



Electoral Commissioner

Mr Daryl Melham MP
Chairman
Joint Standing Committee on
Electoral Matters
Parliament House
CANBERRA ACT 2600

Dear Chairman

At the 26 September 2008 hearing of the Joint Standing Committee on Electoral Matters into the *Commonwealth Electoral Amendment (Political Donations and Other measures) Bill 2008* (the Bill) several issues were raised about which the Australian Electoral Commission (AEC) undertook to supply further information. Each issue raised and the additional information is set out below.

Additional data on funding and disclosure

I understand that this was provided to the Secretariat to the Committee on Monday 29 September 2008.

Anonymous donations

Section 306 of the *Commonwealth Electoral Act 1918* (the Electoral Act) presently contains the prohibition on registered political parties and candidates receiving anonymous gifts. Subsection 306(1) establishes an offence where the political party has received a gift which exceeds the current threshold (which as at 1 July 2008 is \$10,900) without obtaining the name and address details of the person who made the gift. Subsection 306(2) of the Electoral Act contains a similar offence that applies to candidates and members of Senate groups.

The amendments contained in Item 40 of Schedule 1 to the Bill seek to repeal the existing section 306 and to introduce new sections 306 to 306AI. The effect of these new provisions is to ban all anonymous donations to those involved in the political process. The Second Reading Speech that accompanied the introduction of this Bill into the Senate stated (Senate Hansard 15 May 2008 page 1965):

"The Bill includes measures that extend the current prohibition on accepting anonymous donations to all anonymous gifts"

Accordingly, the Bill contains a complete prohibition on the receipt by political parties and candidates of any anonymous gifts irrespective of the amount involved. This prohibition also applies to others involved in the electoral processes where those anonymous funds are used for electoral expenditure. This was a deliberate policy decision based on the concern that setting a threshold below which anonymous donations could be lawfully received has the potential to create a loophole that could

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be exploited to undermine the accountability and transparency of other measures designed to inform the Australian community of the sources of donations that are accepted and expended by the main players in the electoral process.

However, since the AEC's evidence on Friday, the Minister has indicated that Government amendments to the Bill will be considered that introduce a low threshold (of say \$50) below which anonymous donations can be lawfully received by the key players in the electoral process. This will facilitate the collection of donations in the circumstances outlined in the further submission from the Democratic Audit of Australia that was provided to the AEC at the Committee's hearing.

Postal voting

Some of the additional information sought by the Committee was included with the AEC's second submission to the Committee. The work is almost completed on the additional information on postal votes and will be provided to the Committee shortly.

Complaints model

The evidence provided by the AEC referred to the existing complaints mechanism for dealing with electoral offences under Part XXI of the Electoral Act. This includes the offence contained in section 327 of the Electoral Act which covers unlawful discrimination against a person who makes a donation to a political party. The AEC is aware of general allegations having been made of such unlawful conduct in breach of this section. However, in the past 3 years, the AEC has not been provided with any evidence that would indicate that such discrimination has actually taken place. Neither has the AEC been provided with any details of allegations that could be referred to the Australian Federal Police for investigation.

The AEC also notes that the *Human Rights and Equal Opportunity Commission Act 1986* contains the International Covenant on Civil and Political Rights in Schedule 2. Articles 2 and 26 prohibit discrimination on the grounds of "political or other opinion". As to whether this provides an alternative existing mechanism to deal with the types of concerns raised by the Committee would be a matter on which the Committee would need to seek the views of the HREOC or the Attorney-General's Department. This legislation is not administered by the AEC.

Registration of third parties in the United Kingdom

The United Kingdom Electoral Commission has published a range of documents on its website that refer to controlled spending by third parties. This spending is regulated by the *Political Parties, Elections and Referendum Act 2000* (the PPERA). Part VI of the PPERA places various restrictions on third parties including dictating from whom they can accept donations and the amount they can spend on campaigning for the electoral success of registered parties or candidates.

For the 2005 UK Parliamentary election, third parties that intended to spend over 10,000 pounds in England or over 5,000 pounds in Scotland, Wales or Northern Ireland during a regulated period were required to submit a notification to the Commission to be included on the register of recognised third parties before spending

over these amounts. Once registered, third parties were required to submit a controlled expenditure return to the Commission reporting what they spent during the election. To fund their campaign, third parties may only accept donations from permissible donors and they are required to report all donations received for this purpose to the Commission. At the time of the 2005 election, 26 recognised third parties were registered with the Commission.

