

Submission

on the

Funding of political parties and election campaigns

to the

Joint Standing Committee on Electoral Matters

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1. Introduction

The Joint Standing Committee on Electoral Matters is inquiring into options to improve the system for the funding of political parties and election campaigns, with particular reference to:

- a) issues raised in the Government's Electoral Reform Green Paper - Donations, Funding and Expenditure, released in December 2008;
- b) the role of third parties in the electoral process;
- c) the transparency and accountability of the funding regime;
- d) limiting the escalating cost of elections;
- e) any relevant measures at the state and territory level and implications for the Commonwealth; and
- f) the international practices for the funding of political parties and election campaigns, including in Canada, the United Kingdom, New Zealand and the United States of America.

The Committee has invited interested persons and organisations to make submissions to be received by Friday, 24 June 2011.

The Committee is due to report by 30 September 2011.

FamilyVoice Australia is a national organisation which, among other things, has a longstanding interest in democracy, the rule of law, constitutionalism and the separation of powers. It is independent of all political parties.

2. Democratic principles and electoral funding

The funding of political candidates and parties in elections is an integral element of a democratic system of government. The way in which elections are funded is of critical importance to the integrity of the electoral process and the strength of parliamentary democracy as a whole. Consequently, election funding law should facilitate the kind of representative democracy cherished by the Australian people.

2.1 Individual freedom

As Professor Lumb points out in his book *Australian Constitutionalism*, the roots of the modern Australian system of government lie in the debates and battles in earlier centuries over providing a system of effective constraints on government power.¹ The idea of the rule of law, or limited government, overturned the earlier doctrine of unlimited sovereignty under which people were subject to the arbitrary will of the ruler.

The core idea of the Australian system of government is recognition of the right of the citizen to freedom under the law. This fundamental freedom is expressed in many ways, including the right to stand for election and vote, and also through the right of a citizen to use his financial resources to further his political objectives. Any constraint on the freedom of a citizen to fund political candidates or parties needs to be fully justified.

Reasonable measures to encourage citizens who wish to fund political candidates or parties should be seen as a means to foster political freedom.

This recognition of individual freedom emerges from the Judaeo-Christian understanding of mankind being made in the image of God and therefore being entitled to respect and dignity.²

2.2 Freedom of association

Another central element of the dignity of mankind is the recognition that people are inherently relational and naturally join with others in groups of various kinds.

In a political context this involves *“recognition of the fact that between the ruler and the mass of the citizenry there are a variety of groups to which the citizens belong. They may be occupational (guild, union, association), religious (church), educational (school, university), cultural and social. Certainly, in earlier periods, battles over authority and allegiance were often fought between an overweening State (Monarch) and the Church anxious to preserve the rights of its members but also at times encroaching on such rights. The concept of limited sovereignty recognises that claims to allegiance or obedience may arise from a number of groups...”*³

Political parties are among the kinds of association which citizens should have the freedom to form or to join. Furthermore, political parties should have the freedom to raise funds and use them in political campaigns, subject only to constraints which have strong justification.

Other community groups which are not political parties should also be free to participate actively in the political process, including during election campaigns.

2.3 Civil society

Freedom of association provides the basis for civil society, which has been defined by the London School of Economics Centre for Civil Society as follows:

*Civil society refers to the arena of uncoerced collective action around shared interests, purposes and values. In theory, its institutional forms are distinct from those of the state, family and market, though in practice, the boundaries between state, civil society, family and market are often complex, blurred and negotiated. Civil society commonly embraces a diversity of spaces, actors and institutional forms, varying in their degree of formality, autonomy and power. Civil societies are often populated by organizations such as registered charities, development non-governmental organizations, community groups, women's organizations, faith-based organizations, professional associations, trade unions, self-help groups, social movements, business associations, coalitions and advocacy groups.*⁴

The links between civil society and democracy were explored by Alexis de Tocqueville and developed by 20th century theorists like Gabriel Almond and Sidney Verba, who identified civil society as having a vital role in a democratic order.⁵ They argued that many civil society organisations facilitate better awareness and a more informed citizenry, who make better voting choices, participate in politics, and hold government more accountable as a result. Such organisations also accustom participants to the processes of democratic decision making.

Consequently, election funding arrangements should facilitate, not hinder, the organisations which constitute civil society, including political parties, trade unions, business associations and advocacy groups.

2.4 Representative democracy

Australia's system of representative democracy must be distinguished from direct democracy on the one hand and totalitarian democracy on the other.

