



# **Submission to the Joint Standing Committee on Electoral Matters Inquiry into the 2007 Federal Election**

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## **Introduction**

GetUp welcomes the JSCEM's inquiry into the 2007 federal election and related matters. The integrity of elections is at the foundation of our democracy and Australians are looking to the JSCEM to endorse wide-ranging improvements to modernise our electoral system and strengthen our democracy.

In December 2007, GetUp consulted more than thirty thousand Australians about their priorities for the new Parliament as part of our 'People's Agenda for Parliament' process<sup>1</sup>: "Strengthen our democracy" emerged as one of the top ten priorities. This submission contains recommendations drawn from that consultation process and GetUp's experience of the 2007 federal election.

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<sup>1</sup> Read the "People's Agenda for Parliament" at <http://www.getup.org.au/files/misc/peoplesagenda.pdf>

## **About GetUp**

GetUp is an independent, grass-roots community advocacy organisation giving everyday Australians opportunities to get involved and hold politicians accountable on important issues.

Whether it is sending an email to a member of parliament, engaging with the media, talking to voters or helping to get a television ad on the air, GetUp members take targeted, coordinated and strategic action. GetUp does not back any particular party, but aims to build an accountable and progressive Parliament - a Parliament with economic fairness, social justice and environment at its core.

GetUp is a not-for-profit and receives no money from any political party or the government. We rely solely on funds and in-kind donations from the Australian public.

We believe that third parties are an important part of Australian politics and elections. GetUp has over 280,000 members - more than the political parties of Australia combined - and gives many Australians a voice in the political process. We also recognise that third parties must be accountable for their election activities and welcome measures to increase transparency and accountability for all involved in the political process.

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# Summary of Recommendations

## **1 Donations, Income and Expenditure**

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  - 2.4.1 Invite all overseas Australians to register as Eligible Overseas Electors
  - 2.4.2 Don't strike overseas voters from the roll without direct notification
  - 2.4.3 Allow overseas electors to extend EOE status by periods of 4 years rather than annually

## **3 Voting**

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- 3.2 Actively promote enrolment and voting among Aboriginal and Torres Strait Islander Australians
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  - 3.2.2 Actively engage Indigenous electors
- 3.3 Preferential voting above the line in the Senate
- 3.4 Harmonise state and federal voting rules to best practice
- 3.5 Publish group voting tickets online in XML markup
- 3.6 Restrict handling of postal votes to AEC

- 3.7 Investigate how many provisional votes not counted in the 2007 election were fraudulent, and how many were cast by sincere and eligible electors who were disenfranchised
- 3.7.1 Ensure provisional voting will not disenfranchise eligible electors in future elections

#### **4 Fixed Electoral Terms**

- 4.1 Four-year fixed terms
- 4.2 Three-year fixed term for the next election

#### **5 Political Advertising**

- 5.1 Prevent government advertising being used for electoral advantage
  - 5.1.1 All government advertising costs (from focus groups to media buying) publicly available and easily accessible to the community via an annual report
  - 5.1.2. All advertising above \$250,000 to be approved by an independent auditor who applies strict guidelines to limit advertising to the dissemination of public information
  - 5.1.3. These guidelines to be developed with public consultation with the final guidelines to be publicly available
  - 5.1.4 These conditions to apply in both the federal and state governments within 1 year
  - 5.1.5 A cap of \$100 million p.a for total government advertising spending to be imposed with any additional money to be approved by parliament.
- 5.2 Reinstate sections 310 and 311 of Commonwealth Electoral Act
  - 5.2.1 Apply sections 310 and 311 outside election periods

## **Recommendations**

### **1. Donations, income and expenditure of political parties**

#### **1.1 Remove tax deductibility for political donations over \$200**

Tax deductibility for small donations provides a real incentive for everyday Australians to participate in politics; but it should be removed for all donations above \$200.

Tax deductibility means that wealthier Australians effectively get a discount on their political donations compared to those on lower incomes. Under the 2007 tax scale, a donor on an income of under \$30,000 per annum will pay \$450 more to make a political donation of \$1,500 than a donor earning \$100,000.

Tax deductibility on large donations is not a good use of taxpayer money (which already provides public funding to political campaigns), and unjustly advantages the wealthy; it should be removed for all donations above \$200.