Elections Canada

Please find attached two documents from Elections Canada that are published on their website which contain a summary of the various requirements that apply to political contributions under the *Canada Elections Act* and the incurring of election expenses.

The first document is entitled "Introduction to Controls and Contributions under the *Canada Elections Act*" and states that:

"Only Canadian citizens and permanent residents may make contributions to registered parties, registered electoral district associations, leadership and nomination contestants of registered parties, and all candidates."

The second document is entitled "Third Party Elections Advertising" Contributions and Expenses at a Federal Election or By-election: Candidates and Registered Parties" and states that:

"Requirement to register

Under the new Act, a third party spending \$500 or more on campaign advertising is required to register with the Chief Electoral Officer of Canada during the election period.

If the third party is a trade union, corporation or other entity with a governing body, the application for registration must include a copy of the resolution passed by its governing body authorizing it to incur election advertising expenses.

Spending limits on election advertising


A third party may spend up to a total of \$150 000 nationally on election advertising. Of this amount, it may spend no more than \$3 000 in any single electoral district. For by-elections, the maximum is \$3 000 for each electoral district."

I trust that the above information is of assistance to the Committee.

Yours sincerely



Paul Dacey
Acting Electoral Commissioner

 September 2008

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**40th General Election - October 14, 2008**

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Information Sheet 1

Elections Canada: Electoral Law, Policy and Research: Information Sheets

Introduction to Controls on Contributions Under the *Canada Elections Act*

(Revised January 1, 2007)**DISCLAIMER**

These information sheets set out Elections Canada's current interpretation of the *Canada Elections Act* and are issued to assist the public in understanding the Act. The views expressed in information sheets are not law and are not intended to replace the official text of the Act. How the Act applies to any particular case will depend on the individual circumstances of that case. Elections Canada reserves the right to reconsider any interpretations expressed in information sheets, either generally or in light of the actual circumstances of any case, and in accordance with continuing legislative and judicial developments.

Summary of New Rules for Political Contributions

1. Rules regarding controls on political contributions to registered parties, registered electoral district associations, leadership and nomination contestants of registered parties, and all candidates were significantly changed by Parliament in 2004. Further changes have been made to these controls as part of the *Federal Accountability Act*. The following is a summary of the applicable controls on contributions.
2. Only Canadian citizens and permanent residents may make contributions to registered parties, registered electoral district associations, leadership and nomination contestants of registered parties, and all candidates.
3. Corporations, trade unions and other unincorporated associations may no longer make contributions to these entities.
4. There is a limit on the amount an individual may contribute to these entities.¹
5. The controls (limits and prohibitions) do not apply to contributions made to unregistered political parties or to their electoral district associations.
6. The individual making a contribution is responsible for complying with the controls on contributions.
7. An individual who either fails to take reasonable care not to make a contribution when ineligible to do so, or who knowingly (which includes acting recklessly) makes a contribution when ineligible, has committed an offence.²
8. It is also an offence for an individual to wilfully make a contribution larger than permitted.³

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9. The financial agent of a registered party, a registered electoral district association, a leadership or nomination contestant of a registered party, or of any candidate, may not knowingly accept a contribution that exceeds a limit set out in the Act,⁴ keep a contribution after it is known that the contribution was made by an ineligible person or entity,⁵ or keep a contribution that exceeds the maximum amount that the donor could lawfully contribute.⁶
10. The contributions that an individual makes to registered parties, their registered electoral district associations, their leadership and nomination contestants, and all candidates are known, as they are disclosed in financial returns, which the *Canada Elections Act* requires the recipients to file with the Chief Electoral Officer.
11. The *Canada Elections Act* also controls attempts to avoid the application of these rules.
 - 11.1 Goods and services provided to a registered party, a registered electoral district association, a leadership or nomination contestant of a registered party, or to any candidate, through artificial commercial transactions in which the recipient is not actually required to pay will be deemed to be contributions and included in the calculation of contributions made to that entity. This is achieved through the rules dealing with unpaid claims.⁷
 - 11.2 The Act prohibits circumventing or attempting to circumvent either the eligibility requirements for making contributions, or the contribution limits established for individuals;⁸ or colluding with others for those purposes.⁹ It also prohibits concealing or attempting to conceal the identity of a contributor or acting in collusion with another for that purpose.¹⁰
 - 11.3 It is also prohibited to make a contribution to a registered party, a registered electoral district association, a leadership or nomination contestant of a registered party, or to any candidate, if it comes from the resources of other persons or entities, and was given to the contributor for the purpose of making contributions.¹¹ This provision controls attempts by persons or entities to increase their contributions by giving money to others to make contributions.