Representative democracy is characterised by elected representatives who form a parliament charged with the responsibility of making decisions and acting in the public interest – without direct consultation with the electorate. This enables swift and resolute action in the face of changing circumstances.

Direct democracy involves decisions being made either by referendum or by delegates to a ruling body bound to vote in accordance with decisions made by a majority of their electors. Such a system is inherently slow and can be dominated by sectional interests.

In a totalitarian democracy, elected officials are bound to support an ideology independently of the views of the electorate. The ideology may be considered beyond the understanding of the electorate. The duty of the officials is to ensure that any inconsistent public or private activities are eliminated.⁶

Representative democracy works best when elected representatives maintain a close relationship with their constituents. While not being bound by their electorate, representatives are then able to take the views of the electorate into consideration when decisions are made in parliament.

Election funding arrangements should be designed to facilitate a close working relationship between representatives and their constituents.

2.5 Limitation of abuse

While civil society has a vitally important role in a healthy democracy, some elements of society nevertheless create the potential for corruption and abuse. Political donations may be used to purchase political favours, access to decision-makers, or consideration in policy formation. Such practices could distort the democratic process and undermine faith in government.

An important element of the Judaeo-Christian perspective on human society is an understanding of frailty or sinfulness of mankind. This notion is captured in Lord Acton's famous dictum: "*Power tends to corrupt and absolute power corrupts absolutely.*"⁷

Consequently, some constraints on civil society and commercial institutions are necessary for the limitation of corruption and abuse.

2.6 Political freedom

A detailed study of political finance in Australia, undertaken at the School of Social Sciences of the Australian National University for the Democratic Audit of Australia, made the following observation about private political funding.⁸

The foremost democratic virtue of funding of Australian political parties and its regulation is, perhaps, the fact that citizens, companies and trade unions are legally free to contribute politically in whatever manner they like and parties are free to receive any contribution. Insofar as political contributions are a form of political expression, freedom of political speech is then preserved. Moreover, the ability of parties to receive whatever contributions they see fit buttresses the freedom of political association.

3. Green paper Chapter 4: Public funding (and too (d))

The *Electoral Reform Green Paper: Donations, funding and expenditure* was released in December 2008.⁹

The Green Paper states (at 4.10) that “*The aims of introducing a public funding scheme were to provide a greater equality in the opportunity to present policies to the electorate and to reduce the risk of corruption and undue influence.*” The latter was to be achieved indirectly by reducing the reliance of political parties on private donations to raise sufficient funds for an election campaign.

There is no evidence that either of these aims has been achieved despite the massive investment in public funding

The main effect of public funding has been to increase the amount available for election campaigning by all parties.

This is acknowledged in the Green Paper (at 1.15):

“The amount of private funding raised by political parties to contest elections has increased to the extent that critics argue that the public funding and financial disclosure scheme is not effective in reducing political parties’ and candidates’ reliance on private funding. It would appear that public funding has been integrated into campaign budgets as an additional stream of funding that has in turn helped support expanded and lengthened election campaigns.”

An analysis of New South Wales data has revealed that the public funding each party received in 2003 was roughly proportional to the amount of political donations each party was able to raise on its own.¹⁰ For four of the five parties receiving public funding this had no significant effect on their relative overall funding compared to each other.

Those who support public funding are now arguing that it should be accompanied by significant restrictions on private donations, such as upper limits, and caps on election expenditure.

Such demands presume that government, rather than civil society, is responsible for ensuring that parties and candidates are adequately funded. This well-intentioned presumption has the potential to undermine the strength of political parties by reducing their dependence on supporters.

The notion that candidates should be entitled to public funding might be expected in a top-down totalitarian democracy but not in a bottom-up representative democracy.

Recommendation 1:

Public funding has failed to achieve its original objectives of creating equality between parties and reducing reliance on private donations. Support for public funding is increasingly coupled with calls for upper limits on private donations and caps on election expenditure. These measures cannot be justified in a free society. In order to avoid undermining the important relationships between citizens and political candidates, public funding of political parties and candidates in elections should be discontinued.

4. Green paper Chapter 6: Disclosure of political donations (and for (c))

Mandatory public disclosure of financial contributions to political parties and candidates and their campaign expenditures is an important safeguard against inappropriate influence on the political system.

Disclosure thresholds should be set to achieve an appropriate balance between encouraging participation in the democratic process through financial support to political parties and candidates, and the public interest in knowing the source of political donations, especially larger donations.

