

Submission on

Donations, Funding and Expenditure

Electoral Reform Green Paper

to the

**Special Minister of State
Electoral Reform Secretariat
Department of the Prime Minister and Cabinet
Canberra**

From

Eric Jones

20 February 2009.

i)
CONTENTS.

Page 1	General introduction and overview.
Page 1 – 3	Overview of the Proposed Scheme.
Page 3	Qualifications.
Details of scheme follow.	
Page 4	1) Donations and Private sources.
Page 4	2) Disclosure for Donations and Private sources.
Page 4	A) Political Parties and Candidates.
Page 5	B) Third Party and entities.
Page 6	3) Expenditure.
Page 6	Pamphlet.
Page 7	4) Disclosure for expenditure.
Page 8	5) Third Parties.
Page 9	6) Associated Entities.
Page 9	7) Public funding.
Page 9	A) Eligibility for funding.
Page 10	B) Effort Test.
Page 11	C) Public funding should cover Electoral Education.
Page 11	8) Regulation of the scheme.
Page 11	9) Administration of the scheme.
Page 11	A) General.
Page 12	B) From a political interest point of view.
Page 12	10) Tax Deductibility for membership fees to political parties and general donations up to \$100.
Page 12	11) Annual Financial Statement from registered Political Parties.
Page 12	12) General conclusion.
Page 12	13) Thanks.

1)

General introduction.

I agree with the Principles and Values set out in Chapter 2. 2.1, of the Green Paper relevant to consideration of the regulation of electoral funding and disclosure. For me I would see Integrity, Transparency, Fairness and Participation as the ones I would major on but not neglecting the others.

In 1984 public funding was introduced federally so that it would:-

- 1) allow different parties to be able to have an equal opportunity to present their policies to the electorate;
- 2) prevent corruption and undue influence; and
- 3) provide transparency in the finances of participants in federal elections.

I also note the substantial increase in the cost of federal elections since that time.

For myself I agree with the view that public funding has not made established political parties any less dependent on private funding. Public funding has simply been factored into the ever increasing campaign budget. The situation for new and small parties has simply been made more difficult for them as they tend to be swamped by the saturation advertising, particularly on television, by the major parties. To that extent public funding has made it more difficult.

As well the 4% primary vote cut of point for public funding simply acts as a barrier for the entry of genuine new parties/independents or ongoing minor political parties who are not nuisance candidates. What about a party or a candidate, for example, who receives 3.99% - if they can show genuine effort why they can't be eligible for funding? After all 3.99% is hardly an insignificant vote if it represents an interest in a federal electorate.

Scheme – broad overview.

In responding **I would see a scheme** that is broadly speaking one that has no cap or bans placed on **donations**, except for some entities outlined further on in the model, simply because people and organization have the right to do so. As well it would largely deal with the constitutional position. However there is a case for some caps or bans in certain areas to deal with current public perceptions.

As an incentive for political involvement I would retain tax deductibility for donations and party membership but to make it fairer or for a more level playing field reduce it to \$100. Also the 4% threshold for public funding should be supplemented by an effort component for eligibility.

2)

However I would have a **strict disclosure** regime for donations and other sources of income that is comprehensive, timely and effective in its operation. I guess that a full and comprehensive transparency regime would in any case, perhaps, make bans and caps unnecessary.

Submission of returns should relate to the time in and the type of the electoral cycle – quarterly, weekly or daily depending upon whether it is a fixed or unfixed term and the amount. It should utilize modern and up to date technology hosted from the Australian Electoral Commission website.

Generally, wherever possible, donors and recipients should have to disclose donations over a certain threshold. - See later for amounts. However I would support the Joint Standing Committee on Electoral Matters recommendation for the non reporting of anonymous donations up to \$50 though personally I think \$100 would be more appropriate for open plate donations and raffles etc.

For **expenditure** I would broadly go down the United Kingdom (UK) and New Zealand (NZ) path to reduce the costs of this area by limiting expenditure particularly in the television advertising area with a full disclosure aspect in this area. As well I would advocate a “model” campaign expenditure which amounts would only be eligible for public funding along the lines of the UK system as outlined on page 65 of the Green Paper.

