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Committee Secretary
Joint Standing Committee on Electoral Matters
PO Box 6021
Parliament House
Canberra ACT 2600

RE: Senate Inquiry into and report on all aspects of the conduct of the 2016 Federal Election

Summary

The Liberal Democratic Party upholds the principle of smaller government as a foundation of its policy platform. The Liberal Democrats contend that in all aspects, increasing regulation in any area of human endeavour results in increased complexity and barriers to engagement with a corresponding reduction in effectiveness and efficiency. The democratic process and the conduct of elections is not immune to this effect. The onerous over-regulation of the conduct of political parties and associated entities during election periods results in a distortion of democracy itself as smaller, less well-resourced parties find it difficult to successfully navigate the regulatory issues inherent in standing for election. The Liberal Democrats believe that reducing the compliance burden on parties will improve both the robustness and effectiveness of our democratic institutions.

Introduction

The Liberal Democratic Party was formed in 2001 and has contested every Federal election since 2007. The 2016 Australian Federal Election was notable for the number and scope of changes made to electoral legislation prior to its conduct on the second of July 2016. While the scope of this enquiry is limited to matters of fundraising and advertising, it is worth noting that the large number of changes made to electoral procedure placed a significant burden on political parties to the point where a number of parties reduced their level of electoral participation. This represents clear evidence of barriers being placed in the path of those who wish to engage in the democratic process. The Liberal Democrats believe that participation in the democratic process should, as far as is feasible, be open to all. That the level of participation by political parties in federal elections has fallen should be of concern. That the government, in concert with other major parties seem to be engineering such a disfranchisement should provoke outrage.

Matters Relating to the Provisions Requiring Authorisation of Electoral Material

It is the position of the Liberal Democrats that the provisions relating to authorisation of electoral material are both anachronistic in nature and ham-fisted in execution. The modern technological climate has far exceeded that in which the inclusion of authorisation text in all advertising was feasible. A large component of electoral advertising is now placed online. Due to space - and quite often text length - limitations of online advertising, the requirement to include authorisation text on web-based advertisements is studiously ignored by all political parties. With modern home and office printing capabilities now capable of producing professional-quality printed materials the requirement to include the address of the printer in advertising is somewhat absurd. While major parties use their commonwealth-provided electoral funding to fund large-volume print runs, smaller parties are often dependent on the ability of volunteers and supporters to produce printed material at home. The onerous authorisation requirements ensure that the compliance burden is unfairly shouldered by smaller parties.

The application of such provisions is also inconsistent with regard to different types of printed materials. It is an absurdity that a paper handbill containing electoral information requires authorisation text but a cotton t-shirt bearing exactly the same electoral information does not. Such inconsistencies with the legislation and its enforcement lead us to conclude that the preferable approach is to remove the requirement for authorisation completely. The provision of fraudulent information is still a punishable offence and those who would deliberately produce fraudulent electoral material are unlikely to include their correct contact details regardless. The Liberal Democrats recommend the removal of any requirement to authorise electoral material.

Matters Relating to the Potential Applicability of 'Truth in Advertising' Provisions to Electoral Communications

The Liberal Democrats believe in an open and transparent democracy. As such, the Liberal Democrats are in favour of an electoral system where parties and candidates are expected to represent not only themselves, but their opponents in a factual and accurate manner. Section 329 of the Commonwealth Electoral Act requires that a person shall not "print, publish or distribute, or cause, permit or authorize to be printed, published or distributed, any matter or thing that is likely to mislead or deceive an elector in relation to the casting of a vote". This wide-ranging provision ensures that any material published by a political party during an election campaign that is designed to influence an elector's decision with regard to their vote should be accurately portrayed and rooted in fact. While the scope of the provision may be sufficient to handle any incidence of dishonest communication that may arise, it is possible that the penalties described in the act may be insufficient to dissuade larger, more well-funded parties from engaging in deceptive conduct. It is the position of the Liberal Democrats that while the committee may look at increasing penalties for deceptive communication, the existing laws do not require changing.

Matters Relating to the Application of Disclosure Rules to and the Regulation of all Entities Undertaking Campaign Activities

The only entities requiring disclosure rules with regard to the conduct of elections are the candidates standing in those elections and the registered political parties that endorse them. Any attempt to apply disclosure rules to private individuals, businesses or organisations outside of electoral candidates and their parties could only be interpreted as an attempt to limit the ability of Australians to fully participate in our democracy and would be vehemently opposed by the Liberal Democrats.

