

The Greens NSW submission to the Electoral Reform Green Paper



INTRODUCTION

The Greens NSW would like to congratulate Senator John Faulkner and his team for a very thorough and informative Green Paper and for facilitating public debate on political donations and the wider issues of electoral funding reform.

Electoral funding reform is urgently needed.

The rich and powerful in this country have access to politicians that few members of the public will ever experience. Much of this access is gained through large political donations and large contributions at fundraisers.

The current system gives the appearance that many government decisions are influenced by donations rather than based on the common good.

Over the past seven years the Greens Political Donations project, www.democracy4sale.org, has helped to reveal the extent of the influence that corporate donations are having on our democratic process.

In this activity the Greens Democracy4sale research team have identified a number of problems associated with how funding data is presented on the AEC website. The problems we identify are attributed to lack of resources for the AEC. Over the years we have found AEC staff to be very helpful and diligent.

Case studies on donations associated with property developers, the hotel industry, the Manildra company and the Exclusive Brethren included in this submission highlight how interest groups can make use of the current laws on political donations to further their own sectional interests.

In summary the Greens support reforms including:

- a ban on political donations from companies and other organisations,
- a strict limit on donations from individuals,
- anonymous donations to be limited to a very small amount - for example \$50,
- candidates' personal contributions to their own campaigns to be bound by the same limit placed on individual donations,
- a cap on expenditure in election campaigns for political parties, candidates and third parties,
- continuous disclosure of donation data on the internet,
- fixed election terms for the federal parliament, and
- public funding to cover the reasonable expenses of political parties and their election campaigns.

Chris Maltby, Registered Officer
On behalf of the NSW Greens
Phone - 0416 220 237
Email – chris@nsw.greens.org.au

18 February 2009

CONTENTS

Summary of Recommendations.....	2
1. Donations.....	5
2. Disclosure of Donations.....	6
3. Expenditure.....	8
4. Public Funding.....	8
5. Associated Entities.....	10
6. Third Party Expenditure.....	11
7. Fixed Term Elections.....	11
Conclusion.....	12
Contact Information.....	12
Appendix 1 – Political donations case studies.....	13

Summary of Recommendations

Recommendation 1 (Donations):

- 1.1 Ban all forms of donations to political parties except those donations received from individuals or bequests.
- 1.2 If such a ban is not adopted, move to immediately ban all political donations from property companies and companies in tobacco and alcohol related industries.
- 1.3 Introduce a strict cap on donations from individuals.
- 1.4 Ban all donations from foreign donor companies or individuals if they are not Australian citizens or permanent residents.
- 1.5 Anonymous donations to be limited to a very small amount, possibly \$50.
- 1.6 Candidates who choose to donate to their own election campaign should be subject to the same cap imposed on other individual donors.
- 1.7 Intra-party transfers of funds should be capped until there are uniform nationwide electoral funding reforms that incorporate bans and caps.
- 1.8 If caps are adopted rather than a ban on donations from corporations and other organisations, donations from companies and organisations should be considered in their entirety, that is subsidiaries and branches are not considered separate.
- 1.9 If a blind fund is established to receive donations that would otherwise be banned or capped it should be administered independently of all parties and candidates and distribution of funds must be equitable between the various political parties and candidates.
- 1.10 Individuals should be able to choose to donate to more than one political party or candidate from different political parties.
- 1.11 Individual donations should be subject to caps for donations to each political party including that party's candidates. (Eg – If the cap was \$1000 per individual per year that could be divided between the party and some candidates for that party, and another \$1000 divided between another party and some of its candidates.)

Recommendation 2 (Disclosure):

- 2.1 The AEC in the short term to maintain the currently yearly disclosure period regime, while developing the software to allow continuous disclosure of donations of \$1000 or more on the internet.
- 2.2 The online donation disclosure system to be designed so that it is accessible by donors, political parties, candidates, associated entities and third parties.
- 2.3 The AEC should be supplied with sufficient resources to cross check donations declared by political parties against details provided by the donors.
- 2.4 The AEC to be provided with adequate powers and resources to enforce full disclosure by parties and donors and investigate any discrepancies between disclosures.
- 2.5 All party disclosures be submitted using an electronic lodgement form via the internet (unless an exemption is granted).
- 2.6 AEC to include information on the full contact details and the nature of the donor's activities (eg type of company, industry or occupation if the donor is an individual).
- 2.7 Donations of \$1000 or more are published in a user-friendly searchable database on the AEC website. These donations should be searchable by date, party, candidate, electorate, donor or amount, as appropriate. Reasonable access to raw disclosure data should also be available.
- 2.8 The reporting classifications of "other receipts", "public funding" and "donations" needs to be more clearly defined and the AEC need to ensure that parties and candidates use them in a consistent way.

