



**PETER ANDREN MP
FEDERAL MEMBER FOR CALARE**

FACSIMILE MESSAGE

DATE: 8 April 2004
TO: Frances Gant
Inquiry Secretary
JCSEM

Joint Standing Committee on Electoral Matters
Submission NO 9
Date Received 8/4/04
Secretary

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No. of Pages: 8
(including this page)

COMMENTS:

Dear Frances,

Follows a submission to the Joint Standing Committee on Electoral Matters' inquiry into disclosure of donations to political parties & candidates from Peter Andren MP, Federal Member for Calare.

The original copy will follow in the mail.

Thanks and regards,

Tim Mahony *f I*
Senior Adviser to ^/
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Federal Member for Calare

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8 April 2004

The Secretary
Joint Standing Committee on Electoral Matters
Parliament House
CANBERRA ACT 2600

Dear Secretary,

**RE: COMMITTEE INQUIRY INTO THE DISCLOSURE OF DONATIONS
TO POLITICAL PARTIES & CANDIDATES**

Please accept this letter as my submission to the Joint Standing Committee on Electoral Matters' inquiry into the disclosure of donations to political parties and candidates.

Introduction

The terms of reference for this inquiry are:

- (a) *the matter relating to electoral funding and disclosure, which was adopted by the committee on 15 August 2000, and any amendments to the Commonwealth Electoral Act necessary to improve disclosure of donations to political parties and candidates and the true source of donations; and*
- (b) *any submissions and evidence received by the Committee in relation to that inquiry of 15 August 2000.*

In relation to (a), I contend the most effective way to improve the disclosure rules governing donations to political parties and candidates is to limit donations to a basis of individual persons to individual candidates, restricted to a maximum \$1000; legislate a cap on an individual candidate's campaign spending at \$50,000 indexed to the CPI and require all candidates to lodge electoral returns at each election.

Disclosure in Australia

Under the *Commonwealth Electoral Act 1918* (the Act), disclosure rules for political donations presents significant weaknesses in regard to transparency and public perceptions of influence within our democracy.

As it currently stands, the Act allows considerable discretion to political parties and candidates in determining how the funds they receive are classified, which in turn influences what is declared and how much detail about their donors must be provided. This does not contribute to any credible level of transparency for either party annual returns or the returns of their donors.

Party Annual Returns

Australia's political parties are required to file annual returns to the AEC detailing all amounts received, all expenditures and outstanding debts. This is required of each branch of a party.

A party's 'receipts' include all funds received, irrespective of whether or not they are donations or income from other sources. Donations include both cash and 'gifts-in-kind'.

The AEC stipulates parties identify their receipts as 'donations' or 'other receipts'. Generally 'other receipts' will include membership subscriptions, dividends from investments, rents received from properties or public funding from primary votes received in an election. Although the AEC requests this distinction be made, it is not a legislative requirement for a party to do so. When a payment is not classified, it is recorded as 'unspecified'.

Where payments are 'unspecified', the party is not obliged to disclose any details, making it impossible to determine if it is a donation. As it is purely at the party's discretion to clarify its receipts, it is well within its rights to classify a donation as 'unspecified' to avoid releasing the details of the payment.

Similarly, the details of donations, or 'other receipts', of less than \$1500 do not have to be disclosed, even though they are included in the 'total receipts' of a party's return. Donations from the same source are not cumulative to the \$1500-threshold. Donors can make an unlimited number of donations below this limit to a single party branch or affiliated organisation, without the party disclosing their details.

The discretion for the parties to classify payments as 'unspecified', and the \$1500 disclosure threshold, leaves significant leeway for a political party to conceal a donor if considered necessary. Whilst this may serve party political purposes, it is hardly transparent and unlikely to engender confidence amongst voters that influence cannot be bought in Australian politics.

Donor Returns

Under the Act, any person or organisation donating \$1500 or more to a registered political party in a year must lodge an annual return with the AEC

This requirement may assist in tracing multiple donations of less than \$1500 to a single party branch, as outlined above, by cross-checking a party return against an individual donor return. However, the difficulty is that if a donor

does not lodge a return, it cannot be cross-checked against the party return as the party is not required to disclose the details of donations under \$1500.

Further, a donor may donate amounts below the threshold to separate branches of the same party and side-step the AEC requirements to lodge a return as each branch of a party is considered a separate entity.