#### **1.2 Cap political donations to political parties**

Large donations to political parties make everyday Australians feel disempowered and undermine trust in our representatives and the policies they create.

When corporations and individuals alike make large donations they are often making an investment rather than a donation – and they expect a return. We expect our leaders to be accountable to their electors, not their major donors; but until political donations are either capped or banned altogether, our representatives will always be dependent on large donors.

An effective donation cap will be set low enough to prevent foundations, corporations and other third parties channelling individual donations to political parties and avoiding individual disclosure.

Capping donations to political parties will lead to a healthier democracy and healthier political parties that foster a broad and active membership rather than an elite cache of large donors.

### **1.3 Online donations database**

#### **1.3.1 Updated quarterly, and weekly during election periods**

Political donations are only conducive to transparency and accountability if they can be analysed in a meaningful and timely fashion. As Senator Faulkner has pointed out, the disclosure period under current regulations is seven months at a minimum, but in many cases up to nineteen months pass between donation and disclosure<sup>2</sup>. Currently, political donations and spending for the election period of the 2007 Federal Election won't be publicly available until February 2009.

Australia can do a lot better than reducing the disclosure gap from nineteen to nine months (six month periods plus three months for processing), as Senator Faulkner has proposed<sup>3</sup>. The United States maintains an online register of donations disclosed on a quarterly basis, with additional requirements before and after elections<sup>4</sup>. The United Kingdom requires parties to submit weekly reports during the election period detailing any donations over £5,000<sup>5</sup>. The Internet has made it possible to process and disseminate information quickly and efficiently. If Australia is to have a cutting edge, world leading democracy, we mustn't be satisfied with a delay of up to nine months for publicising donations.

An automatically updated donations database should be a permanent fixture of the Australian democratic system, not just an available feature during state and federal elections. Donations

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<sup>2</sup> Transcription: Electoral Reform, Parliament House, Canberra. March 28, 2008. Available at:

[http://www.smos.gov.au/transcripts/2008/tr\\_20080328\\_electoral\\_reform.html](http://www.smos.gov.au/transcripts/2008/tr_20080328_electoral_reform.html)

<sup>3</sup> *ibid.*

<sup>4</sup> More details from US Federal Election Commission: [http://www.fec.gov/info/report\\_dates.shtml](http://www.fec.gov/info/report_dates.shtml)

<sup>5</sup> The UK Electoral Commission – "Donations to political parties" available at:

<http://www.electoralcommission.org.uk/regulatory-issues/legdonpoliticalparty.cfm>

should be published on at least a quarterly basis, and weekly during an election. If the purpose of disclosure is that the electorate should know what influences might be at work on election results and policy outcomes, they need to know before they vote, not months into the next term of Parliament.

### **1.3.2 With an easy online interface**

The donations database should have an easy-to-use public interface such as that of the Federal Election Commission in the US<sup>6</sup>, which present geographic, demographic and statistical trends rather than a simple list of transactions.

### **1.3.3 With XML markup**

The AEC should also make rich data available for media and third parties to interpret and build interfaces of their own. The best standard format for such a database is XML markup.

An excellent example of a user friendly and transparent donations database is Huffington Post's Fund Race 2008<sup>7</sup>. It allows political donations to be searched by donor name, address, city, employer and occupation and supplies a geographic breakdown of donations across the country. This allows meaningful analysis of donations by geography, employer and industry.

## **1.4 Make disclosure data richer and easier to understand**

Donation disclosure is only transparent to the extent that those disclosures can be meaningfully analysed. Current disclosure statements are inconsistent and lack essential data for interpretation.

### **1.4.1 Improve classification of gifts and receipts to make it easy to discern the relationship between donor and recipient**

Disclosure of political receipts should clearly distinguish between political donations and other forms of transaction. Current ambiguity in the definition of "gift" in the CEA and mean that

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<sup>6</sup> See US Federal Election Commission: <http://www.fec.gov/DisclosureSearch/mapApp.do>

<sup>7</sup> See Huffington Post's FundRace: <http://www.fundrace.huffingtonpost.com>

transactions other than donations are sometimes categorised as “gifts”, including receipts from assets sold or rented, and refunds for unused services. The lack of clarity and classification of gifts makes it difficult for the public to know the nature of the relationship between the source of a gift or other receipt and the party.

