

Other issues

Administrative body for funding and disclosure

- 10.1 A number of submitters raised the option of creating a separate administrative body for the enforcement of the Commonwealth funding and disclosure scheme. Some submitters argued that a discrete administrative body should exist under the current framework and others proposed that in cases where substantial changes are made to the funding and disclosure scheme there is justification for a separately resourced administrative body for political financing.
- 10.2 The arguments for separating funding and disclosure functions from the AEC relate mainly to the fact that it is a specialist field and may benefit from having discrete funding and subject matter experts, rather than being part of a larger organisation.
- 10.3 The Australian Labor Party submitted that, particularly where requirements beyond disclosure are in place:
- ...the clearest case for a separate entity exists around what may become the new and more detailed areas of campaign finance and expenditure.¹
- 10.4 The issue was also raised in the submission from GetUp who outlined options for the form the separate agency could take:
- the national campaign authority may form part of the AEC;
 - the national campaign authority may be a separate office within the AEC; or

1 Australian Labor Party, *Submission 21*, pp. 4-5.

- the national campaign authority may be a completely separate body from the AEC.²

- 10.5 The Democratic Audit of Australia indicated its general support for the separation of funding and disclosure to be dealt with by a single administrative body, in concert with recommendations regarding harmonisation of federal, state and territory jurisdictions.³ In its submission to the JSCem inquiry into the conduct of the 2007 federal election, the Democratic Audit of Australia also stated that each of the tasks undertaken by the AEC, in particular the administration of the electoral roll, conduct of elections, and the administration of funding and disclosure, all required a variety of different skills and expertise. The Democratic Audit also highlighted the fact that some jurisdictions, such as New Zealand, have three separate electoral bodies for enrolment, elections and campaign finance and related matters.⁴
- 10.6 Domestically, the NSW Election Funding Authority is a separate administrative body for the purpose of funding and disclosure. It administers the political party registration, public funding, disclosure and financial compliance aspects of the NSW legislation. There is some overlap between staff and some services. The Election Funding Authority existed as a separate body prior to the implementation of the revised regulatory system in that jurisdiction.
- 10.7 The AEC, in its appearance before the previous committee for the purposes of the *Advisory Report on the Commonwealth Electoral Amendment (Political Donations and Other Measures) Bill 2008* (2008 Advisory Report), expressed its support for the notion of a dedicated office within the AEC, stating that:
- The current funding and disclosure unit is within the AEC and they are not really involved in our other core business. So if we were resourced to establish such a unit that would be quite possible from within the AEC.⁵

2 GetUp!, *Submission 23*, p. 2.

3 Democratic Audit of Australia, *Submission 2*, p. 6.

4 Democratic Audit of Australia, *Submission 45* to JSCem inquiry into the conduct of the 2007 federal election and matters related thereto, pp. 12-13.

5 Mr Paul Dacey, Acting Electoral Commissioner, *Committee Hansard*, 26 September 2008, p. 4.

- 10.8 The resources and powers of any administrative authority responsible for monitoring and enforcing compliance with a political financing scheme are also key elements of its success. It has been argued that the resources available for compliance activities in this area dictate, at least to an extent, the 'nature and extent of support that can be offered to encourage and assist voluntary compliance'.⁶
- 10.9 The Commonwealth Electoral Amendment (Political Donations and Other Measures) Bill 2010 proposed providing the AEC's authorised officers with powers to seek documents from a broader range of people than is currently the case under the Commonwealth legislation.

Conclusion

- 10.10 If a move to increased regulation occurs at the Commonwealth level, the separation of the funding and disclosure functions into a separate, specialist body with discrete resourcing will need to be seriously considered to ensure that the administering agency can meet the increased compliance and enforcement demands of a more complex funding and disclosure system.
- 10.11 However, under the current system, with the proposed reforms as outlined in this report, administrative efficiencies would be best achieved by leaving the administration of the Commonwealth funding and disclosure system with the Australian Electoral Commission. It is imperative that the body is adequately resourced and have sufficient enforcement powers to meet the demands of an expanded funding and disclosure system.

Recommendation 30

- 10.12 **The committee recommends that the funding and disclosure functions in the *Commonwealth Electoral Act 1918* continue to be exercised and administered by the Australian Electoral Commission, and that the Australian Electoral Commission receive additional resources to carry out these functions and exercise its enforcement powers.**

6 B Edgman, 'Political Funding: Challenges of Enforcement and Compliance', Paper prepared for the Challenges of Electoral Democracy Workshop, University of Melbourne, July 2011, p. 1.

Internal rules for corporate donations

- 10.13 Another point for consideration is the internal rules for corporations or other organisations making political donations, as donations can be made by corporations and trade unions without the knowledge of members or shareholders or without their explicit consent.
- 10.14 The first Electoral Reform Green Paper raised the issue of corporations, and other organisations, needing to get shareholder or member approval before donations to political parties can be made. The requirement currently applies in the United Kingdom. For any political donations greater than £5 000 in a 12 month period, a resolution itemising the money to be donated must be passed by shareholders before the political donation can be made. This resolution is valid for four years.⁷
- 10.15 In the findings of the Parliamentary Joint Committee's inquiry into the Corporate Law Economic Reform Program (Audit Reform and Corporate Disclosure) Act 2004 (CLERP 9) draft exposure Bill, that committee recommended 'that provisions be inserted in the Corporations Act that would require the annual report of listed companies to include a discussion of the board's policy on making political donations'.⁸
- 10.16 However, the additional burden that would be placed on corporations in having to organise meetings for approval of donations or alternative mechanisms for approval by shareholders, could discourage them from making political contributions. There is also the concern that if shareholder approval were required, the matter of making a political donation would become incredibly invasive and complicated, and that it would be very difficult to reach consensus on a single beneficiary.⁹
- 10.17 There are a number of alternatives available to address the concerns in respect of requiring shareholder approval of individual political donations. For example, companies could be required to develop political donations policies, which would need to be made available on their websites. In addition, company annual general meetings could serve as an
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7 *Companies Act 2006* (UK), ss. 366-368, 378.

8 Chartered Secretaries Australia, 'No support for involving shareholders in political donations', *Media Release*, 6 June 2004, <http://www.csaust.com/Content/NavigationMenu/NewsAdvocacy/Mediareleases/Political_donations080604.pdf> viewed 24 October 2011.

9 Chartered Secretaries Australia, 'No support for involving shareholders in political donations', *Media Release*, 6 June 2004, <http://www.csaust.com/Content/NavigationMenu/NewsAdvocacy/Mediareleases/Political_donations080604.pdf> viewed 24 October 2011.

appropriate forum for shareholders to air any grievances about company political donations or donations policies.¹⁰

Conclusion

- 10.18 There would be benefits in following the United Kingdom's model of requiring shareholder approval for political donations by companies. However, the precise amendments to the *Corporations Act (Cth)* and the Electoral Act necessary to facilitate this change would need to be determined, as would the means for the administration of such a requirement.
- 10.19 Another approach that would arguably be less onerous would be for corporations, unions and other organisations that make political donations, to make full disclosure of their policy in this regard on their websites, in their annual reports and other publically accessible mediums.

Daryl Melham MP

Chair

30 November 2011

¹⁰ Chartered Secretaries Australia, 'No support for involving shareholders in political donations', *Media Release*, 6 June 2004, <http://www.csaust.com/Content/NavigationMenu/NewsAdvocacy/Mediareleases/Political_donations080604.pdf> viewed 24 October 2011.