

**SUBMISSION CONCERNING THE ELECTORAL REFORM GREEN PAPER  
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## **1.0 Executive Summary**

Creating the right political finance laws is not an easy task, as it can often involve: setting aside partisan interests; weighing up and deciding between two different, yet equally, important values; and attempting to anticipate unintended side-effects. The Australian Government must be congratulated for its willingness to engage in such a sensitive topic and the authors of the Green Paper must be congratulated for preparing a detailed discussion of the complex issues involved.

The major aim of this submission is to describe and advocate innovative ideas that have received little attention in the political finance debate. In summary, the four recommendations made by this submission are:

1. **Create a model based on the US Clean Money system for candidates to qualify for public funds before elections and that does not rely on past electoral victory.** In the US, a number of states use the Clean Money public financing model, which enables candidates to receive public funds prior to an election. Candidates qualify to receive this money by collecting a specified number of small token donations. A similar model could be adapted for Australia.
2. **Providing a public web hosting service for candidates.** One inexpensive way of attempting to promote equity between candidates would be for the Australian Election Commission (AEC) to maintain a candidate website index, with candidates grouped by electorate. Users would be able to select their electorate and be provided with a link to the personal website of every candidate participating in an election (who has a website). People are more likely to look at candidate webpages if they are easily accessible through one well-known website, rather than searching for each candidate's webpage.
3. **Ban all donations from organisations and limit the amount of money individuals can contribute, exempting candidate contributions to their own campaign. Personal donation limits should be indexed to inflation. Parties with few or no elected members should have relaxed restrictions.** Given the controversy surrounding donation bans and limits, a detailed defence of this position, derived using Goodin's (1995) political philosophy decision-making framework, is presented in Section 4.
4. **Set up a democracy enhancement fund.** A democratic enhancement fund is one into which individuals and organisations can contribute as much money as they wish. Entities could be induced to contribute if they were offered incentives, such as access. In order to minimise the chance of these donors exercising undue influence, the money is divided amongst every party and independent represented in at least one house. Every elected independent or party with at least one elected representative receives one share per seat contested in the last election. In this way, large donations are encouraged, but the potential influence large donors can exert is blunted, as no single party benefits in relation to their competition. Section 3.2 provides responses to potential criticisms that the fund: institutionalises the sale of access; protects existing parties; and is vulnerable to loophole exploitation.

The following seven pages of this submission describe recommendations for reforming both private and public political funding. The remainder is a detailed justification of why organisational donations should be banned and why citizen donations should be limited, derived using the lens of a political philosophical moral framework.

## **2.0 Recommendations Concerning Public Funding**

The initial rationales behind providing public funding – particularly minimising undue donor influence and levelling the playing field – remain relevant in today’s world. Investing in a well-designed public funding regime can be seen as a form of insurance – by spending a relatively small amount of money now, society guards against a potentially far greater loss later. The Australian Government is entrusted with the responsibility for wisely spending a large amount of money. The Government will be more likely to spend that money wisely if donors do not have undue influence and if the Government faces political competition capable of assessing its decisions and providing viable electoral alternatives. Hence, a well designed public funding system could be justified on the grounds of increasing government accountability alone. Given that the Federal Government is also responsible for important areas such as law, defence, social justice and health, there is a clear need for government accountability. If public funding can be used to stimulate competition and increase accountability, then Australia has good reason to provide public political finance.

The above argument presents only a *prima facie* case for public funding. In order to truly justify public funding, the system must be capable of producing these benefits. It is evident that the current system does not reduce the potential for donors to exercise undue influence, as parties still collect large donations. The fact that 80% of public money goes to the nation’s two most powerful parties suggests that the system currently serves more to protect major parties than assist smaller ones. Rather than abandoning public funding, however, the system should be modified so that it achieves the intended objectives.