Despite the fact it is a legal requirement, it seems there is no way to enforce a donor to disclose their activities if they wish to remain anonymous.

One particularly grey area for donors is in their attendance at party fundraising functions, especially where they believe they have received a service in return for their money. For example, where a person attends an event, at a ticket-price above \$1500, and gains access to senior government ministers, that person may feel this access benefits their business, and is therefore a purchase of services rather than a donation, and therefore no return needs to be lodged.

The problem from the public's perspective is that elected representatives, from senior government ministers to backbenchers, are supposed to serve all people and not just those who purchase services, and "this 'loophole' suggests that the current disclosure law may allow the hiding of the very types of donation-linked influence that it ostensibly aims to expose".¹

Public Funding

The amount of public funding a candidate receives at the next election will be calculated at \$ 1.92 per first preference formal vote received. The rate is indexed to increase every six months in line with the CPI.

A 1983 parliamentary committee recommended the introduction of public funding for elections, arguing it would reduce the importance of money to campaigns thereby removing the taint of corruption. It was also supposed to return political parties to the people as they would be less dependent on big business. Twenty years on from the introduction of public funding this is far from the case.

In 1984 with the first public funding election, the cost to the taxpayer was \$7.8 million at 31c a primary vote. In 2001, the cost was \$38.5 million at \$1.87 a vote. The next election will push public funding well over \$40 million. That is surely enough to run a legitimate campaign for all candidates.

However, spending by the major parties in elections has well exceeded public funding levels. Although difficult to confirm due to the fact Australian political parties no longer have to lodge specific election returns (election spending is contained within the party's annual return for that year), one media report

¹ Miskin, Sarah, "Political finance disclosure: party and donor annual returns 2002-03", *Research Note No. 49, 29 March 2004*, Parliamentary Library, Department of Parliamentary Services.

stated that in the 2001 election, the political parties combined spent \$50 million campaigning.² Public funding for the 2001 election totalled \$38.5 million.

Due to the lack of specific information in regard to how much the parties spend on elections, direct comparisons to public funding received are only possible for the 1984, 1987, 1990 elections. The table below illustrates the disparity between spending and public funding for the ALP, the Liberal and National Parties:³

	\$	1984	1987	1990
Labor	Expenditure	4,700,420	10,601,833	14,598,612
	Public funding	3,669,264	4,759,415	5,300,869
Liberal	Expenditure	4,798,619	6,206,094	11,862,872
	Public funding	2,597,283	3,495,840	4,612,261
National	Expenditure	2,731,129	3,758,166	3,402,608
	Public funding	839,292	1,221,785	1,178,939

These figures certainly support the proposition that public funding has encouraged, rather than contained, party spending on election campaigns. Yet it must be emphasised public funding remains vital for unaffiliated candidates without access to the spending power of major parties.

Campaign Spending Cap

The amount of money that a candidate, independent and party affiliated alike may spend in an election campaign should be capped at \$50,000, indexed to the CPI. The spending limit should be legislated to apply not only to the candidate personally, but to the campaign as a whole, to include expenditure made by supporters on the candidate's behalf.

The \$50,000 limit will also need to be legislated as the maximum amount of public funding a candidate may receive, even if his/her share of formal first preference votes would exceed this limit under current arrangements.

All candidates will still receive public funding according to primary votes received up to this limit. This will help counter any suggestions of profiteering by candidates and level the playing field for everyone standing for election. Candidates will obviously still spend different amounts for their respective campaigns, but the 'gap' between them will at least be contained.

A \$50,000 cap will more than adequately cover a mail-out to each of the roughly 50,000 households in a federal electorate, leaving some \$40,000 for moderate television, radio and press campaign; the printing of hand-outs leaflets, letters, 'how-to-votes' and posters for the booths; and for a campaign

² Kearney, Simon & Vass, Nathan, "Taxpayers \$100m bill", *Sunday Mail*, 11 November 2001.

³ Charles, Ernest, "Financing elections in Australia: reflections on a decade of public funding and (non) disclosure", Paper presented to the Australasian Study of Parliament Group annual conference, Hobart 21-22, September 1990; pp.3-4.

office. In the case of the incumbent, the campaign office should be separate from the electoral office.