### **1.4.2 Family Groupings**

Donations from within the same immediate family should be grouped, just as donations from separate divisions of a corporation are currently grouped under the Commonwealth Electoral Act.<sup>8</sup> This will prevent families making large donations split between family members to avoid disclosure.

### **1.4.3 Employer Groupings**

To prevent companies channelling large donations through small individual donations from employees, donors who make political donations above the disclosure threshold should be required to disclose their main employer, as is the practice in the United States.

## **2 Enrolment**

Australia should be proud of our history of compulsory voting and maintain an electoral roll that leads the world in accuracy, allowing all Australians the best opportunity to vote.

### **2.1 Introduce automatic enrolment**

The current enrolment system clearly misses many eligible voters: the AEC has found that 18% of 18-25 year olds are not on the electoral roll<sup>9</sup>.

Those turning 18 years of age and new Australian citizens should automatically be added to the electoral roll. Automatic (direct) enrolment would allow the AEC to update the electoral roll more

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<sup>8</sup> ‘Political finance disclosure under current and proposed thresholds’ Parliamentary Library Research Note no. 27 2005–06. 24 March 2006, ISSN 1449-8456

<sup>9</sup> Australian Electoral Commission Youth Electoral Study – Report 1: Enrolment and Voting. Available at: [http://www.aec.gov.au/about\\_aec/publications/youth\\_study/youth\\_study\\_1/page03.htm](http://www.aec.gov.au/about_aec/publications/youth_study/youth_study_1/page03.htm)

easily and cost effectively, and ensure that our electoral roll is as accurate as possible.

An automated system would also remove the need for AEC spending on advertising encouraging enrolment in the lead up to each state and federal election. The AEC spent \$35.2 million in advertising in the lead up to the November 2007 Federal election, much of which went to encouraging new electors to enrol to vote.

Measures to streamline enrolment will have the support of the Australian public. A Roy Morgan poll commissioned by GetUp in August 2007 found that only 3% of Australians think it should be harder to enrol<sup>10</sup>.

## **2.2 Maintain enrolments more accurately and fairly**

To its credit the AEC has become increasingly efficient at handling electronic data to adjust the electoral roll. However to date this has had an unbalanced effect on the roll – the AEC has become much better at removing electors from the roll but not at putting them on (or back on after they've been removed). Currently the same weight of evidence that will strike a voter from the roll is not sufficient for the AEC to re-enrol them or simply change their details.

This problem disproportionately affects those sections of the population who move frequently: young, migrant, Indigenous and poor Australians and all those who rent.

The AEC should be able to change a voter's details easily based on information from other government agencies and without onerous postal forms.

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<sup>10</sup> GetUp commissioned Roy Morgan poll 3-4 and 6-8 August, 2007. Full poll available on request, or find more information at: <http://www.theage.com.au/news/national/new-enrolment-laws-could-rob-many-of-vote/2007/04/14/1175971419565.html>

Automatic enrolment and maintenance would also pave the way for efficiency savings in the AEC: local AEC branches, which spend countless hours processing postal enrolment forms, could be consolidated, saving tens of millions of dollars in staff and real estate costs.

### **2.2.1 Prevent political manipulation of the electoral roll**

Currently, if MPs and Senators have mail returned to sender from a constituent's address, they can inform the AEC, who can then begin to remove those people from the electoral roll. Perhaps this is not so alarming in itself, but there is nothing to regulate or monitor the activities of politicians in this respect, and it is not unimaginable to envision a party selectively mailing those groups or areas unlikely to vote for them, and then selectively reporting the 'returned to senders' to suit their psephological fancies. Only the AEC should be able to initiate the process of removing an elector from the roll.

### **2.3 Extend enrolment period to the day before polling day**

If Australia is not to move to automatic enrolment, the enrolment period should be extended to give eligible voters the best chance to get on the electoral roll.

In the age of digital information, there is no good reason not to allow eligible voters to enrol up until the day before polling day, as is the case in New Zealand and Canada.

