up to a maximum of C\$500pa (on a donation of C\$1150). The scale is set to give higher deductibility to the first \$100 of a donation.¹¹
- 4.3 Provinces also levy income tax. All offer further tax relief.¹² Eg, in Quebec, contributions are deductible, on a sliding scale up to a maximum claim of C\$250pa (reflecting a total donation of C\$400pa).¹³ We cite Quebec as it is one of the few jurisdictions where tax statistics have been studied. In Quebec, whilst declining over time (as elsewhere) the number of donors since the 1990s has varied between 50 000 and 115 000 annually. The percentage who claimed deductions varied from around 50 to over 70% in that time. These are significant levels of small scale donating, in an electorate where just under 4 million voted in 2007. Massicotte observes that contributing ‘remains a rather elitist activity’: but this may be skewed by lower income earners being less aware of their tax rights or less motivated to claim in a system with progressive tax scales.
- 4.4 The reason not all Canadians claim deductions includes (a) donations by those with no taxable income, (b) ignorance, and (c) fear or misunderstanding of the privacy of information where the tax form requires explicit disclosure of the fact of the claim (although not the party involved). The Federal Tax Return in Canada, for instance, includes an explicit item ‘Federal political contributions tax credit’ with columns to assist calculation. Receipts are meant to be attached, or kept (in case of electronic filing). Receipts would identify the party favoured by the donation.
- 4.5 It should be remembered that in Canada, corporate and union donations are now banned, and that donations from individuals are capped at C\$1100 to a party and its candidates.¹⁴ Tax credits in Canada augment other forms of public funding.
- 4.6 The use of sliding scales and restriction of deductibility to low levels and to only individual taxpayers is reflected, for example, in the US state Oregon.¹⁵
- 4.7 The Neill Committee in the UK recently recommended deductibility of up to £500pa.¹⁶ The UK Electoral Commission and the House of Commons recommended deductibility, respectively, of up to £200pa or £250pa.¹⁷ The Labour government is not adopting these proposals. Aside from issues of relative fairness to low-income electors, there is the problem in the UK that the bulk of taxpayers do not submit returns and are merely part of the PAYE system.¹⁸
- 4.8 Instead, the UK government commissioned Sir Hayden Phillips to report on *Proposals for the Funding of Political Parties* after he conducted inter-party talks. He recommends: (a) capping donations; (b) per vote funding, like Australia, but at lower rates; and (c) matching funding. His proposal for matching funding is a £10

¹¹ Ewing, above n 4, at p 202.

¹² Colin Feasby, ‘Canada’ in Thomas D Grant (ed), *Lobbying, Government Relations and Campaign Finance Worldwide* (2005), table at pp 82-90.

¹³ Louis Massicotte, ‘Financing Parties at the Grass-Root Level: the Quebec Experience’ in Ewing and Issacharoff (eds), above n 6, at p 160.

¹⁴ A couple can claim US\$100pa, a single taxpayer US\$50pa.

¹⁵ <http://www.elections.ca/content.asp?section=fin&document=index&dir=lim&lang=e&textonly=false>

¹⁶ <http://egov.oregon.gov/DOR/PERTAX/docs/101-662.pdf>

¹⁷ Ewing, above n 4, at pp 192-193.

¹⁸ The Electoral Commission, *The Funding of Political Parties: Report and Recommendations* (December 2004) p 100; House of Commons Constitutional Affairs Committee, *Party Funding* (First Report of Session 2006-07) pp 50-52.

¹⁹ Ewing, above n 4, at 202-203.

subsidy for every donation a party solicits of £10 or more. Initially it will be capped to one million donations, ie £10m pa.¹⁹

- 4.9 Matching funding is an alternative means of giving parties incentives to generate grass roots donations. It poses higher compliance costs on parties than tax deductibility, and probably a higher cost to public finances (both in administration, and potential overall payouts).

5. RECOMMENDATIONS

- 5.1 **We welcome the removal of deductibility from corporate donations.**
- 5.2 **We recommend the Bill be amended to provide for limited deductibility for individual taxpayers,** along the lines of the pre-2006 law. We particularly recommend that deductibility be not abolished altogether until the government and/or JSCEM settles proposals for any revamping of the broader system of political finance. Encouraging small scale donating will be essential if, as is currently being floated by members of both sides of politics, donations from organisations are to be capped or even banned.
- 5.3 Australian parties are already considering new approaches to fund-raising, particularly based on internet marketing to online networks (of the kind done successfully by the likes of Barack Obama and, closer to home, Get Up!) Limited tax deductibility should help such campaigning.
- 5.4 What level of deductibility is a matter of convention, and depends upon whether a sliding scale is used. For simplicity's sake, it would be easier to set a lowish figure without a sliding scale. The figure of A\$100 had not been adjusted for many years. **A figure in the range of A\$200-A\$500pa would accord with Canadian practice.**
- 5.5 The availability of deductibility needs to be better understood to be successful in encouraging political donations. A chief means of this is the parties themselves. If they do move to internet based fund-raising, this is achievable, as the lure of deductibility can be easily marketed on the website or emails soliciting donations, and similarly tax invoices can be more easily sent electronically than in the past. The ATO could better promote awareness of it via the TaxPack, tax agents, and providing a simple flyer for distribution through the networks of registered parties.
- 5.6 **We support the provisions of the Bill designed to close off 'business expense' deductibility for political donations in the form of buying access/tables at fund-raisers.** This closes a loophole – such deductions were never subject to a cap, unlike individual donations. It is consistent with the thrust of the Bill and the democratic principle that the focus of any systematic encouragement of financial participation in politics should be on individuals.
- 5.7 **We do *not* recommend any adjustment of the general income taxation principle to deny deductibility of either levies on MPs salaries, or private campaign expenditure by candidates.** These are equally available to MPs/candidates from all parties.

¹⁹ Inter-Party Talks: The Funding of Political Parties (Sir Hayden Phillips, Chairman), *Proposals for the Funding of Political Parties* (August 2007) p 5.