Recommendation 3 (Expenditure):

- 3.1 A cap on election expenditure to apply on a state basis for political parties and to apply to individual House of Representatives candidates for the three months prior to election day.
- 3.2 If fixed term elections (Recommendation 7.1) are not adopted notification of federal elections should be required three months prior to the election date to enable the cap on election expenditure to be implemented.
- 3.3 Election expenditure caps to also apply for the three-month period to political parties, third parties and associated entities.
- 3.4 The cap on expenditure should apply to defined electoral campaigning expenses, including electronic campaigning.
- 3.5 Expenditure caps should not apply to volunteer labour.
- 3.6 Compliance with expenditure caps should be a condition of public funding with penalties in place if the cap is exceeded.
- 3.7 Suggested penalties could include loss of public funding; hefty fines; and in extreme cases of over expenditure disqualification as a candidate or member of parliament.

Recommendation 4 (Public Funding):

- 4.1 Pursue the introduction of Canadian style electoral funding laws in NSW, including the introduction of publicly funded election advertising during the election campaign period.
- 4.2 Australian National Audit Office should be given the power to determine if government advertisements should be publicly released, basing their decision on the public education value and general importance of the advertisements.

- 4.3 The maximum funding entitlement of a candidate or group to be calculated by reference to the number of votes or percentage of vote obtained.
- 4.4 No candidate or group is to receive more than half of the total pool of potential funding available for the electorate contested.
- 4.5 To assist new parties in particular each registered party should receive an annual base funding for party administration costs.
- 4.6 This base funding should be topped up by a larger annual grant to parties and independent candidates based on the vote they received in the last general election. A possible amount could be \$1 per vote.
- 4.7 Parliamentary representation and/or party membership subscriptions and individual donations should not be factors in determining public funding.
- 4.8 In the case of independent candidates funding should be paid to the candidate.
- 4.9 Public funding in relation to political parties or their candidates should be paid to the registered political party. The party can determine distribution of funds to its branches or candidates according to its own rules.
- 4.10 Public funds should not be spent on personal private expenses.
- 4.11 Parties should be able to determine whether public funding is spent on election campaigns or party administration costs.
- 4.12 If a new public funding scheme is not adopted the current automatic funding based on the level of the vote should be retained.
- 4.13 Federal and state governments should consider providing public funding for local government elections.

Recommendation 5 (Associated Entities):

- 5.1 The rules for donors giving to political parties, candidates and associated entities needs to be consistent at both state and federal levels.
- 5.2 All anonymous donations over the maximum permitted to political parties, candidates and associated entities to be forfeited to the AEC. Fines of up to \$5,000 to be imposed on political parties, candidates and associated entities for accepting an anonymous donation of more than the maximum.

Recommendation 6 (Third Parties):

- 6.1 The present donation disclosure regime for third parties to be maintained.
- 6.2 Third party expenditure to be capped for the three months prior to the election date, up to and including the election date.

Recommendation 7 (Fixed Parliamentary Term):

- 7.1 Adopt fixed terms for the federal parliament, three year terms initially with a referendum on fixed four year terms to follow.

1. Donations

The Greens through our extensive work on political donations have found there is widespread cynicism within the community about politicians and political parties that accept donations. The corporatisation of electoral funding has undermined the public's faith in the democratic process. Many people believe that:

- political donations are a form of bribery or corruption;
- those who give donations and attend expensive party fundraisers are buying access to decision makers;
- politicians are influenced by large donations to their party;
- donors and politicians exploit loopholes and weaknesses in disclosure laws to hide money and avoid scrutiny;
- large donations can create a conflict of interest for politicians, and
- governments make decisions that favour donors to their party even when there is significant community opposition to the decision.

The Greens NSW has campaigned for many years for a ban on political donations from companies and other organisations. Rules which permitted only individuals to donate within limits would be the most comprehensive way to restore integrity to the political funding system.