### ***2.1 RECOMMENDATION 1: Create a model based on the US Clean Money system for candidates to qualify for public funds before elections and that does not rely on past electoral victory.***

Public funding would be of greater assistance to new entrants if it could be accessed before elections. The Clean Money public financing system used in US states, such as Arizona and Maine, provides a model which could be adapted for Australia. Candidates for House of Representative elections could qualify for electoral funding by collecting token donations (eg. \$10 to \$30) from a specified number of voters in their electorate (eg. 200). Eligible candidates can receive public funding equal to three times the total amount of money they collected in token donations. In order to minimise the chance of funds being misused, cash should not be handed out. Instead, candidates should be required to draw upon their entitlement by forwarding invoices or receipts to the AEC. Guidelines would have to be drawn detailing which goods and services candidates can claim reimbursement. Whilst there may be a number of legitimate political expenses for which candidates will be unable to claim reimbursement, any candidate with a chance of winning can be assumed to have at least a minimal amount of finance.

Candidates should be able to qualify for public funds using both the matched donation method and the first preference vote method currently in use. This is to prevent those candidates more successful at collecting votes than donations from being disadvantaged. However, those candidates who succeed in qualifying for money using both methods should only be entitled to the larger amount. Hence, when candidates qualify to receive public money from first preference votes, their entitlement is reduced by the amount of

public money they have already received from matched token donations, to a minimum of \$0.

In the US, Clean Money Senate candidates can also qualify for public funds by collecting token donations, although the number of donations Senate candidates must collect is much greater than the number needed by House candidates. Senate candidates also receive a greater amount of money, as they are campaigning across an entire state. Whilst it would be possible for Australia to adopt a similar system, it is difficult to see any benefit. In NSW – and one would imagine the rest of Australia – political campaigns extol citizens to vote for a party in both houses. Campaigns for House candidates are not conducted separately to campaigns for Senate candidates. It is difficult to see a need in Australian politics for Senate candidates to receive more money than House candidates, or why parties should receive money for Senate campaigns on top of money for House campaigns. The only people who could benefit from matched donations in Senate races are independents or parties which only contest the Senate. Even for these, the benefit of providing public funds before an election is minimal. Unless the state is very small, any group capable of campaigning across an entire state would already have political resources, be it name recognition or wealth.

In order to reduce the occurrence of would-be candidates qualifying for public funds by using their own money and falsely claiming that it is from others, donors could be required to fill in a verification form. The AEC could randomly contact a small number of these donors to confirm their authenticity.

The cost of running this program for the House of Representatives would be reasonable. In the 2004 Federal election, 1091 candidates contested a House of Representatives seat (Australian Electoral Commission, 2005). Even if the number of candidates rose to 1500; and even if each was able to successfully obtain \$30 from 200 people, it would still only cost \$27 million to provide candidates with treble the amount they collected. This is very reasonable considering that combined total received by Australia's two largest parties in the 2004 election was \$34.7 million. The next section suggests an even cheaper way to assist candidates.

## ***2.2 RECOMMENDATION 2: Providing a public web hosting service for candidates***

It would be worth providing public funding in the form of web hosting. The AEC (or another agency) could maintain a candidate website index, with candidates grouped by electorate. Users would select their electorate and be provided with a link to the personal website of every candidate participating in that election (who has a website). The provision of a content management system would ensure that any candidates capable of using a word processor could design their own site. Candidates would also have the option of retaining the services of a professional webpage designer or choosing not to have a webpage. The purpose is to provide a well-known and easily accessible forum in which candidates can place whatever information they want into the public domain – youtube style videos stating why they should be elected; policy statements; responses to news items; video character references from friends and family; or whatever they choose.

Although many candidates already have their own websites, it would still be advantageous to maintain such a site as it could encourage people to look at candidates' personal webpages. People are more likely to look at candidate webpages if they can

access them easily by going to one well-known website, than if they have to search for every candidate's webpage separately. Further, if the existence of the website were advertised before the election period, candidate webpages would be viewed by people who never previously considered looking for election information on the internet. Some people will browse simply out of curiosity, while others will feel they have a civic duty to consider what the different candidates have to say. If such a website were designed, it should have its own web address, for example, mycandidates.gov.au for easy access.

