

## Changes to the Funding and Disclosure Scheme

### General principles of the scheme

- 2.1 In its report on the 2004 Federal Election, the Committee outlined a number of general principles that ought to underpin the funding and disclosure scheme, namely that:
- funding should be provided to parties and candidates as a subsidy to their costs of contesting a particular federal election campaign, and not a means by which to fund on-going administrative costs or to provide a financial base from which to fight future elections;
  - a level playing field should operate between political parties and independent candidates;
  - high degrees of transparency in donations to political parties and candidates should reduce the potential for undue influence and corruption in the political system;
  - disclosure provisions should not impose a cumbersome administrative burden (and unnecessary duplication) on donors, participants in the electoral process, and the AEC;
  - the onus for the identification of the source of political donations should be on candidates and political parties, not donors; and

- financial reporting arrangements for all entities involved in the political process and covered by the Electoral Act, should be the same in the interests of transparency and consistency.

2.2 To achieve these principles, the Committee considered that:

- higher thresholds for the disclosure of political donations would encourage individuals, small businesses and other organisations to make donations to political parties and candidates;
- proposals to ban certain types of contribution, or limit the amounts that may be donated often arise from the apprehension of a potential for corruption and undue influence, but have not, to date, found evidentiary support; and
- a higher tax deductibility level of donations to political parties and independent candidates would encourage more people to participate in the democratic process and decrease the parties' reliance on a smaller number of large donations;

2.3 In line with these general principles, this chapter outlines proposed changes to the provisions of the *Commonwealth Electoral Act 1918* regulating the funding and disclosure scheme.

## Payment of election funding

2.4 Currently, payment of election funding is based on the number of first preference votes received once a threshold of 4% of first preference votes is obtained. In acknowledging the potential for alleged 'profiteering' under the current system, the Committee suggested that some consideration be given to:

...raising the threshold at which public funding would be paid from the current 4% of the formal first-preference vote to, say, 5% of the formal first-preference vote. [The Committee] notes that a 5% threshold is about the current level of the informal vote.<sup>1</sup>

2.5 Because public funding payments to Senate candidates are based on a larger number of voters than in a House of Representatives electorate, the Committee also suggested that different thresholds be applied to the Senate and the House of Representatives.<sup>2</sup>

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1 JSCEM, *The 2004 Federal Election*, p. 327.

2 JSCEM, *The 2004 Federal Election*, pp. 327-328.

- 2.6 Ultimately, however, the Committee remains of the view that ‘the scheme continues to meet its original objectives’.<sup>3</sup>

## Disclosure thresholds

- 2.7 Political parties are required to lodge annual returns detailing the totals of all receipts, payments and debts. Under the current arrangements, details of those receipts and debts that reach a threshold of \$1,500 or more must also be disclosed. Candidates and Senate groups are required to lodge election returns detailing the total of all donations received and certain categories of expenditure, and details of persons or organisations who donate \$200 or more to the same candidate, or \$1,000 or more to the same Senate group.
- 2.8 In its review of the 2004 Federal Election the Committee recommended that:
- ...the disclosure threshold for political donations to candidates, political parties and associated entities be raised to amounts over \$10,000 for donors, candidates, political parties, and associated entities;<sup>4</sup> and
- ...the threshold at which donors, candidates, Senate groups, political parties, and associated entities must disclose political donations should be indexed to the Consumer Price Index.<sup>5</sup>
- 2.9 The Government endorsed these recommendations and in December 2005, introduced the Electoral and Referendum Amendment (Electoral Integrity and Other Measures) Bill 2005 (hereafter referred to as ‘the Bill’), which proposes, inter alia, to increase the threshold for disclosing gifts to parties and candidates from \$1,500 to amounts above \$10,000. The threshold will be CPI indexed.<sup>6</sup> If enacted, the measures will have effect from the date of introduction of the Bill, that is, 8 December 2005.

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3 JSCM, *The 2004 Federal Election*, p. 325.

4 JSCM, *The 2004 Federal Election*, Recommendation 49. This recommendation addressed an issue raised by the AEC (Submission No. 11, 40<sup>th</sup> Parliament), p. 31, AEC Recommendation 21.