### **2.4 Ensure overseas Australians are not unfairly disenfranchised**

The right to vote should not be hastily or automatically removed from any Australian. In 2005, 158,440 Australian residents left Australia either permanently or with the intention to remain abroad for at least one year. According to the AEC, only 54.7 per cent of electors with EOE status voted at the 2001 federal election. Professor George Williams suggests that the low number stems from the lack of information provided to expatriates and the

complex legal regime currently in place<sup>11</sup>. GetUp's experience with overseas electors supports this conclusion, and reveals considerable confusion and distress amongst overseas voters. The following personal accounts were submitted to GetUp's recent campaign blog on overseas voting<sup>12</sup>:

Chris D. – "I've lived abroad for 20 years (Hong Kong) but I'm still a proud Australian. I wasn't aware of the three-years-away-and-you're-out rule until it was too late."

Julia H. – "I am living in Chile this year, and when the NSW state election was looming in early 2007, I called the embassy here to ask how I could vote. Instead of providing me with information, they simply insisted that I didn't have to vote because I was overseas."

Suzanne M. – "It took six weeks and a complaint to the Commonwealth Ombudsman to get my name reinstated on the electoral roll as an overseas voter. Now I just have to hope I manage to stay on the roll until the next election."

Mike D. – "I am still required to pay 'non-resident' tax on income from Aust. Could that be considered 'taxation without representation'?"

Many expatriates return to Australia on a regular basis, maintain local connections, own property in Australia, pay taxes, and are capable of remaining informed of Australian affairs through the Internet. Expatriate Australians and their families are affected by political decisions made here. Current barriers to expatriate voting are out of step with modern society and a global environment of increased mobility.

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<sup>11</sup> They Still Call Australia Home, Senate Legal and Constitutional Affairs Committee (2005), Available: [http://www.aph.gov.au/senate/Committee/legcon\\_ctte/completed\\_inquiries/2004-07/expats03/report/index.htm](http://www.aph.gov.au/senate/Committee/legcon_ctte/completed_inquiries/2004-07/expats03/report/index.htm)

<sup>12</sup> See GetUp campaign blog at: [www.getup.org.au/blogs/view.php?id=132](http://www.getup.org.au/blogs/view.php?id=132)

#### **2.4.1 Invite all overseas Australians to register as Eligible Overseas Electors**

#### **2.4.2 Don't strike overseas voters from the roll without direct notification**

#### **2.4.3 Allow overseas electors to extend EOE status by periods of 4 years rather than annually**

### **3 Voting**

#### **3.1 Introduce optional voting for 16 and 17 year olds**

Optional voting should be introduced for Australians above 16 years of age, while maintaining mandatory voting for those above 18. Late teenagers are legally permitted to drive, have sexual relations, and work full time. Many teenagers pay tax on their full-time or part-time jobs. These rights and responsibilities should be reflected in giving them a legitimate voice in the political process. This will also encourage young Australians to take an interest in politics.

#### **3.2 Actively promote enrolment and voting among Aboriginal and Torres Strait Islander Australians**

The AEC and all governments should make concerted efforts to ensure that Aboriginal and Torres Strait Islander Australians are encouraged to participate in the democratic process, and to remove any obstacles to Indigenous voters.

##### **3.2.1 Thorough study of Indigenous voting**

The AEC should conduct a thorough investigation of the actual rates of voting and enrolment among Indigenous Australians and the reasons for low rates of participation

##### **3.2.2 Actively engage Indigenous electors**

The Australian Government should fund a comprehensive campaign to increase Indigenous voting, and investigate the use of mobile voting booths and active door-to-door enrolment.

#### **3.3 Preferential voting above the line in the Senate**

The complicated preference flows of Upper House voting confuse even the most diligent elector and cause public mistrust and ridicule of the Senate voting process.

Voters who want to control their own preference flows often invalidate their votes accidentally by making small mistakes voting below the line – a sour reward for their interest and diligence.

Preferential voting above the line would allow electors to easily dictate their own preference flows by numbering their preferences for groups above the line, without fear of invalidating their ballot in the complicated process of voting below the line.

This simplification would replace current rules which are complicated and little understood. During the 2007 Federal Election there was considerable confusion within the AEC, even among the top legal advisors, about the rules for Upper House voting. It appears to be legal for an elector to vote both above and below the line, so that if they invalidate their vote by making a mistake below the line, the above the line vote will still be counted. However AEC officials gave GetUp conflicting advice throughout the election, raising doubts as to whether the rule would be applied in the scrutineering room.

### **3.4 Harmonise state and federal voting rules to best practice**

There are several differences between federal voting laws and some state elections. Voters should reasonably be able to assume that an equivalent formal vote in their state election will not be informal at a federal election and vice-versa.