Such a website might be visited only by a few and have little impact on election results (especially in rural areas where the internet is less common). However, it is not only the effect of the information that is important, but also the principle that it be available. The primary reason to create this website is to make a more level playing field. All players – big and small – would have a forum that is considered easily accessible; where they can communicate everything they choose to say; and where those who want to listen can do so. Even if society in general chooses not to use this resource, the system has not necessarily failed. Democracy places responsibility on the individual to decide how much effort they will invest into deciding who shall lead.

Provision would have to be made to prevent insincere candidates from placing inappropriate material on these webpages – such as a certain stripper who used her candidacy to advertise her pornographic website (Orr, 2004). Nevertheless, this type of public funding can be made available to all candidates and the cost of insincere candidates using it is minimal. The next section suggests reforms to private funding.

### **3.0 Recommendations Concerning Private Funding**

***3.1 RECOMMENDATION 3: Ban all donations from organisations and limit the amount of money individuals can contribute, exempting candidate contributions to their own campaign. Personal donation limits should be indexed to inflation. Parties with few or no elected members should have relaxed restrictions.***

It is argued in Section 4 that donations should be prohibited from all organisations and that individual donations be capped. Parties with few or no elected members should be subject to more relaxed restrictions. This is required as not all parties are equal; hence, it makes no sense to treat them as such. Parties with no elected members are more likely to need large donations than established parties with large membership bases. Given that established parties were able to raise money without the hindrance of a donation limit, it appears unfair to place this restriction on new entrants. Further, as new entrants mostly lack the ability to sell favours, the risk of large donors exerting undue influence is minimal.

By contrast, society has less cause to be worried about major parties being unable to raise sufficient funds to operate, but more reason to be concerned that large donations will be used to obtain undue influence. The risk to democracy could be reduced by designing laws appropriate to parties in different stages of development.

Ideally, there would be a sliding scale whereby the more seats a party secures, the tighter the limits on donations. One possible sliding scale is that once a party has one member elected to either house, the donation limit is \$3000 less \$500 for every two seats gained beyond the first, to a minimum of \$1000 indexed to inflation. The assumption is that if a party has nine elected representatives, it is now a political

influence. Those parties without elected representatives are not subject to donation limits. However, it is acknowledged that as I am unfamiliar with the costs involved in running a political party, I cannot vouch for the viability of these figures.

Regardless of where the limit is set, the amount should be indexed to inflation so that rising costs do not render the limit inadequate. The financial impact of placing bans and limits on donations could be mitigated by establishing a democratic enhancement fund, as discussed below.

### ***3.2 RECOMMENDATION 4: Set up a democratic enhancement fund to increase the viability of donation limits.***

#### ***3.2.1 Objective of a Democratic Enhancement Fund***

A democratic enhancement fund is a fund into which corporations, unions and individuals can contribute as much money as they wish. Limits and bans on donations do not apply to money contributed to this fund. Donors could be induced to contribute into this fund if parties offered appropriate incentives, such as membership to forums, opportunity to attend dinners with ministers, or other forms of access. The money in this fund is periodically divided amongst every independent represented in the House and the Senate, as well as every party with at least one elected member in either house. Every party is entitled to one share of the money per seat contested in the last election. Independents are entitled to one share each. Where expense is incurred in acquiring the donation (e.g. the cost of hosting a dinner), then the party/candidate is entitled to claim back the expense before the proceeds are distributed. This is to prevent the one who obtained the donation from gaining the least.