5 JSCM, *The 2004 Federal Election*, Recommendation 50.

6 See proposed subsections 305A(1), (1A), (2), (2A) and (3). The Explanatory Memorandum also notes that ‘Where the threshold amount is amended due to CPI increases, the threshold amount will be rounded to the nearest \$100, where amounts below \$50 will be rounded down to the nearest \$100...’ p. 2.

- 2.10 In its latest submission to the Committee, the AEC noted ‘that the proposed increase in the disclosure threshold will be likely to affect the volume of disclosure information reported’ because:

The proposed increase ... gives rise to a reporting obligation for parties, associated entities and donors against two different financial limits for the 2005-06 financial year. Disclosure returns based on the old thresholds must be lodged for the period 1 July to 7 December 2005, and returns based on the new thresholds apply subsequent to that date.<sup>7</sup>

## Associated entities

- 2.11 An ‘associated entity’ is defined in subsection 287(1) of the Electoral Act as an entity controlled by, or operating ‘wholly or to a significant extent for the benefit of, one or more registered political parties.’ Under the current regime, associated entities are required to lodge annual returns under section 314AEA of the Electoral Act detailing:

- all amounts received and total amount paid in a financial year;
- total debts outstanding as at 30 June; and
- where required, sources of capital deposits.<sup>8</sup>

- 2.12 In the past, various concerns have been expressed in relation to associated entities. Concern has arisen with the definition of an associated entity and, specifically, what constitutes an associated entity. There has also been some allegation that certain ‘associated entities’ have failed to lodge annual returns with the AEC<sup>9</sup> and that the disclosure provisions for associated entities, including the declaration of funding sources, require improvement.<sup>10</sup>

- 2.13 The Bill currently before the House of Representatives seeks to extend the definition of an ‘associated entity’ to apply to entities that are members of a political party and those that have voting rights in political parties, such as trade unions. If enacted, the provisions of the Bill would require that, for each entity, the annual returns provide:

- the total of all receipts and payments of the entity for the financial year, and the total of all debts as at 30 June;

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7 AEC (Submission No. 1, 41st Parliament), p. 1.

8 AEC, *Electoral Pocketbook* 2005, pp. 86-87.

9 JSCEM, *The 1998 Federal Election*, p. 132.

10 JSCEM, *The 2001 Federal Election*, p. 236.

- the names and addresses of those people or organisations from whom more than \$10,000 was received during the financial year;
- the names and addresses of those people or organisations to whom more than \$10,000 was owed at the end of the financial year; and
- the names and addresses of those people or organisations that contributed capital to the entity, and the amount of their contribution, in the situation where the entity made a payment to the benefit of a party out of funds generated from the capital deposit.<sup>11</sup>

## Third parties

- 2.14 In its review of the 2004 Federal Election, the Committee noted that some discrepancy existed in the financial reporting requirements of third parties compared to those of other entities, such as registered political parties and associated entities. The Committee therefore recommended that third parties be treated in the same way as political parties, associated entities and donors.<sup>12</sup>
- 2.15 If passed, the Bill will see new sections 314AEB and 314AEC inserted into the Electoral Act requiring third parties to furnish annual returns (as distinct from the election returns they previously provided) relating:
- the amounts spent on certain categories of political expenditure (for example, political advertising, production of electoral matter and opinion polling); and
  - the names and addresses of those people or organisations from whom donations totalling more than \$10,000 were received which were used in whole or in part to incur political expenditure of more than \$10,000, with the dates the donations were received.<sup>13</sup>
- 2.16 In addressing the administrative issues associated with implementing these provisions, the AEC noted that:
- The introduction of third party annual returns of expenditure for a political purpose will require disclosure of expenditure by persons or organisations that are involved in political

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11 AEC (Submission No. 1, 41st Parliament), Appendix B.

12 JSCM, *The 2004 Federal Election*, Recommendation 53. This recommendation addressed an issue raised by the AEC (Submission No. 11, 40<sup>th</sup> Parliament), p. 31, AEC Recommendation 21; p. 33, AEC Recommendation 28.