For example in several state elections voters are only required to designate a certain number of preferences when voting below-the-line, rather than assigning a number to every candidate. In a federal election this would be an informal vote.

### **3.5 Publish Group Voting Tickets online in XML markup**

Group Voting Tickets should be prominently displayed at all booths and be accessible online not only in PDF format but in XML markup. In the 2007 Federal Election GetUp attempted to create a user-friendly online demonstration of preference flows but found this

impossible due to the unmanageable format of GVTs.

### **3.6 Restrict handling of postal votes to AEC**

The issuing of postal vote forms should be restricted to the AEC only. Political parties often use postal votes to send misleading political advertising in the guise of official government information. Many candidates in the 2007 Federal Election mailed their constituents postal vote forms in envelopes bearing the Commonwealth emblem and the text 'Important Election Information', with little or no external identification of the political party. This is not only misleading, but it compromises public trust in the AEC and the ability of the commission to effectively communicate with electors. Also, since the distribution of postal forms is covered by public funds, political groups may be exploiting public monies to disseminate their own materials.

### **3.7 Investigate how many uncounted provisional votes in the 2007 election were fraudulent, and how many were cast by sincere and eligible electors who were disenfranchised.**

In the 2004 federal election 50% of provisional votes were counted. In the 2007 federal election just 14% were counted<sup>13</sup>.

It is clear that the 'Electoral Integrity Act' caused a huge increase in the number of uncounted provisional votes between 2004 and 2007. This warrants a detailed inquiry by the JSCEM to determine how many of these uncounted votes were indeed fraudulent, and how many were cast by sincere and eligible voters who were disenfranchised. The JSCEM should ensure provisional voting never disenfranchises eligible electors.

#### **3.7.1 Ensure provisional voting will not disenfranchise eligible electors in future elections.**

Approximately 144,000 Australians who cast provisional ballots on November 24 did not have their votes counted<sup>14</sup>. Those 144,000

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<sup>13</sup> 2007 Election – Provisional Voting Rejections – Peter Brent, The Australian National University. Available at: <http://democratic.audit.anu.edu.au/papers/20071220commentbrentprovisvotes.pdf>

<sup>14</sup> *ibid.*

Australians, together equivalent to almost 2 whole federal electorates, could well have changed the outcome of a couple of federal seats. In 2004 the country voted approximately 53 to 47 for the Coalition after preferences; provisional voters were the opposite, voting approximately 53 to 47 for ALP. Peter Brent has commented that in 2007 "the nation voted about 53 to 47 in Labor's favour. Can we assume the "missing" provisional votes would have swung by the same amount, and so gone 59 to 41 in Labor's favour? If we do assume that, then they would have added about 0.1 per cent to Labor's national vote"<sup>15</sup>. If this is true, those uncounted provisional votes would likely have changed the results in McEwan and Bowman at the least, but potentially also Swan and Dickson. There is no way to know for sure exactly how those provisional voters would have impacted the result – but therein lies the problem.

Their impact on election results aside, provisional voters include many Australians we should be making a concerted effort to include in the democratic process. Indigenous, young, migrant and poorer Australians are all overrepresented among provisional voters

## **5 Political advertising**

### **5.1 Prevent government advertising being used for electoral advantage**

27,668 Australians have signed GetUp's petition to end biased government advertising.

"To all Australian politicians, I demand an end to the unchecked and undemocratic spending of my taxes on government advertising. I call on you to introduce into law strict guidelines enforced by an independent authority to ensure all publicly funded government advertising is for the legitimate dissemination of information; full disclosure

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<sup>15</sup> *ibid.*

requirements of the real campaign costs; and a cap on the amount a government can spend."

Any measures to regulate government advertising should apply also to State Governments. During the period 1996 to 2003, Commonwealth Government advertising amounted to \$929 million; in the same period State Government advertising collectively totaled more than \$2.15 billion<sup>16</sup>. All political leaders, Labor and Liberal, at all levels of government need to do better by the Australian people.