Parliament increased the disclosure threshold from 'amounts of \$1,500 or more' to 'amounts of more than \$10,000' with effect from 8 December 2005. This \$10,000 threshold is indexed in July each year based on the All Groups Consumer Price index at 31 March.

The disclosure threshold applying for the 2011-12 financial year will be \$11,900.¹¹

Factors supporting the higher threshold for disclosure include:

- (a) preserving the privacy of citizens (and their businesses) who choose to make political donations, and
- (b) limiting the compliance costs of political parties in reporting the sources of donations over the threshold.

The disclosure threshold should be high enough to allow political parties to attract adequate private donations without an undue administrative burden of disclosure.

The major factor that should limit the threshold is the public interest of enabling the public to be aware of the major supporters of political parties. A robust democracy requires openness and accountability in the contributions to political parties, since those contributing large amounts could have significant influence over candidates who are elected to positions of responsibility and authority. The disclosure threshold should be set at a level that will allow the public knowledge of the source of the larger donations to political parties and candidates.

The three criteria for determining an appropriate threshold are: preserving donor privacy, limiting compliance costs and safeguarding the public interest.

One approach to determining the threshold would be by reference to a fixed proportion of the total donation income raised. This would:

- (a) safeguard the public interest by ensuring that a fixed proportion of the donation income raised is subject to public disclosure; and
- (b) adjust the threshold to compensate for changes in donor generosity affected by changing salaries, living costs and other economic factors.

In its report on the conduct of the 2004 Federal election an earlier committee argued that:

*In supporting an increase in thresholds, the Committee is convinced that, since under the present rules 88% of the value of disclosed donations to the major parties is greater than \$10,000, even if the disclosure threshold were increased to that amount, disclosed donations would continue to be a very high proportion of all donations. Nevertheless, higher thresholds would encourage more individuals to make donations to all candidates and parties.*¹²

This approach has been challenged by Young and Tham who point out that this percentage refers only to receipts classified as “donations”, whereas if the total receipts were used instead then only an average of 64.1% of total receipts would have been disclosed from 1998/99-2004/05 with a threshold of \$10,000¹³. The earlier threshold of \$1500 would have resulted in an average disclosure of 74.7% of all receipts.

However, if there is a problem with donations being improperly classified as other income then this should be remedied for other reasons as this could mean individual receipts of large amounts were not being declared as donations. As long as disclosure rules apply to donations then it makes sense to use the total of donations as the denominator in a percentage calculation.

Another complication mentioned by Young and Tham is the existence of separately registered state branches of most political parties, so that the current arrangements allow a donor to give \$10,000 to each of nine associated “parties” without disclosure being required. As long as the electoral law permits the registration of state based parties they are entitled to be treated as separate entities for disclosure purposes.

In order to balance all these factors it could be appropriate to use a fairly high percentage of total annual donations – somewhere between 90 and 95% - to determine the monetary threshold required to ensure disclosure of this percentage of donations.

Recommendation 2:

The annual threshold for disclosure of political donations should be based on the previous year’s returns so as to ensure that a fixed percentage, between 90 and 95%, of total donations are disclosed.

5. Green paper Chapter 7: Bans and caps on private donations

The democratic principles outlined above suggest that any restriction on private donations to political parties or candidates would need to be justified on the basis of verifiable concerns that could not be adequately addressed by other means such as disclosure requirements.

Given the peculiar nature of the gaming industry and its already disproportionate influence on government in Victoria due to the size of its net contribution to revenue, the existing limitation in section 212 of Victoria’s Electoral Act on donations from the holders of casino and certain gaming licenses is entirely appropriate and should be maintained.

In the absence of any specific concerns about other inappropriate sources of donations there is no justification for either setting a maximum limit as applies in Canada or excluding or imposing limits on other categories of donors. Appropriate disclosure requirements should adequately meet the need for transparency.

The *West Australian* has reported on one big donor to the Liberal party for the 2007 election campaign, Mrs Josephine Armstrong.¹⁴ Mrs Armstrong, a private citizen, donated a total of \$600,000 to the campaign because “it sounded as if John Howard could do with some extra money”. There is no case in a free society for restricting Mrs Armstrong’s freedom to make such a donation.

Recommendation 3:

Limits on private donations should only be imposed when there is clear and specific evidence for a specific concern. Otherwise there should be no limits on private donations.

6. Green paper: Chapter 8: Caps on expenditure (and for (d))

The democratic principles outlined above suggest that in the absence of a clear justification any caps on election expenditure would be inappropriate.