If this proposal is not adopted, there is a pressing need to ban donations from certain industry sectors that are having a damaging impact on our democratic system in NSW. In particular the Greens NSW support an immediate ban on all political donations from the property industry, tobacco companies, hotels, clubs and other alcohol related companies, and overseas interests.

Case studies on the impact of donations from property companies, hotels and clubs and other special interest groups are contained in Appendix 1.

The Greens NSW argue that moves to limit political donations would be constitutionally valid. In particular, the implied constitutional right to freedom of political expression would remain valid under a system whereby enrolled voters are allowed to donate subject to strict caps on those contributions. Such a system would strike an appropriate balance between promoting political communication and limiting the influence of large donors on political decision-making. Similarly caps on election expenditure by third party entities would be constitutionally valid. Appropriate caps on donations and expenditure would not unreasonably restrict rights to political activity implicit in our democratic system of government.

We note that moves by the US and Canadian governments to limit campaign donations have not conflicted with or undermined the respective constitutions of the US and Canada. The validity of limiting donations in Canada was recently confirmed by the Canadian Supreme Court.

Recommendation 1:

- 1.1 Ban all forms of donations to political parties except those donations received from individuals or bequests.
- 1.2 If such a ban is not adopted, move to immediately ban all political donations from property companies and companies in tobacco and alcohol related industries.
- 1.3 Introduce a strict cap on donations from individuals.

- 1.4 Ban all donations from foreign donor companies or individuals if they are not Australian citizens or permanent residents.
- 1.5 Anonymous donations to be limited to a very small amount, possibly \$50.
- 1.6 Candidates who choose to donate to their own election campaign should be subject to the same cap imposed on other individual donors.
- 1.7 Intra-party transfers of funds should be capped until there are uniform nationwide electoral funding reforms that incorporate bans and caps.
- 1.8 If caps are adopted rather than a ban on donations from corporations and other organisations, donations from companies and organisations should be considered in their entirety, that is subsidiaries and branches are not considered separate.
- 1.9 If a blind fund is established to receive donations that would otherwise be banned or capped it should be administered independently of all parties and candidates and distribution of funds must be equitable between the various political parties and candidates.
- 1.10 Individuals should be able to choose to donate to more than one political party or candidate from different political parties;
- 1.11 Individual donations should be subject to caps for donations to each political party including that party's candidates. (Eg – If the cap was \$1000 per individual per year that could be divided between the party and some candidates for that party, and another \$1000 divided between another party and some of its candidates.)

2. Disclosure of Donations

The second reading speeches to the 1981 NSW Election Funding Act and the 1984 amendments to the Commonwealth Electoral Act set out a commitment to transparency to ensure the public knows the source of money received by political parties. However, more than 20 years after those laws were passed it is difficult for the public to access information about political donations and fund raisers.

Transparency depends on the maintenance of a rigorous and regular disclosure regime. An examination of information disclosed through the AEC reveals many procedural inconsistencies and loopholes in the rules that allow both donors and political parties to avoid full and timely scrutiny of their electoral funding.

There is a widely held public perception that donors and politicians exploit loopholes and weaknesses in the disclosure laws to hide donations and avoid public scrutiny. Disclosure procedures need to be tightened to restore public confidence in the system.

Donor companies

Research undertaken by the Greens Democracy4sale project using AEC data has found that many donors do not submit returns. In some years it appears that about 50 per cent of donors fail to lodge a disclosure form with the AEC.

When a donor fails to lodge a disclosure form they have broken the law. However the AEC have limited resources to investigate and prosecute donors that fail to meet their obligations.

Publishing donations on the web

Details of political donations of \$1000 or more received by parties and candidates should be displayed on the AEC website.

The current level of web technology should make it easy and affordable for the AEC to both allow for electronic lodgement of returns via the internet, and to display all the donations data stored in its database in a user friendly, fully searchable website.

People should be able to view donations by donor name, year, electorate, candidate, local MP, party or amount. This should be the baseline standard for transparency in the public disclosure of donations information.

Further, donor companies should be categorised into industry categories to help the public better understand the influence that industry sectors are exerting on the political process.

The Greens democracy4sale.org website has provided this service to the public for the past seven years on a minimal budget, so such a service is clearly achievable.