The reason each party receives a share of money equal to the number of seats contested in the last election is to facilitate dividing money more equally amongst the parties. Simply giving an equal amount to each party would create the problem of the Coalition receiving twice as much as the ALP, Greens or other parties. Dividing the money equally amongst the elected members or according to first preference votes would defeat the purpose of the fund. The idea behind this fund is to create a situation where everyone benefits from large contributions being placed into the fund, but where no-one benefits enough to make it worthwhile to provide favours in exchange for contributions. Dividing the money in the way previously specified means that any party will receive less than the combined total received by their rivals. There is little reason for politicians to sell favours when doing so will cause an even greater amount of funds to flow to the competition. Donors will benefit from this system as it will:

1. **Allow them to truthfully argue they are contributing to the democratic process.** Previously, such claims lacked credibility. Donating to the democratic enhancement fund will mean that donations really do assist the democratic process.
2. **Protect them from allegations of attempting to corrupt the political process.** It will be harder to accuse donors of attempting to exert undue influence when the receiver stands little to gain from the donation.

Even if the democratic enhancement fund fails to produce the before mentioned benefits, it should at least reduce the need to increase public funding, should the previously suggested donation restrictions be enacted. There are a number of potential flaws critics may see in a democratic enhancement fund. Replies to these criticisms are presented below.

### *3.2.2 Potential Criticism Defence 1: The Fund Entrenches Existing Parties*

Given that this fund only provides to parties with successfully elected candidates, it could be criticised for entrenching the political elite. Such a criticism fails to recognise that the democratic enhancement fund is intended to work alongside pre-election public funding. Public funding is the mechanism designed to reduce financial inequality between those parties with elected representatives and those without. The democratic enhancement fund is designed to reduce financial inequity between parties who already have elected members. This fund ensures that the larger parties who are capable of gathering corporate, union and other sponsorship share this money with their counterparts. Establishing a democratic enhancement fund can further be justified on the grounds of:

1. **Minimising the conflict of interest created by raising large donations.**
2. **Lessening the value of partaking in arms races.** When large donations are split amongst parties, then the value of engaging in constant fundraising is significantly diminished.
3. **Lessening the risk that banning organisational donations will result in an unsustainable financing model.** In a world where political party membership is falling, there is no assurance that individual contributions will be sufficient to sustain a party.
4. **Reducing the amount of taxpayer money needed to sustain political parties.**

### *3.2.3 Potential Criticism Defence 2: The Fund Institutionalises the Sale of Access*

A second potential criticism is that the democratic enhancement fund depends upon political parties selling access. Given that part of the controversy is that political donors are granted access unavailable to ordinary citizens, there would certainly be people who argue that selling access creates just as much risk to democracy as accepting large donations.

Despite the numerous criticisms of the rich having unequal access, it is difficult to find a detailed argument concerning why this situation is wrong. As far as I can tell, the concern people have is that the rich and powerful who can afford access have a better chance of having their interests supported than the average citizen. Perhaps this supposedly occurs because politicians fail to hear the voice of the average citizen; or perhaps the concern is that the rich have a chance to form relationships which they can later exploit. Regardless, there appears to be a belief that even if one contributes thousands of dollars of their own money to a party, s/he is not entitled to even the mere privilege of a face-to-face meeting.

Firstly, I would argue that granting access, even purchased access, it is not necessarily undemocratic. It is good for politicians to listen to and take on board the views of interest groups. Second, if the views of average citizens truly are being excluded, then the democratic enhancement fund could help – provided, of course, that the political parties are willing to do their part. Parties could grant access to groups of citizens who feel, for whatever reason, that they need face-to-face meetings and who are able to demonstrate that they speak on behalf of sufficiently large number of concerned citizens. Groups could prove this by collecting a specified number of token donations and signatures.

Although some may find this system distasteful, it does have the benefit of allowing special interest groups to demonstrate the breath and commitment of the people they supposedly represent. The fact that the money is technically financing democracy, as opposed to a single party, may make this idea more acceptable. If there is still resistance to paying to see members, then the money could go to a charity or into the public treasury for general use. Those who cannot, or will not, collect money can still have their voices heard by following the time-honoured tradition of writing to their local member.

