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ELECTORAL REFORM GREEN PAPER
DONATIONS, FUNDING AND EXPENDITURE
February 2009

Electoral Reform Secretariat
Department of the Prime Minister and Cabinet
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Introduction

News Limited welcomes the opportunity to make a submission in response to the Government's Electoral Reform Green Paper (December 2008).

The Green Paper addresses the possible reform of the donations, funding and expenditure regime and the related issues of public funding of political parties and the possible regulation of campaign expenditure.

News Limited would like to comment specifically on one area of the Green Paper, namely the obligation on third parties to disclose political expenditure.

News Limited is concerned there is a possible interpretation of section 314AEB of the Commonwealth Electoral Act which could inappropriately require media companies to declare their costs of conducting or purchasing political polling data and coverage and comment of politics and elections.

We submit that section 314AEB of the Act should be amended to clarify this anomaly.

Section 314AEB of the Commonwealth Electoral Act

Section 314AEB requires political expenditure (over the regulated threshold) by any person to be declared on an annual basis.

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Included in the definition of political expenditure is expenditure for any of the following purposes:

- (i) the public expression of views on a political party, a candidate in an election or a member of the House of Representatives or the Senate;
- (ii) the public expression of views on an issue in an election by any means;
- (iii)
- (iv)
- (v) the carrying out of an opinion poll, or other research, relating to an election or the voting intentions of electors;

In the normal course of its business News provides news coverage and comment on political parties, candidates and on elections, and we conduct, commission and purchase political polling for the purpose of reporting it and commenting on it in our newspapers and on our websites. These are activities central to our business as a news provider and the monies we spend on these activities are central to our core business.

Discussion

News Limited appreciates that the requirement for entities to disclose monies spent on electoral campaigning is central to the integrity of the electoral process.

Transparency of funding and spending on the election of political representatives provides the public with knowledge of how their democracy is operating, who is seeking to engage in the political process and reduces the risk of corruption.

Disclosure by third parties who are participating in the electoral process recognises that participation in election campaigns is not limited to only candidates and parties who are directly seeking election. Other people and groups can seek to be influential in the process.

As stated in the Green Paper, requiring disclosure by third parties who are neither parties nor candidates also reflects concerns about the growing and potential influence of such entities and the need to ensure that election funds are not channelled or diverted to third parties who can promote and advertise in support of a candidate or political party overcoming restrictions or obligations that would apply if the candidate or party itself received the funds.

Whilst appreciating the objectives of the existing disclosure requirements, the disclosure requirements may inappropriately capture expenditure by media companies for three reasons.

Firstly, sub sections 314AEB (i), (ii) and (v) may capture expenditure of media organisations to the extent the expenditure relates to engaging in the political process through conducting polling, commenting on and reporting on election and political issues. However, the media's purpose in expending monies to engage in the political process is not to promote or take a political position to further the election of a candidate or political party. For example, media companies do not commission polling to use the results for advocacy and lobbying, but rather, polling is commissioned to report the results and comment on them.

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Media companies comment in their papers and other media assets on the policies and actions of candidates and political parties not for the purpose of influencing the outcome of an election, but to inform the public.

Secondly, the objective of the disclosure requirements is to make transparent the unknown activities of persons and entities who are seeking to influence the outcome of elections by requiring them to publicly declare their expenditure. Disclosure would not make the involvement of media companies in the process, any more transparent than it already is given that our engagement in the process is by its very nature publicly available through the news coverage it provides in its newspaper and websites.

Thirdly, a requirement that media companies disclose their expenditure on political coverage and conducting political polling is possibly counter to the Act's objective to increase transparency. The role of the media in the electoral process is to increase the transparency of the process bringing the processes to the attention of the public rather than to influence the outcome of elections. Ironically, requiring disclosure by media companies of expenditure on political coverage and polling could potentially impede transparency, if media companies are discouraged from providing political coverage on the basis they must declare the costs of operating their business to their competitors.

Submission

News Limited submits that the Act should be amended to clarify the definition of electoral expenditure to ensure expenditure by media companies is not political expenditure for the purposes of the Act. This could be achieved by amending the definition of political expenditure in section 314AEB to exclude expenditure incurred in connection with publishing reports and commentary on news and current affairs.