Elections Canada has an excellent website where donations above \$200 go on the public record within four months, since donor declarations are made quarterly. The Canadian website also publishes raw election data in spreadsheets to enable research and analysis of the data. See <http://www.elections.ca>.

Continuous disclosure of donations

Electronic lodgement of party disclosure returns using a web based reporting system would allow for more regular disclosure of donations. It would be feasible for parties to continuously disclose all donations of \$1000 or more that they receive to the AEC, and for the donations to be regularly published on the public record, especially before elections.

The time lag between when parties and candidates receive donations during an election campaign and when those donations are publicly disclosed months after the election dramatically reduces the accountability of political parties and candidates.

Voters have a right to know about donations before they go to the polls. To this end, the Greens NSW made significant efforts to continuously disclose all donations over the disclosure threshold in the lead up to the last state and federal elections on the Greens NSW party's website.

Recommendation 2:

- 2.1 The AEC in the short term to maintain the currently yearly disclosure period regime, while developing the software to allow continuous disclosure of donations of \$1000 or more on the internet.
- 2.2 The online donation disclosure system to be designed so that it is accessible by donors, political parties, candidates, associated entities and third parties.
- 2.3 The AEC should be supplied with sufficient resources to cross check donations declared by political parties against details provided by the donors.
- 2.4 The AEC to be provided with adequate powers and resources to enforce full disclosure by parties and donors and investigate any discrepancies between disclosures.
- 2.5 All party disclosures be submitted using an electronic lodgement form via the internet (unless an exemption is granted).
- 2.6 AEC to include information on the full contact details and the nature of the donor's activities (eg type of company, industry or occupation if the donor is an individual).
- 2.7 Donations of \$1000 or more are published in a user-friendly searchable database on the AEC website. These donations should be searchable by date, party, candidate, electorate, donor or amount, as appropriate. Reasonable access to raw disclosure data should also be available.

- 2.8 The reporting classifications of “other receipts”, “public funding” and “donations” needs to be more clearly defined and the AEC need to ensure that parties and candidates use them in a consistent way.

3. Expenditure

An effective way to bring fairness to the system of electoral funding and to reduce the corrupting influence of large donations is to put controls on the demand side. This can best be achieved by introducing caps on election expenditure.

In New Zealand the cap on expenditure for individual candidates is \$20,000 and \$1 million for political parties. This means that a political party in New Zealand can spend up to \$2.38 million on its 'election expenses' - \$1 million plus \$20,000 for each of the 69 electorates contested by the party.

In Canada the cap on expenditure is calculated based on the number of voters in each electorate. Third party advertising is also limited to \$150,000.

If parties were not permitted to spend excessive amounts on elections it would remove the incentive to seek donations from inappropriate sources.

Recommendation 3:

- 3.1 A cap on election expenditure to apply on a state basis for political parties and to apply to individual House of Representatives candidates for the three months prior to election day.
- 3.2 If fixed term elections (Recommendation 7.1) are not adopted notification of federal elections should be required three months prior to the election date to enable the cap on election expenditure to be implemented.
- 3.3 Election expenditure caps to also apply for the three-month period to political parties, third parties and associated entities.
- 3.4 The cap on expenditure should apply to defined electoral campaigning expenses, including electronic campaigning.
- 3.5 Expenditure caps should not apply to volunteer labour.
- 3.6 Compliance with expenditure caps should be a condition of public funding with penalties in place if the cap is exceeded.
- 3.7 Suggested penalties could include loss of public funding; hefty fines; and in extreme cases of over expenditure disqualification as a candidate or member of parliament.

4. Public Funding

The Greens support the introduction of public funding reforms similar to the system that is now working successfully in Canada.

In 2004 Canada introduced new electoral funding laws that only allow political donations from individuals. No other private sources are permissible. Canadian political parties receive approximately three times the public funding of political parties in Australia, paid in quarterly instalments, giving a steady public income. Spread over a four-year parliamentary term this adds up to \$6.80 per vote.

Canada's new laws have reduced public cynicism towards politicians. Whilst some public wariness of politicians' motives still persists, accusations of buying political influence are rarely made, as donations are not large enough to significantly corrupt. In the absence of large corporate donors, Canada's new laws encourage parties to seek more donors, thereby increasing grassroots political involvement.

If similar laws were introduced in Australia, it would fix the single most important electoral funding problem at present, namely, the perceived and real influence of big donations on political decision-making.