Finally, in order for a ‘providing-access-to-donors-is-wrong’ argument to be sufficient grounds for rejecting the democratic enhancement fund, advocates must first put forward a plan for ending the sale of access. Instituting a donations cap is unlikely to achieve this, as politicians would still be more likely to provide access to their largest donors, regardless of the level at which the cap is set. Therefore, short of banning donations completely, it is unlikely that the sale of access can be prevented. Even then, relieving parties of the need to raise support from society may not give ordinary citizens greater access. Indeed, a system without any private donations may break a vital link between parties and their members. (Nassmacher, 2003a; Johnson, 2005; Edwards, 2007). This may lead to parties becoming distanced from their members’ concerns, thereby reducing their ability to provide effective representation.

#### *3.2.4 Potential Criticism Defence 3: The Fund is Vulnerable to the Issue Advocacy Loophole*

A third criticism against the democratic enhancement fund is that donors may be able to help parties without placing donations into the fund, through the clever use of issue advocacy campaigns. It is quite likely, in fact, that groups interested in supporting a single party, such as unions or business lobbies, will use this loophole so that their spending helps their party of choice.

Short of criminalising the communication of information pertinent to an election, this is a vulnerability experienced by political finance law. Even if a number of large donors were to exploit this loophole, society would probably still be better off, as those seeking access to both major parties would use the fund - provided parties do not actively encourage them to use this loophole.

#### *3.2.5 Potential Criticism Defence 4: Little Money Will Be Placed in the Fund*

A final criticism is that there is a chance that little money will be placed in the fund. This is a particularly likely outcome if parties do not provide access to contributors, or if parties encourage supporters to fund issue advocacy campaigns. While there is a chance this proposal will fail, it may work. A democratic enhancement fund should be trialled and if it fails, then the legislation can always be repealed.

### **4.0 An Extended Justification of Recommendation 3**

Chapter 2 of the Green paper rightly points out that there are a number of important, yet potentially conflicting, principles to consider when designing political finance law. This is an especially controversial area to deal with as any decision has implications for democratic freedom and the integrity of Australian politics.

The best way to decide how to deal with an issue involving conflicting principles is to apply a political philosophical moral framework. The moral course of action is always the one best supported by reason (Rachels, 2003, p.12). Moral frameworks help identify which course of action is best supported by reason through providing criteria to rank alternatives. The framework chosen for this analysis - Goodin's (1995) utilitarian philosophy – is described below.

#### ***4.1 Robert Goodin's (1995) Public Policy Utilitarianism***

The central idea in a utilitarian framework is that the best decision is the one that produces the most utility, that is, the most overall good. This framework lends itself to assessing public policy issues as the objective of public policy is to produce the most good.

Goodin's (1995) utilitarianism can be briefly summarised as:

The government should enact those policies and rules for which it is expected that general observance will best satisfy society's preferences – or, at least, as well as any conceivable alternative.

This particular framework takes into account the feasibility of different solutions, thereby permitting consideration of real world constraints on public policy. For example, policies that are great in theory but too costly to implement contribute little to the overall good.

According to Goodin's (1995) framework, the optimal policy is the one that best satisfies people's preferences. There are three possible policies for dealing with donations:

1. **Allowance:** Placing no limit on the amount of money that entities can contribute to political advocacy.
2. **Limitation:** Placing a cap on the amount entities can spend in the political domain.
3. **Prohibition:** Banning entities from making any monetary political contributions.

The literature suggests that a democratic society has four preferences concerning the political donation system. These preferences are that the system:

1. Promotes a robust democracy (Pierre et al., 2000)
2. Promotes appropriate donor influence (Nassmacher, 2003b; Johnson, 2005; Lawrence, 2007).
3. Minimises undue pressure on donors (Sitkoff, 2003; Ackerman and Ayres, 2006).
4. Minimises the cost of maintaining and enforcing the donation system (Smith, 1999).