In my personal experience campaigning as an independent in three federal elections, around \$50,000 has proved sufficient to help get my views and policy positions out to the electorate, along with the usual media editorial coverage.

I anticipate a campaign spending cap will not only make it easier for people to vote for their local member according to the candidates' merits, rather than a high-saturation media blitz directed from a party's national campaign headquarters, but also contribute to 'returning the major parties to the people'.

Donation Limits

In the United States, the *Bipartisan Campaign Reform Act (BCRA) of 2002* - known as the McCain-Feingold Law - was passed on 27 March 2002 and survived a Supreme Court challenge (almost entirely in its original form) in December 2003. The BCRA is designed to facilitate the same 'reconnection' of the major US political parties to the American people by regulating political donations.

The McCain-Feingold Law is a complex piece of legislation. Essentially it prohibits donations from corporations, unions and wealthy individuals to pan-affiliated 'political action committees'. Prior to this, such committees were used by the parties to get around laws which limited donations to parties and candidates to amounts and from individuals only. These are referred to as *soft money* donations. *Hard money* refers to funds raised from individuals only and within the limits.⁴

In a country where, for the 1996 elections, it was widely held that a sitting member or senator would need, on average, \$600,000 to be re-elected, this certainly suggests that limit-free, *soft money* donations are the main campaign drivers.

For the 2003 financial year, the top 50 campaigns for the US Senate by funds raised ranged from US\$1,027,855 to US\$11,757,505. For the House of Representatives, the funding levels ranged from US\$803,359 to US\$2,044,362.⁵

These figures indicate the extraordinary amounts of money involved in federal election campaigns in the United States. Despite the fact that the effectiveness of the McCain-Feingold Law will not be known for some years, especially in regard to the exploitation of 'loopholes', the American press has already noted

⁴ For a summary of the *Bipartisan Campaign Reform Act of 2002* refer to: Gross, Kenneth, "The New Federal Campaign Finance Act - In a Nutshell", *Campaigns & Elections*, July 20 32; pp. 22-26.

⁵ Figures are taken from the Federal Electoral Commission of the USA website: www.fec.gov.

the emergence of third party organisations, without official political affiliation but actively involved in campaigning on federal political issues.⁴

Limits on donations alone, from the US experience, serves only to encourage the exploitation of loopholes in campaign finance laws. The weaknesses in Australia's disclosure regime, as we have seen, are similarly exploited.

Donation limits for Australia

In concert with the campaign spending cap, a limit on donations to those from individuals to individual candidates, and limited to a maximum \$ 1000 could be significantly more effective. If third party organisations were to engage in raising millions of dollars of funding outside the regulations, the \$50,000 campaign spending cap rules out the opportunity to spend it.

The perceived benefit for donors to contribute large sums of money to a campaign in the hope of influencing public policy is therefore reduced.

The donation limit I have proposed will avoid the pre-McCain-Feingold Lav situation where large-scale donations from corporations, unions and individuals avoided prohibition and donation limits by being channelled to a campaign through political action committees and situation now where third party organisations appear to be taking up the fundraising mantle.

Election returns

The adoption of a campaign spending cap and donation limits will also require the amendment of the Act to ensure all candidates, regardless of party affiliation, to lodge election campaign returns to enable the enforcement of these measures. Registered political parties should still be required to lodge annual returns for each financial year.

RECOMMENDATIONS:

- 1. The *Commonwealth Electoral Act 1918* be amended to limit the amount of money spent by a candidate in a federal election campaign to \$50,000 indexed to the Consumer Price Index (CPI) and public funding per primary vote be limited to a maximum \$50,000 reimbursement.**
- 2. The *Commonwealth Electoral Act 1918* be amended to only allow for political donations from individual persons to individual candidates, to limit such donations to a maximum of \$1000 and apply the act's disclosure provisions to all donors and donations.**

⁴ Justice, Glen: "Court ruling affirms new landscape of campaign finance", 11 December 2013, The New York Times nytimes.com, www.nvtimes.com.

3. The *Commonwealth Electoral Act 1918* be amended to require all candidates regardless of party affiliation, to lodge an electoral campaign return detailing all income and expenditure at each federal election.

Thank you for your consideration of this submission.

Yours sincerely,

A handwritten signature in cursive script that reads "Peter Andren". The signature is written in dark ink and is positioned above the printed name.

PETER ANDREN
Federal Member for Calare