Any changes to the funding of elections and political parties need to ensure that recently formed and emerging parties are not locked out from receiving assistance. The Greens NSW are open to the current 4 per cent threshold for public funding being reduced. The threshold could possibly be lower for the first election a political party or an independent candidate contests.

We support public funding for administration and election costs. Further we support a system that provides incentives to build the funding source associated with membership fees.

If a new public funding scheme is not adopted the Greens NSW oppose a return to the expenditure/invoice reimbursement funding model. The current automatic funding based on the level of vote received is preferable. Introduction of an electoral expense refund system would significantly increase the administrative workload of parties and candidates. To prevent inappropriate spending of public electoral funding a ban on spending these funds on personal private expenses would be needed, with misdirected funding being withheld from future entitlements and penalties for more serious breaches. A similar system already exists in NSW in relation to the expenditure of Political Education Fund amounts.

Public funding of TV and radio advertising

In New Zealand public funding consists largely of funded broadcasts. The Electoral Commission negotiates with broadcasters about how much free and discounted airtime they will give to parties. Since 1990 the Electoral Commission has purchased broadcasting time for candidates to screen election advertisements. New Zealand's public radio and television stations also allocate time for candidate's opening and closing speeches.

The Greens support the provision of publicly funded election advertisement timeslots on free to air television and commercial radio and the ABC.

Recommendation 4:

- 4.1 Pursue the introduction of Canadian style electoral funding laws in NSW, including the introduction of publicly funded election advertising during the election campaign period.
- 4.2 Australian National Audit Office should be given the power to determine if government advertisements should be publicly released, basing their decision on the public education value and general importance of the advertisements.
- 4.3 The maximum funding entitlement of a candidate or group to be calculated by reference to the number of votes or percentage of vote obtained.
- 4.4 No candidate or group is to receive more than half of the total pool of potential funding available for the electorate contested.
- 4.5 To assist new parties in particular each registered party should receive an annual base funding for party administration costs.
- 4.6 This base funding should be topped up by a larger annual grant to parties and independent candidates based on the vote they received in the last general election. A possible amount could be \$1 per vote.
- 4.7 Parliamentary representation and/or party membership subscriptions and individual donations should not be factors in determining public funding.
- 4.8 In the case of independent candidates funding should be paid to the candidate.

- 4.9 Public funding in relation to political parties or their candidates should be paid to the registered political party. The party can determine distribution of funds to its branches or candidates according to its own rules.
- 4.10 Public funds should not be spent on personal private expenses.
- 4.11 Parties should be able to determine whether public funding is spent on election campaigns or party administration costs.
- 4.12 If a new public funding scheme is not adopted the current automatic funding based on the level of the vote should be retained.
- 4.13 Federal and state governments should consider providing public funding for local government elections.

5. Associated Entities

In addition to contributions made directly to candidates and parties, donations can also flow through companies, trusts and other entities associated with the political parties. These organisations are often referred to as associated entities. There are about 80 associated entities listed with the AEC. Many other associated entities operate within states.

Associated entities are essentially front organisations that operate mainly or entirely for the benefit of a political party. The associated entity receives large donations, and then passes the money on to the political party. While these organisations are required to submit returns to the AEC detailing their sources of income, the use of associated entities on the part of political parties adds another layer of complexity to the entire disclosure process.

Considerable money flows through these entities. For example, the Free Enterprise Foundation, which is a Coalition associated entity, distributed over three million dollars to the Federal Office of the Liberal Party between July 1998 and June 2003 and smaller amounts to the NSW divisions of the Liberal and National Parties.

It is illegal for a political party, branch, or person acting on their behalf to receive donations totalling more than \$10,500 unless the person receiving the gift knows the name and the address of the donor. An anonymous donation is one for which both the name and address of the donors is not given to the AEC. However, there is a loophole in disclosure that the AEC has unsuccessfully attempted to close for a number of years.

While the entity that doesn't disclose an anonymous donor can be fined \$1,000 they do not have to forfeit the money received to the government. However, if a party accepts an anonymous donation it can be fined \$5,000 and has to forfeit the money given by the donor. This inconsistency needs to be removed by applying the stricter rule to associated entities as well.

Obviously it is an advantage for political parties not to have organisations declared to be associated entities. The AEC can audit the books of associated entities but not independent organisations.