**5.1.1 All government advertising costs (from focus groups to media buying) are publicly available and easily accessible to the community via an annual report**

**5.1.2 All advertising above \$250,000 is to be approved by an independent auditor who applies strict guidelines to limit advertising to the dissemination of public information**

**5.1.3 These guidelines are to be developed with public consultation with the final guidelines to be publicly available**

**5.1.4 These conditions to apply in both the federal and state governments within 1 year**

**5.1.5 A cap of \$100 million p.a for total government advertising spending is to be imposed with any additional money to be approved by parliament.**

## **5.2 Reinstate sections 310 and 311 of Commonwealth Electoral Act**

In kind donations and discounts are equally, if not more, in need of scrutiny than cash gifts. This is particularly true of media broadcasters and publishers.

Sections 310 and 311 of the CEA prescribed that broadcasters and publishers disclose details of political advertisements run during an election period, including any discounts on the market rate given.

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<sup>16</sup> Government advertising — funding and the financial system - Harry Evans. Available at: [http://arts.anu.edu.au/democraticaudit/papers/20060308\\_evans\\_govt\\_adv.pdf](http://arts.anu.edu.au/democraticaudit/papers/20060308_evans_govt_adv.pdf)

Both sections were repealed in the 'Electoral Integrity Act' 2006<sup>17</sup>. No explanation is offered in the Explanatory Memorandum, but when the previous government attempted to make the same change in 2004, the explanation was offered "These provisions place an administrative burden on publishing and broadcasting businesses that is not required because expenditure on electoral advertising is already disclosed by individuals and organisations that authorise the advertisements as required under other sections of the Electoral Act"<sup>18</sup>.

Individual and organisation disclosures however are not required to provide details of discounts on market rates, and nor are they able to do so accurately. Additionally, statements by publishers and broadcasters provide a means to verify the accuracy of party disclosure statements, as do donation statements by individuals and companies at the moment.

### **5.2.1 Apply sections 310 and 311 outside election periods**

Senator Bob Brown recently made a public statement on ABC Radio National's 'Background Briefing' program that he had been "directly offered [by a media company] a package that would have been worth about a million dollars over the coming year, to the Greens, in terms of media coverage and publicity, if I were to vote to favour loosening of the media laws"<sup>19</sup>. Senator Brown's claims demonstrate the need for scrutiny of in-kind media donations, and for scrutiny outside the election period.

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<sup>17</sup> Electoral and Referendum Amendment (Electoral Integrity and Other Measures) Act 2006

<sup>18</sup> Explanatory Memorandum, Electoral and Referendum Amendment (Enrolment Integrity and Other Measures) Bill 2004 par. 115.

<sup>19</sup> 'Peddling influence and money' – ABC Radio National Background Briefing 1-05-2008. Available at: [http://mpegmedia.abc.net.au/rn/podcast/current/audioonly/bbg\\_20080518.mp3](http://mpegmedia.abc.net.au/rn/podcast/current/audioonly/bbg_20080518.mp3)

## **Third Parties in the political process – GetUp and the 2007 federal election**

In response to the inquiry terms of reference pertaining specifically to third parties, GetUp would like to outline our 2007 Federal Election experience.

### ***The level of donations, income and expenditure received by political parties, associated entities and third parties at recent local, state and federal elections;***

GetUp's election campaign was predominantly funded by the same people it aimed to serve: ordinary Australians. Here are the numbers for the 2007 calendar year:

- Share of all GetUp! contributions made online: 98%
- Number of online contributions: 22,833
- Number of online contributors: 17,111
- Average online contribution: \$47.51

As a public company limited by guarantee, Getup provide audited accounts to ASIC and makes annual disclosure statements to the AEC.

GetUp declared to the AEC a total of \$555,234 in political expenditure in the 06-07 financial year. This money was spent on:

- the public expression of views on an issue in a Federal election (\$187,241);
- Printing, production, publication or distribution of materials requiring authorisation (\$183,453);
- Broadcasting of political matter requiring authorisation (\$169,905); and on
- Carrying out opinion polling or other research relating to a Federal election or voting intentions (\$14,635).

***The extent to which political fundraising and expenditure by third parties is conducted in concert with registered political parties;***

GetUp is an independent non-profit organisation and receives no government or political party funding. Instead we're largely supported by thousands of individuals who may not have a lot of time or money, but who care about the issues and want to have a say. We also receive support from organisations, unions and community groups.

GetUp welcomes all measures to increase transparency and accountability in the political process and is pleased to comply with all such obligations.