For more information,
see information sheets on individual topics.

¹ Contribution caps are indexed for inflation. The Chief Electoral Officer publishes the contribution caps for each year in the *Canada Gazette* (s. 405.1, *Canada Elections Act*).

² Ss. 497(1)(i) and 497(3)(f.1), *Canada Elections Act*.

³ S. 497(3)(f.13), *Canada Elections Act*.

⁴ S. 405.2(3), *Canada Elections Act*. S. 497(3)(f.16) of the *Canada Elections Act* makes it an offence to breach this prohibition.

⁵ S. 404(2) of the *Canada Elections Act* sets out the prohibition and s. 497(1)(i.1) makes it an offence to breach s. 404(2).

⁶ S. 405.4, *Canada Elections Act*. It is an offence to breach this prohibition (ss. 497(1)(i.7) and 497(3)(f.19); *Canada Elections Act*).

⁷ Ss. 403.34(1), 423.1(1), 450(1), 435.29(1) and 478.22(1), *Canada Elections Act*.

⁸ S. 405.2(1)(a), *Canada Elections Act*.

⁹ S. 405.2(1)(b), *Canada Elections Act*.

¹⁰ S. 405.2(2). It is an offence under ss. 497(1)(f.5) and 497(3)(f.15) to breach this prohibition.

¹¹ S. 405.3, *Canada Elections Act*.

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Third Party Election Advertising

Elections Canada: Electoral Law, Policy and Research: 1999-2000 Electoral Reform

The new *Canada Elections Act*, which came into force on September 1, 2000, regulates election advertising by third parties – individuals and groups other than candidates, registered political parties, or their electoral district associations. This is one of the most substantial changes included in the new legislation.

Context

In 1993, amendments to the *Canada Elections Act* previously in force set a \$1 000 limit on the amount a third party could spend on partisan campaign advertisements during an election period. When the Alberta Court of Appeal struck down this provision (*Somerville*, 1996), third parties were free to spend as they liked to promote or oppose candidates, parties and their positions on campaign issues. In the *Libman* case (1997) that invalidated some sections of the Quebec *Election Act*, however, the Supreme Court of Canada supported the view that campaign advertising could be subject to restrictions, because it is a legitimate objective for electoral legislation to set spending limits for all electoral participants, including third parties. The new provisions in the Act are intended to ensure a level playing field for all parties involved in election campaigns.

Definitions

The new Act defines election advertising as "the transmission to the public by any means during an election period of an advertising message that promotes or opposes a registered party or the election of a candidate, including one that takes a position on an issue with which a registered party or candidate is associated." It also specifies that editorials, news, speeches or interviews are not considered to be election advertising. Nor are personal Web pages posted on the Internet on a non-commercial basis.

Requirement to register

Under the new Act, a third party spending \$500 or more on campaign advertising is required to register with the Chief Electoral Officer of Canada during the election period.

If the third party is a trade union, corporation or other entity with a governing body, the application for registration must include a copy of the resolution passed by its governing body authorizing it to incur election advertising expenses.

Spending limits on election advertising

A third party may spend up to a total of \$150 000 nationally on election advertising. Of this amount, it may spend no more than \$3 000 in any single electoral district. For by-elections, the maximum is \$3 000 for each electoral district.

Other provisions

A third party must identify itself on any election advertising it places and indicate that it has authorized the advertisement.

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The blackout on election advertising applies to third parties, just as to registered political parties and candidates. No election advertising is allowed, whether published or broadcast, on election day until all polling stations in the electoral district have closed.

Under the new Act, third parties are not entitled to reimbursement of their advertising expenses, do not receive the voters lists, and are not, as third parties, entitled to issue tax receipts for contributions they receive.

Financial reporting

Registered third parties are required to submit a report to the Chief Electoral Officer within four months of the election. This report has to indicate the contributions received for the campaign and the expenditures made for election advertising during the campaign. Expenditures include the costs of producing and placing election advertisements.