As well **third parties and entities** would have to be more clearly identified and defined so that when they participate full disclosure of their activities prevails. I appreciate that this could be difficult.

It could be considered that to “round of” the various disclosure returns that the supply of an **Annual Financial Income and Expenditure and Asset and Liability Return** from registered political parties should be supplied. I would not extend this requirement to third parties. Again, I suppose that this would be useful in an overall check sense for this system.

In all of this there are the **potential constitutional difficulties** that could make a scheme unconstitutional. Accordingly a scheme would have to meet this area. No easy task!

The **payment calculation for public funding** should stay on “a dollar per primary vote” basis and be effected on the present system. The final payment should not be made until a return has been submitted though interim payments would be made. Final payment should never exceed the total verified expenditure amount.

3)

The **public funding provision** should also have a **component** that provides **for electoral and voting education**. Eligibility and payment would be based upon the primary vote of a political party at both the House of Representatives and Senate for the last election where they have a sitting member and would be paid yearly. It would be only available for the political interests to engage in genuine non party political education particularly in the area of people being able to understand our democratic system, enrolment, voting systems and the casting a valid vote As well such other education that will make our citizens more aware of the system and their responsibilities. It might well have to be a separate scheme from the general public funding scheme.

Not that I particularly advocate it but if the scheme is felt to be administratively burdensome to the major players, the political interests, perhaps a financial provision or contribution should be made to the established parties to enable them to administer it. However this could be seen to be unfair to the other parties required to disclose etc under the scheme.

Regulation of the system should be enforced on an administrative and financial penalty basis along the Canadian lines. Political parties should be regulated under the Electoral Act with a provision that includes a provision that specifically gives a registered party (and/or a state branch) standing before a Court for prosecution and recovery purposes.

There should be overall a **single national authority**, assumably within the Australian Electoral Commission, with state branches that administer a national disclosure scheme where states and territories have agreed to the scheme.

The AEC would have to be adequately staffed, resourced and funded to implement the scheme for it to work.

Overall, we should build on our present scheme by seeking to take the best of the approach of New Zealand and the United Kingdom but also using the Canadian regulatory approach.

Through these arrangements I would generally like to see freedom to donate or raise other sources of income and a reduction in expenditure to hopefully act as a break on a need for raising excessive funds.

Qualifications.

Whilst I have not addressed every aspect outlined in Chapter11, “Issues for Discussion and Comment” (Part 7 – Conclusion. Page 79), I trust that this contribution will cover a fair number of them. Some of my detail is not complete, for example – the campaign model for expenditure and needs further working on. I do not claim that I have been comprehensive enough for everything that I have contributed in this submission.

4)

1) Donations and Private sources.

No capping or banning of donations and private sources except for the following arrangements:-

Banned.

- i) foreign bodies or companies from overseas that do not have an ABN number;
- ii) overseas Australian citizens not on the roll;
- iii) property developers at a state and local government level;
- iv) tobacco, alcohol and gaming companies at all government levels;
- v) organizations that obtain or seek Government contracts at all government levels; and
- vi) lobbying firms at all levels

Capped.

- i) anonymous donations over \$100.

General.

* Incorporated companies and unincorporated bodies must have the consent of their shareholders/members every three years to make donations to political interests or third parties or entities.

* Similarly Unions must have the consent of their members.

Some points for.

Minimises constitutional challenge.

Allows stakeholders freedom to contribute what they want to.

Allows scope for political party and independents to raise the funds required for a campaign.

Banning iii) – vi) deals with the question of public perception which has been at the heart of ‘undue influence’ issue since, before and at least, the Wollongong Council NSW going on.

Some points againsts.

Can advantage some interests in terms of their capacity to donate.

For myself, I would like to see the banning of iii) – vi) but feel that they could have some success with a constitutional challenge to any legislation. I am not a lawyer and cannot speak competently on this point.

2) Disclosure for Donations and Private sources.

A) Political Parties and Candidates.

Should cover all avenues of sources- donations and private sources etc for 1) Elections;
2) Party/organizational administration and research; and 3) Political Education.