It is highly unlikely that any policy will simultaneously satisfy all four preferences. Attempts to minimise undue influence on parties are likely to increase the cost of maintaining and enforcing the donation system. It is therefore necessary to consider the trade-offs and evaluate which policy, overall, best satisfies the range of preferences.

#### *4.1.1 Preference 1: System Promotes Robust Democracy*

A robust democracy exists when society's different interests are adequately represented, i.e. viewpoints receive the attention they merit. Such representation is in the public interest as it lessens the chance that important issues and viewpoints are left out of policy debates. There are numerous factors which influence democratic robustness, including culture, political apathy and technology. However, this submission is concerned only with the influence caused by money.

The political finance system impacts robustness by determining how much money is available to parties (resource access) and the fairness with which that money is distributed (financial equity). Resource access and financial equity are the two criteria used to evaluate which policy option best promotes a robust democracy. A possible third criterion is the ability of participants to exert appropriate influence over policy. This is discussed separately below.

Resource access is potentially important to robustness because parties can use money to commission investigations into voter preferences and to purchase advertising which more effectively argues their positions. I write that resource access is 'potentially' important because parties do not always use resources in a manner beneficial to democratic decision-making. The policy most conducive to resource access is allowance, followed by limitation. The more money is permitted to finance politics, the more resources parties potentially have at their disposal. It is possible, however, that parties may spend so much time gathering money that they fail to give appropriate consideration to other views.

The second criteria - financial equity - is concerned with how easily new candidates and minor parties can raise sufficient funds to compete with more power. Financial equity impacts on democratic robustness as it directly affects the ability of minority interests to obtain adequate representation. People undoubtedly have different conceptions of financial equity. Financial equity is defined here as a situation in which any reasonable candidate can be expected to obtain sufficient funds to run a competitive campaign.

Part of the difficulty in designing rules to enhance financial equity is that the rules may affect various parties in different ways. The wealthier elements of society – both people and organisations – are more likely to contribute to major parties than minor ones, if only to gain access to those more likely to become lawmakers. Imposing low donation limits may reduce the ability of major parties to capitalise on their previous success. However, low donation limits may also hinder new parties from gathering sufficient funds, as they can be more dependent on a few large donors.

Overall, the best way to promote financial equity – and democratic robustness as a whole - would be to limit the amount of money people and organisations can donate to major parties, while reducing the requirements placed on the smaller players. Ideally, there would be a sliding scale whereby the larger a party becomes, the tighter the limits on donations.

#### *4.1.2 Preference 2: System Promotes Appropriate Donor Influence*

There is controversy concerning the extent to which people and organisations should be permitted to use their money to influence politics. I will adopt as the starting point, the

position that all people and organisations should have neither more, nor less, influence over politics than is appropriate.

Organisations can be considered to have appropriate influence when they affect policy by force of truthful argument and nothing more. Organisations have some right to have their interests recognised because, as Lascelles (2005) argues: a) they are affected by policy decisions; b) they represent people whose interests are affected by policy decisions; and c) some organisations, such as corporations, have a right to exercise some influence on policy by virtue of being taxpayers. Organisations do not, however, have the right to have their interests prioritised over the public interest. The public interest is advanced when organisations have sufficient influence to provide useful input, yet insufficient influence to buy the decision.

If it is accepted that organisations should have no more influence than is appropriate; and if it is accepted that organisations should be able to exert influence only through argument, then we have reason to restrict organisational donations. If organisations can only influence policy through argument, then they should not be permitted the opportunity to derive influence from donations. It follows that society should either prohibit organisational donations or place a limit sufficient to minimise undue influence. Allowance creates too much risk of organisations donating sufficiently large contributions to corrupt the process.

Overall, the favoured position in regards to organisational donations, is prohibition. The trouble with limiting organisational donations is that it may not prevent entire groups or industries from donating combined amounts sufficient to exert undue influence. There is a risk that prohibiting organisational donations will be less effective than limits in keeping money out of the system. For example, it is possible that a company may ask its wealthier shareholders for money and succeed in gathering together – and subsequently donating - more money than it would have done so had a donation cap been in place. However, the risk of this occurring is likely to be less than the risk of an entire industry exerting influence by pooling their donations.