In the report, third parties are required to disclose the name and address of anyone who contributed more than \$200 for election advertising in the period beginning six months before the election was called and during the election period. When a numbered company contributes more than \$200, the name of its chief executive officer or president must be indicated. The financial report has to be audited if the third party has spent \$5 000 or more in election advertising expenses.

Failure to comply with any of these provisions constitutes an offence under the *Canada Elections Act*. The new Act prohibits collusion between candidates, registered political parties and third parties, to prevent circumvention of the limits.

The Chief Electoral Officer must publish the third party reports within one year of the issue of the writs for an election, in the format he deems most suitable.

For more information, please contact:

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257 Slater Street
Ottawa, Ontario
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Telephone

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toll-free in Canada and the United States

001 800 514-6868
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September 2000

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A summary of the election funding payments for the 2007 election

Table 1 - 2007 Election Funding Payments	
Name	Amount (\$)
Parties	
Australian Labor Party	22,030,460.82
Liberal Party of Australia	18,133,645.07
Australian Greens	4,370,920.20
National Party of Australia	3,239,706.37
Pauline's United Australia Party	213,095.49
Northern Territory Country Liberal Party	169,178.85
Family First Party	141,016.33
Independent Senate group	
Nick Xenophon (South Australia)	312,497.07
Independent candidates	
Tony Windsor (New England, NSW)	110,755.64
Bob Katter (Kennedy, QLD)	68,336.48
Gavin Priestley (Calare, NSW)	39,978.64
Tim Horan (Parkes, NSW)	35,910.42
Caroline Hutchinson (Fisher, QLD)	22,254.46
Gavan O'Connor (Corio, VIC)	22,115.84
Noel Brunning (Forrest, WA)	20,843.08
Aaron Buman (Newcastle, NSW)	13,322.01
Ben Quin (Lyons, TAS)	12,794.84
Cate Molloy (Wide Bay, QLD)	11,711.11
Ray McGhee (Boothby, SA)	9,220.19
Rob Bryant (Murray, VIC)	9,184.48
Tim Williams (Macquarie, NSW)	8,705.62
Jamie Harrison (Lyne, NSW)	6,985.50
Total	49,002,638.51

An analysis of the distribution of election funding following the 2004 and 2007 elections

Table 2 – Distribution of Election Funding					
Party	2004 Election		2007 Election		% change 2004 to 2007
	\$ '000	% of total	\$ '000	% of total*	
Australian Labor Party	16,710	39.86	22,030	44.96	+5.10
Liberal Party of Australia	17,956	42.83	18,134	37.01	-5.82
Australian Greens (all related parties)	3,317	7.91	4,371	8.92	+1.01
National Party of Australia	2,967	7.08	3,240	6.61	-0.47
Pauline's United Australia Party	-	-	213	0.43	+0.43
Northern Territory Country Liberal Party	159	0.38	169	0.34	-0.04
Family First	158	0.38	141	0.29	-0.09
One Nation	56	0.13	0	0	-0.13
Australian Democrats	8	0.02	0	0	-0.02
Others	595	1.41	705	1.44	+0.03
Total	41 926	100.00	49 003	100.00	

Table 4 provides payment rates and amounts since the current base rate of payment (\$1.50 prior to indexing) was set by Parliament in 1995 are outlined in table 4:

Table 4 – Payment rates and payments since 1996			
Election	Funding Rate per vote	Total Payments (\$ '000 000)	Percentage increase in payments from previous election
1996	\$1.57594	32.15	-
1998	\$1.62210	33.92	5.51
2001	\$1.79026	38.56	13.68
2004	\$1.94397	41.93	8.74
2007	\$2.10027	49.00	16.86

Returns lodged

Table 5 provides details of the number of annual returns lodged with the AEC in the 2007-08 and the previous three financial years.

Table 5 – Annual Returns Received				
Return	2003-04	2004-05	2005-06	2006-07
Political Party – original	83	79	89	51
Political Party – amended	67	69	34	14
Associated Entity – original	78	75	121	325
Associated Entity – amended	17	15	3	4
Donor – original	947	1,442	395	229
Donor – amended	33	38	11	16
Political expenditure – original	N/a	N/a	N/a	65
Political expenditure – amended	N/a	N/a	N/a	1