5)

Amounts to be disclosed. 1) \$1000 and above; 2) \$2000 and above; and 3) \$3000 and above.

Frequency.

For 1) Set terms and Non set terms. For full electoral cycle on a quarterly basis. During the official electoral period or incomplete quarter on a weekly basis or for donations/other resource receipts over \$10000 daily.

For 2) As in 1)

Re 1) and 2). For the set term regime in the first two years of a three year term or for the first three years of a four year term you might make it half yearly and for the final period go onto the quarterly and weekly election period basis.

Again on a threshold basis.

For 3) Half yearly basis throughout the year.

The reporting authority is to post the disclosures as soon as possible on their website.

Anonymous donations, up to and including \$100 (up from JSCEM's suggestion of \$50) do not have to be disclosed. They are capped at \$101 and above.

Both **donor and recipient** have to **disclose their donation** by due process.

Disclosure returns set up by the central body for use should be as fully descriptive as possible and cover all segments of receipts of donations, funds, loans or "in kind" benefits/contributions. Individual political branches should not be required to submit an individual return but instead be charged to submit appropriate information to the central body for lodgment of the return as soon as possible.

B) Third Party and Entities. Disclosure for Donations and other items.

As per 1) above.

General.

It could be said that the administrative burden being imposed is excessive but this has to be balanced with:-

- 1) a transparent position that supports the integrity of the system;
- 2) transparency and disclosure enhances accountability; and
- 3) a timely and hopefully, up to date position being made for citizens to be able to make a sound judgement of the political interests for voting purposes.

6)

Technology and systems would have to be developed by the AEC so that parties and independents would be able to hook on to it. Common system packages would be given to the relevant parties but particularly to small parties and independents.

Some points for.

Hopefully, covers all areas.

Timely and accurate.

Easily accessed by the general public.

Enhances the integrity of the system.

Disclosure applies to private sources as well as donations.

Some points against.

Could be administratively burdensome, particularly to independents.

Some privacy aspects.

3) Expenditure.

Should be capped upon a “model” expenditure base for an election campaign along the lines of the UK and NZ models. Electorate and overall country/state expenditure should apply.

Refer generally Green Paper pages 64 to 66 for UK scheme particularly. I do not want to reproduce all of the points here. Follow up UK white paper mentioned in 8.23 should be made to see if the system can be improved here in Australia.

Television (TV) advertising should be capped and supplemented by free government bought TV broadcasts which must cover all candidates and parties contesting the elections. I can't address the time allocation question but could be modeled on overseas experience.

As an incentive to reduce expenditure public funding should not be available for:-

- 1) TV advertising; and
- 2) Postal voting printing or party/candidate administration.

For perception purposes as regards the integrity of the service, postal voting should be run by the AEC and funded accordingly. Equity would then apply to all parties/candidates.

Pamphlet.

If it was considered appropriate to cut back expenditure on other advertising areas perhaps the following idea could be considered to compensate.

* A general pamphlet provided outlining at the electorate level the policies of the candidates in ten areas. Seven common wider interest policy areas and three for their local area or whatever combination you would suggest; or

* A state wide pamphlet for distribution.

7)

The production would have to be coordinated and set up by an independent body other than the AEC.

However, in this area we have the precedent of having a pamphlet that Andrew Fisher's Labor Government set up for the For and Against positions on referendum questions.

People could elect to voluntarily receive it in hardcopy or by the internet. Over the years the cost should go down with the ever increasing use of the internet.

If expenditure is less than donations and taking into account receipt of public funding funds the candidates/parties should refund any excess money back, proportionally, to the donors. However, this might be administratively difficult especially for the minor anonymous donations.

Some points for.

Already in operation in the UK and NZ to learn from and adjust to an Australian scheme. Provides a reasonable basis for expenditure for an election campaign.

Could hopefully address constitutional concerns - "though the legislation was an infringement of the right to freedom of political expression, the legislation was for the legitimate purpose of establishing a level playing field for electors."

Lower campaign costs.

Reduces fundraising demands on candidates and political parties.

Evens out access, to some degree, to the media for independent candidates and minor and new parties.

Require less finance for new parties to contest elections.

Caps on TV advertising could reduce excessive TV advertising.