Matters Relating to the Potential Application of New Technology to Voting, Scrutiny and Counting

The Liberal Democrats have no objection to the use of technology to streamline and improve the electoral process. The changes to senate voting rules prior to the 2016 federal election increased the complexity of counting senate ballot papers by several orders of magnitude with the net effect being that senate voting results were not known for several weeks after the election. It would seem absurd that we are able to file tax returns via the Internet, but allowing voters to number six candidates in order electronically is beyond the grasp of the government's capabilities. Electronic voting is used in numerous jurisdictions around the world. In Brazil, electronic voting was first trialled two decades ago and election results are known minutes after the close of polls.

Security and transparency remains the major drawback of electronic voting with a number of electors unwilling to trust the "black box" nature of voting machines and the intentions of the corporations contracted to design and construct them. It would go a significant way to alleviating these fears by ensuring that the design and construction, including source code for any software, be available for inspection by any interested party.

Matters Relating to the Extent of Donations and Contributions from Foreign Sources

It is the position of the Liberal Democrats that donations and contributions from foreign sources should be treated no differently from those obtained domestically. As long as the source of the donation is sufficiently identifiable, voters will be able to use the information to create an informed opinion on which candidates and parties they would choose to support. The delineation between domestic and foreign sources of income is wholly unnecessary and any regulation requiring differentiation between the two would only serve to increase a compliance burden already unfairly shouldered by smaller parties and independent candidates.

Matters Relating to the Current Donations, Contributions, Expenditure and Disclosure Regime

The Liberal Democrats believe that electors have a right to know the major backers of political parties seeking to secure their vote. Currently, in a scheme concocted by the major parties who have been historically unwilling to reveal their backers, political donations must be accounted for annually with a minimum threshold of \$13,000 (thirteen thousand dollars) for individual donations. This effectively allows parties to hide the source of donations of \$12,999 or less. For minor parties who rarely receive donations anywhere near such levels this amounts to almost total opacity of their donor base. The yearly reporting requirements also allow major parties to “sit on” large donations - potentially until after an election.

It is the position of the Liberal Democrats that both the reporting frequency be increased and the threshold reduced. At a bare minimum the Liberal Democrats believe that quarterly reporting is required to provide up-to-date information to electors. The Liberal Democrats also support reducing the threshold for individual reporting of donations to \$1000 (one thousand dollars).

Matters Relating to the Extent to which Fundraising and Expenditure by Third Parties is Conducted in Concert with Registered Political Parties

It is the position of the Liberal Democrats that it is wholly immaterial as to whether funds are raised, or expenses incurred, by a political party or a third party subcontracted to a political party. Larger political parties which are supported predominantly by taxpayer-funded electoral funding are able to maintain permanent administrative staff with a focus on fundraising. Smaller and less well-resourced parties find it more economical to contract with specialist fundraising organisations on an as-needed basis. To treat fundraising by external contractors as intrinsically different to fundraising by internal employees would again constitute an unfair imposition of an increased regulatory burden on smaller parties placing additional barriers to full enfranchisement in the political process.

Additional Concerns

In addition to the points raised above, the Liberal democrats have grave concerns regarding the tendency toward public funding of political parties. It is unconscionable conduct to force Australian taxpayers to subsidise private political parties that they have no interest in funding. Any attempt to reduce the ability of private individuals to fund the political parties of their choice is usually accompanied by a corresponding proposal to increase the amount of public funding available to parties. It is by no means an accident that the major parties - who are the primary beneficiaries of public funding - are the major proponents of such a move. Political affiliation is a private concern and the funding of political parties should be a private matter.

The increasing number of rules and regulations surrounding political parties leads to not only a higher compliance burden on the parties themselves, but also to a higher enforcement bill for the taxpayer. In the interests of cutting unnecessary spending, unnecessary regulation should be removed from the statutes.

Summary

The Liberal Democrats assert that:

- The requirement to “authorise” electoral material should be removed.
- Existing provisions related to deceptive conduct are sufficient however,
 - Existing penalties for breaching said provisions may be insufficient.
- Only candidates and registered political parties should be subject to disclosure laws,
- Technology should be used to streamline electoral processes where possible, however,
 - The design and software implemented on such devices should be open for inspection.
- There should be no differentiation between foreign and domestic sources of income,
- The current reporting regime is insufficient to provide transparent and up-to-date information to electors,
- The reporting frequency should be increased to at least quarterly,
- The reporting threshold for individual donations should be decreased,
- There should be no differentiation between fundraising activities undertaken by political parties and fundraising activities undertaken by external contractors employed by political parties,
- Any increase to the regulatory burden placed on political parties will be felt hardest by smaller parties and constitutes a “squeezing out” of minor parties from participation in our democracy,
- Any increase in regulation belies a corresponding increase in compliance spending which is borne by the taxpayer,
- Public funding of political parties represents an unconscionable imposition on the taxpayer to fund political parties that they otherwise would not support and contravenes the freedom of political association.