The case for caps on election expenditure has not been made out. It is either merely a sentiment that “too much” is being spent on elections or, when coupled with proposals to increase public funding and limit private donations, an attempt to “socialise” election campaigning.

Recommendation 4:

There is no case for capping expenditure on election campaigns.

7. Membership of political parties

While political parties in Australia are not obliged to release membership figures, and most have declined to do so in recent times, it is generally agreed that there has been a marked decline in membership numbers.

Researchers from the Australian National University examined the available evidence for the Democratic Audit of Australia. They concluded:

“In total, we estimate that membership of all Liberal, National, Labor and Democratic Labor Party in the 1960s and the Democrats since 1977 has declined, from 4 per cent of the electorate in the 1960s to less than 2 per cent in the late 1990s.”¹⁵

A halving of public participation in political parties over a thirty year period is not a positive development in a representative democracy.

Tax deductibility for political party membership dues is a useful and justifiable measure to encourage increased participation by individuals in the political party of their choice.

Recommendation 5:

Tax deductibility for political party membership dues should be supported.

8. Political contributions and gifts

From 22 June 2006, contributions and gifts to political parties and to independent candidates and independent members have been tax-deductible for amounts up to \$1,500 in each income year.

These are relatively modest amounts, not of a size likely to lead to concerns about undue influence on the political process. Rather donations of this size are a healthy measure of political participation.

An important effect of tax deductibility of donations generally is to strengthen the links between citizens and the associations and parties which make up civil society. In the case of political parties, tax deductibility of donations would facilitate the raising of private funds for campaign purposes and decrease reliance on public funding.

However, in February 2010 the Parliament passed the *Tax Laws Amendment (Political Contributions and Gifts) Bill 2008*. As introduced by the Rudd government the Bill would have entirely removed tax

deductibility for donations to political parties. It was amended in the Senate to retain tax deductibility for individuals while removing it for businesses.

This discrimination seems unjustified. Why shouldn't those engaged in business enterprises be encouraged, like other citizens, to participate in the political process through tax deductibility for reasonably modest donations of \$1500? This measure particularly impacts on small business owners whose income is derived entirely from their business.

Public funding of political parties is sometimes proposed as a desirable approach. However, this would provide a conduit for funding which bypasses civil society and thereby weakens the representative nature of Australian democracy. Public funding increases the likelihood of celebrity candidates, who are disconnected from civil society, being elected.

Recommendation 6:

All contributions and gifts to political parties and to independent candidates and independent members for amounts up to \$1,500 in each income year should be tax deductible. Tax deductibility for such donations by businesses should be restored.

9. Role of third parties (tor (b))

As explained at 2.2 and 2.3 above community groups which are not political parties should also be free to participate actively in the political process, including during election campaigns and election funding arrangements should facilitate, not hinder, the organisations which constitute civil society, including political parties, trade unions, business associations and advocacy groups.

Third parties are people or organisations (other than registered political parties, candidates and Federal government agencies) who incur political expenditure as defined in the Act.

Political expenditure is expenditure incurred by a person or organisation, or with their authority, on:

- public expression of views on a political party, candidate in an election or member of the Federal Parliament by any means;
- public expression of views on an issue in an election by any means;
- printing, production, publication, or distribution of any material that is required by section 328 or 328A of the Act to include a name, address or place of business;
- broadcast of political matter in relation to which particulars are required to be announced under sub-clause 4(2) of schedule 2 to the *Broadcasting Services Act 1992*;
- opinion polling and other research relating to an election or the voting intention of voters.

Other expenditure (for example, on administration or travel) is not political expenditure for reporting purposes.

Where political expenditure reaches the disclosure threshold, third parties are required to lodge an annual *Third Party Return of Political Expenditure* by 17 November each year.¹⁶

The disclosure threshold amount for political expenditure by third parties is the same as the disclosure threshold for donations to political parties, that is \$10,000 in 2005-06 indexed to the CPI. It will be \$11,900 for 2011-12. Third parties are also required to declare any donation above the disclosure threshold which is spent wholly or partly on political expenditure.

These disclosure requirements are reasonable for the reasons given above for requiring disclosure of donations to political parties above a threshold. The disclosure threshold for political expenditure by and donations to third parties should remain the same as the disclosure threshold for donations to political parties.

Recommendation 7:

Political expenditure by and donations to third parties above the disclosure threshold set for donations to political parties should continue to be subject to disclosure requirements.

10. Endnotes

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3. Lumb, *op cit*, p 5.
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