13 AEC (Submission No. 1, 41st Parliament), Appendix B.

commentary. Whilst in the short term this new requirement is expected to present some awareness issues, the AEC intends to mount a comprehensive awareness campaign and will monitor media advertising and related activities.<sup>14</sup>

## Party registration

- 2.17 In the course of its work, the Committee has systematically received submissions expressing some apprehension that the current requirements for a group to register as a political party are not stringent enough and potentially could be abused.<sup>15</sup>
- 2.18 The Bill seeks to allay these concerns by proposing a scheme of deregistration and re-registration of political parties. All parties, excepting parliamentary parties and parties with past representation in the Federal Parliament, would automatically be de-registered six months after Royal Assent. Those de-registered parties would be required to re-apply, complying with current requirements in the Electoral Act, including the existing naming provisions. The \$500 application fee would not extend to those parties re-applying.<sup>16</sup>
- 2.19 In its submission to the Committee, the AEC noted that the effect of these amendments:
- ...is to ensure that all registered political parties, other than those who are or have been represented in Parliament, meet the current naming requirements of the Act. The re-registration process is likely to affect about 20 registered non-parliamentary parties, who must prove current compliance with the registration rules.<sup>17</sup>

## Electoral returns of broadcasters and publishers

- 2.20 Sections 310 and 311 of the Electoral Act detail the provisions requiring broadcasters and publishers, respectively, to lodge returns with the AEC. These returns disclose details of pre-election advertising, including the identity of the advertiser, the authority for the advertisement, the times it was broadcast or published and the amount charged.

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14 AEC (Submission No. 1, 41st Parliament), p. 1.

15 See, for example, JSCM reports on the 1996, 1998, 2001 and 2004 federal election reports.

16 Explanatory Memorandum, Electoral and Referendum Amendment (Electoral Integrity and Other Measures) Bill 2005, p. 2.

17 AEC (Submission No. 1, 41st Parliament), p. 1.

- 2.21 The Bill proposes to repeal these sections of the Electoral Act. It has been suggested that this proposal has been made for reasons of administrative efficiency.<sup>18</sup>

## Taxation arrangements for donations

- 2.22 Currently, taxpayers may only claim a maximum tax deduction of \$100 for their total donations to political parties registered under Part XI of the Electoral Act.<sup>19</sup> On the understanding that tax deductibility for political donations would encourage more donations from individuals and small businesses, the Committee recommended, in its report on the 2004 Federal Election, that:

- the *Income Tax Assessment Act 1997* be amended to increase the tax deduction for a contribution to a political party, whether from an individual or a corporation, to an inflation-indexed \$2,000 per year;<sup>20</sup> and
- the *Income Tax Assessment Act 1997* be amended to provide that donations to an independent candidate, whether from an individual or a corporation, are tax deductible in the same manner and to the same level as donations to registered political parties.<sup>21</sup>

- 2.23 The Bill endorses the sentiments of these recommendations, but proposes to amend the *Income Tax Assessment Act 1997* to increase the level of tax-deductibility, whether from an individual or corporation, to political parties and independent candidates from \$100 to \$1,500 in any income year.<sup>22</sup>

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18 In his Bills Digest on the Electoral and Referendum Amendment (Electoral Integrity and Other Measures Bill) 2005, Jerome Davidson notes that 'no explanation is offered in the Explanatory Memorandum but when a previous attempt was made to repeal these requirements the rationale offered was that: "These provisions place an administrative burden on publishing and broadcasting businesses ..."', p. 8.

19 Explanatory Memorandum, Electoral and Referendum Amendment (Electoral Integrity and Other Measures) Bill 2005, p. 4.

20 JSCEM, *The 2004 Federal Election*, Recommendation 51.

21 JSCEM, *The 2004 Federal Election*, Recommendation 52.

22 Explanatory Memorandum, Electoral and Referendum Amendment (Electoral Integrity and Other Measures) Bill 2005, p. 2.

## Conclusion

2.24 The Committee's report on the 2004 Federal Election noted that Australia has rejected an interventionist approach to regulation of campaign finance matters and concluded that:

the evidence suggests that, after 20 years, Australia's funding and disclosure scheme is achieving its major goals.<sup>23</sup>

2.25 In its subsequent re-examination of the submissions specifically addressing funding and disclosure, the Committee did not find the need to add to the recommendations that it made in its report on the 2004 Federal Election.

Peter Lindsay MP  
Chair  
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23 JSCEM, *The 2004 Federal Election*, p. 337.