Assists smaller parties, independents and new entrants to enter the field.

Some points against.

Pamphlet, if considered, design, timing and production costs.

Maybe constitutional concerns.

Media interests would be against it as their revenue could suffer on an overall reduction in advertising type situation.

People should be allowed to campaign for as much as they like.

Third parties would be hard to enforce.

4) Disclosure for expenditure.

Follow the same principles as outlined, where appropriate, for donations and private sources. General points above for donations apply.

A full and comprehensive definition of expenditure should apply as per 4.9, page 34, 8.18, page 65 of the Green Paper plus whatever else is appropriate.

8)

Some points for and against.

Expenditure disclosure presents a fuller picture and can minimize the abuse or circumvention of the system. Generally points for and against for donations apply to this area as well.

5) Third Parties.

Because this model does not, generally, advocate banning donations it will be necessary to “regulate” third party bodies that are engaging in the political process by advocating a particular policy position, vote for a particular candidate or party otherwise the political party will simply use them to bypass the rules.

I agree with your comments in discussion point 3.90 (Page 31 of the Green Paper) that the issue of how third parties should be regulated presents particular challenges.

Despite the difficulties in identifying “third parties” the Electoral Acts provisions should still continue to apply.(Page 23, 3.26 etc Green Paper.)

For well known advocacy “political” pressure groups or channels, like Greenpeace or Getup they should comply with the regulation rules which, subject to some modification should have the same disclosure rules as the political parties and interests. However, for bodies that have so called “mass membership” donating small amounts the threshold might have to be smaller.

However it could well be that new third parties will only, in the main, enter into the fray at different times for different purposes. They want be there year in and year out! For set term elections perhaps the reportable time would be six months before an election. For non set terms it could be for the year before the term expiry date or if an election is called early and unexpectedly for the official election period.

This area, under the Act, should be under constant review to suggest changes to, hopefully, eliminate abuse.

Some points for.

Fuller coverage to catch any attempt to bypass the rules.

Integrity of the overall system guarded.

Consistency for all parties spending.

Some points against.

Problem of identifying such third parties and advising them of the requirements under the Act.

Administrative work for them.

9)

6) Associated Entities.

The current rules as outlined in sections 3.15 to 3.17 of page 21 of the Green Paper should be extended to incorporate any relevant items in this submission. I do not think I have much to say here!

From previous history these entities would be well known for identification purposes. Disclosure of income from all sources including loans etc and expenditure would have to be comprehensive for them.

Some points for.

Consistency across the scheme.

Safeguard the integrity of the scheme.

Some points against.

Administrative work for them.

7) Public funding.

A) Eligibility for funding.

There is a perception that the 4% threshold excludes candidates as it is normally spoken of it being used to exclude “nuisance” candidates. The aim, unspoken though, could well be to discourage them through the financial cost to them of their campaigns if they are not elected.

There is a case for a mechanism for some means of excluding genuine “nuisance candidates” that appear on, for example, Senate ballot papers and the 4% threshold is appropriate.

However, this threshold can be unfair to newer new entrants and smaller political parties.

There needs to be a mechanism that rewards genuine effort for public funding, for those who receive less than 4%, as it simply recognizes their right to participate in the electoral process along with all of the other political interests.

An anomaly to the threshold principle is already in place. This is where a candidate is elected on less than the 4% primary vote through the preference flow. (As an aside most successful candidates elected in Upper Houses in Australia do so on less than 4% primary vote by virtue of the preference flows to their party members. Mostly, only the number one candidate receives more than 4% for the primary vote.)

10)

What I mean here is that a candidate, group or party perform certain activity in the election campaign and still do not reach the 4% they should still be eligible. What about the candidate who receives 3.99% and misses out by a few votes public funding. It does happen – witness at the last federal election the Christian Democratic Party (CDP) candidate for Reid in New South Wales, Dr. Alex Sharah, who received 3170 out of 79438 formal first preference votes. If he had received 8 more votes he would have been eligible for public funding at \$2-10 approx per vote. Similarly Jo Sammut, the CDP candidate for Lakemba at the last New South Wales state election missed out by some 12 votes to receive public funding at the state level. No doubt other parties and candidates can recite such circumstances.