Critics may point out that the above arguments concerning appropriate organisational influence could also apply to individuals. If it is agreed that individual citizens should only have appropriate influence, and if it is further agreed that appropriate influence is obtained through arguments and not money, then should not donations from citizens also be banned? A donation from an individual is just as capable of yielding inappropriate influence as one from an organisation.

My response is that unless citizens are permitted to contribute small amounts, there is a risk that part members will be permitted to exercise too little influence over decisions. By freeing parties from the need to raise support, parties may cease being required to represent chosen segments of society or stand for anything other than winning (Edwards, 2007). When parties need to raise their own funds, they are forced to understand certain segments, address their needs and inspire them. Without this need, parties are free to follow popular opinion on every issue. Issues for which there is no consensus and for which every position is likely to alienate a significant number of voters (such as social security) may not be discussed at all. It is even possible that parties will divide up the segments of the population between them and collude at the

polls (Pierre et al., 2000; Johnson, 2005). The risk to democracy caused by banning citizen donations is greater than that created by limitation.

#### *4.1.3 Preference 3: System Minimises Undue Pressure on Donors*

It is not in the public interest for any donor to experience undue pressure to contribute. Undue pressure is most easily exercised by incumbent candidates and powerful interests. Hence, placing undue pressure on donors helps entrench the status quo. Where undue pressure appears in its most extreme form – outright political extortion – trust in the democratic system can suffer.

The most effective defence against undue pressure is obviously prohibition, as entities will be forbidden from making contributions. Limitation is the second best option, as that limits the amount donors can be pressured into giving. Allowance is not conducive to minimising undue pressure.

One risk that merits special mention is that banning corporate donations may lead to employees being pressured to donate. Executives may seek to gain political favour by persuading a large number of donors to provide funds. They may attempt to achieve this by withhold promotions and/or bonuses from employees who do not contribute as directed. Former Québec Chief Electoral Officer Côté noted that even when his office received complaints of such activity, it was almost impossible to gather sufficient evidence to prosecute (Standing Senate Committee on Legal and Constitutional Affairs, 2006). A situation in which employees are pressured into making contributions is worse than one in which organisations are pressured, as such a situation is likely to generate greater cynicism and mistrust. The plight of an average employee pressured into contributing is more likely to resonate with and shock citizens than the plight of an organisation. From a utilitarian perspective, if minimising undue pressure was the only concern, there would be good reason to allow corporate donations. When corporations can donate out of the general treasury, management has little reason to risk engaging in the illegal activity of coercing donations from employees.

#### *4.1.4 Preference 4: System Minimises cost of Maintaining and Enforcing the Donation System*

The public interest is served by minimising the cost of maintaining and enforcing the donation system, as this leaves more money available for other purposes. Whether donations are allowed, limited or banned has very little bearing on the cost of maintaining and enforcing the system. The only cost difference between these options is that allowance does not entail creating a law requiring enforcement. System cost is, however, heavily influenced by the presence of public funding and disclosure requirements, assuming money is spent on their enforcement. Different policy options may make the adoption of disclosure and/or public subsidies more likely - for example, adopting prohibition likely increases the chance that public funding will also be implemented - but it can never be certain that the adoption of an option will be followed by disclosure and/or public funding.

## **4.2 Conclusion**

One false assumption people make is that the same set of rules must apply to all parties. However, there are different concerns surrounding different types of parties, concerns which would be best addressed by applying different laws to parties with different

levels of political power. A party without elected members is more likely to need larger donations than an established party with a large membership base. As the established parties were able to raise money without the hindrance of donation limits, it appears unfair to place these restrictions on new entrants. Further, as new entrants have minimal favours to sell, the risk of large donors using their contributions to exert undue influence is equally minimal. For major parties, however, there is a much greater chance that large donors will attempt to exert undue influence. The risk to democracy could be best reduced by designing laws appropriate to parties in different stages of development.

Ideally, there would be a sliding scale system whereby tighter limits are placed on more powerful parties. Those parties with an elected member in either house are subject to donation limits, but in exchange, are entitled to receive a share of the money from the democratic enhancement fund. One possible sliding scale I could suggest is that once a party has one member elected to either house, the donation limit is \$3000 less \$500 for every two seats gained beyond the first, to a minimum of \$1000 indexed to inflation. The assumption is that if a party has nine elected representatives, it is now a political influence. However, I admit that these values are arbitrary.

#### *4.2.1 Donation Law for Established Parties*

An application of Goodin's (1995) utilitarian framework reveals that the best policy to adopt in relation to organisational donations to established parties is either limitation or prohibition. The only three reasons for adopting an allowance policy are:

1. It increases parties' access to resources.
2. It involves the lowest maintenance and enforcement costs – provided there is no disclosure or public funding.
3. It lessens the chance that employees will be pressured into donating for the benefit of an organisation.

Neither of the first two benefits is particularly significant and both are outweighed by: a) the gain of lessening the chance that donors will exercise more influence than is appropriate and b) an increase in financial equity. The emotionally strongest reason for permitting organisations to donate appears to be the third, which is, lessening the chance that employees will be pressured into making donations.

Ultimately, less harm will be caused by citizens being pressured into donating, than would be if donors exercising excessive influence and/or challengers' views are excluded from the public domain. Further, the risk of employees being pressured can be reduced by adopting a democratic enhancement fund. If executives could acquire access simply by donating money into a fund, they would have no reason to pressure employees into donating.

Overall, the best option with regard to organisational donations appears to be prohibition, as that will prevent organisations with the same interest from donating as a group. A further benefit of this policy is that it would level the playing field between corporations, unions and public interest groups. Many public interest groups either: do not have the money to donate to politics; would jeopardise their tax-exempt status by donating to politics; or would risk scandalising their own contributors who may balk at their donations being used for politics.

Almost every reason put forward as to why organisations should not donate to established parties can also be used to argue why citizens should not donate. The major difference between individual and organisational donations is that it is desirable that a sufficiently large group of individuals be sufficient to pool their donations and exert influence. The danger to democracy created by a party no longer needing support from its membership is just as great as the danger caused by undue donor influence. There is certainly a risk that limiting individual donations will allow some to exercise undue influence, but that is no greater than the potential harm that could be caused by a government that can ignore controversial issues and always pursue the path of least resistance, as it no longer has to engage with its membership. This is why individual donations should be limited.

Candidates should be permitted to donate an unlimited – or at least very large - amount of money to their own campaign. This rule would advantage richer candidates, but it poses little risk to democracy. By contrast, limiting the amount people can spend on their own campaigns could be very detrimental to self-funded candidates and smaller parties; whilst doing nothing to minimise corruption.

#### *4.2.2 Donation Law for New Entrants*

There appears to be little reason to prohibit or set low limits on donations from organisations or individuals to new entrants (i.e. parties without at least one elected member). Such restrictions would do little to decrease the chance of donors exercising undue influence, as new entrants have little political power. Restrictions would also fail to increase financial equity, as new entrants are the people most in need of finance. Unlimited or high donation limits for new entrants would serve to help level the playing field.

There is a possibility that monied interests may be able to exploit this rule by financing some candidates to do nothing except attack other candidates. Such behaviour is both unethical and undemocratic. However, our concern must be focused on the risk to democracy posed by limiting new entrants. Furthermore, short of banning people from communicating their views on political matters, there is no way to prevent monied interests attacking candidates. It is possible, however, to minimise the likelihood that political finance reform hinders the rise of new entrants.

It is recommended that no restriction be placed on the amount new entrants can raise from either individuals or organisations. Any limit risks hindering new entrants whilst achieving little benefit.

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