Where is the justice in these situations?

Payment of public funding funds should be made to the candidate. There should be a provision that a candidate can assign payment to their party.

B) Effort Test.

For those candidates that receive 4% or less they should still be eligible if they have put a demonstrated effort into their campaigns. The effort should be measured by such criteria as :-

- 1) Did they man the physical Prepoll centre with staff and How – to – Votes;
- 2) Did they produce a leaflet and was it distributed in a reasonable area of their electorate;
- 3) Did they man most of the polling booths for at least half the time on Election Day; and
- 4) Did they have, at least, one advertisement in a local paper?

This effort criterion is still a high threshold but it would show that they were not “nuisance” candidates.

If a candidate has completed most of the above and still did not receive the 4% mark he/she should still be granted eligibility for Public Funding.

Such a change should enhance democratic participation as this was one of the reasons advanced for public funding in the first place.

If you feel the administrative arrangements to implement this is to high then consider reducing the % threshold to 2 or 3%.

Some points for.

Fairer and more equitable to all genuine participants.

A sense of justice would be recognized. An injustice addressed.

Effort is recognized and is an incentive to do a good job and compete more effectively.

More equal opportunity.

11)

Some points against.

More administration.

More cost but I suspect not by a substantial amount.

C) Public funding should cover Electoral Education.

The public funding provision should also have a component that provides for electoral and voting education. Eligibility and payment would be based upon the primary vote of a political party at both the House of Representatives and Senate for the last election where they have a sitting member and would be paid yearly. It would be only available for the political interests to engage in genuine non party political education particularly in the area of people being able to understand our democratic system, enrolment, voting systems and casting a valid vote As well such other education that will make our citizens more aware of the democratic system and their responsibilities. It might well have to be a separate scheme from the general public funding scheme.

It would not apply to administration, research or to the internal affairs of the political parties. It would simply be a means by which the political parties would demonstrate to the general party a solid commitment to the electorate in this area. It would also be a counter to the negative perception that politicians have, unfortunately, in the wider community.

In this regard look at the New South Wales system.

8) Regulation of the scheme.

Regulation of the system should be enforced on an administrative and financial penalty basis along the Canadian lines. Political parties should be regulated under the Electoral Act with a provision that includes a provision that specifically gives a registered party (and/or a state branch) standing before a Court for prosecution and recovery purposes.

For blatant cases of abuse where the Member of Parliament is involved a last stage penalty of a loss of ones seat should be provided for in the penalties.

9) Administration of the scheme.

A) General.

There should be overall a single national authority, assumably within the AEC with state branches that administer a national disclosure scheme where states and territories have agreed to the scheme.

The AEC would have to be adequately staffed, resourced and funded to implement the scheme for it to work

12)

B) From a political interest point of view.

Not that I particularly advocate it but if the scheme is felt to be administratively burdensome to the major players, the political interests, perhaps a financial provision or contribution should be made to the established parties to enable them to administer it. However this could be seen to be unfair to the other parties required to disclose etc under the scheme.

10) Tax Deductibility for membership fees to political parties and general donations up to \$100.

As an incentive for political involvement I would retain tax deductibility for donations and party membership but to make it fairer or for a more level playing field reduce it to \$100 from the present \$1500.

11) Annual Financial Statement from registered Political Parties.

It could be considered that to “round of” the various disclosure returns that the supply of an Annual Financial Income and Expenditure and Asset and Liability Return should be supplied. I suppose that this would be useful in an overall check sense for this system.

12) General conclusion.

I think we should major on the best elements of the United Kingdom and New Zealand systems and incorporate them into our arrangements. Going down the Canadian track would be good in the regulatory area. However it could lead to frustration because political interests could feel that they are to constrained in being able to adequately get their views across. Maybe I am wrong here but it is a feeling I have on the Canadian scheme.

As well I do not think that a scheme that, 1) substantially increases, or 2) requires full election cost coverage in public funding will go down well with the general public.

In the short term we also have to bear in mind the current economic situation of our nation.

13) Thanks.

Thank you for the opportunity of making this submission to the Green Paper.