The Democracy4sale.org site lists possible associated entities. These entities are being investigated by the AEC since there is reason to believe they are such entities. Once they have been declared associated entities the public can then see where they receive their money.

There are also other similar organisations that are very closely aligned with political parties and are major sources of funds but which cannot be defined as associated entities. The Greens Democracy4sale project defines these organisations as Political Party Affiliates.

For more information visit www.democracy4sale.org

Recommendation 5:

- 5.1 The rules for donors giving to political parties, candidates and associated entities needs to be consistent at both state and federal levels.
- 5.2 All anonymous donations over the maximum permitted to political parties, candidates and associated entities to be forfeited to the AEC. Fines of up to \$5,000 to be imposed on political parties, candidates and associated entities for accepting an anonymous donation of more than the maximum.

6. Third party expenditure

The involvement of third parties in collecting money and campaigning in elections requires tighter controls.

The term “third parties” refers to individuals or organisations that engage financially in an election campaign but are not candidates, political parties or their associated entities. Third parties may be special interest groups, lobby groups or individuals, corporate or institutional supporters of a political party or candidate.

Third parties are currently required by the AEC to disclose details of the donations made to political parties or candidates, donations they receive for election related expenditure and their expenditure over an election period on election advertising, campaign material, mail-outs, polling and research.

Third parties play a critical part in the Australian democratic process, a role likely to increase with the use of the internet for campaigning. Election expenditure caps on third parties would enhance our democracy.

The proposed change to expenditure caps set out in the recommendation below is largely based on the 2000 Canadian Election Act. The new law is working well in Canada and has survived at least one legal challenge in the Supreme Court of Canada.

Recommendation 6:

- 6.1 The present donation disclosure regime for third parties to be maintained.
- 6.2 Third party expenditure to be capped for the three months prior to the election date, up to and including the election date.

7. Fixed Electoral Terms

Fixing the date of elections not only has the advantage that it deprives the ruling party of setting the date to maximise their chances of winning, it also would assist in managing the election expenditure period.

A cap on election expenditure for a certain period of time prior to an election can be more readily implemented when the date of the election is already known.

A fixed three year term could be implemented by legislation. A constitutional referendum for an extension of the parliamentary term to four years would be desirable but is not a prerequisite for the introduction of fixed terms.

Recommendation 7:

- 7.1 Adopt fixed terms for the federal parliament, three year terms initially with a referendum on fixed four year terms to follow.

Conclusion

Political donations have eroded the democratic process. If we want a thriving, democratic society where the public has faith in politicians and their decisions, many changes must be made to the electoral funding system in Australia.

Decisions by governments must be based on the common good, not the inappropriate wishes and demands of powerful interest groups.

Contact Information

Chris Maltby

On behalf of the Greens NSW

Phone - 0416 220 237

Email – chris@nsw.greens.org.au

APPENDIX 1 - POLITICAL DONATIONS CASE STUDIES

Source: www.democracy4sale.org

Introduction

Corporate donations to political parties appear to many people as a corrupting force in our political system. Yet it is difficult to establish that the giving of donations allows the donors to directly influence government decisions. Companies may give money and then receive a favourable outcome but the public is not privy to these arrangements. Agreements reached between party leaders and corporate managers at their private fund raising dinners are not disclosed.

However, we can show a broader pattern of influence where during the period that donations from a particular industry have increased the laws that govern activities in that sector have been amended in ways that benefit the corporate sector.

The following case studies examine where:

1. Millions of dollars in developer donations to the major parties coincided with bipartisan planning law changes that favoured developers,
2. Huge donations from the hotel and clubs industry to NSW Labor coincided with law changes that benefited hotels,
3. New ethanol fuel subsidies followed massive donations from Manildra to the federal government,
4. Exclusive Bretheren can influence election agendas whilst avoiding disclosure.

1. Developer Donations

In the past nine years property developers have donated over \$21,569,078 to the major parties in NSW. If you include the federal divisions of the major parties that figure goes up to \$31,136,203. In 2006/07, despite the disclosure threshold being raised from \$1,500 to \$10,500, developer donations peaked with \$3,275,933 flowing to the major parties.

The rise of developer donations in recent years has coincided with major changes in planning and development laws. Under successive NSW governments, both Labor and Coalition, the Environmental Planning and Assessment Act (EPAA), a progressive piece of legislation when passed in 1979, has been successively watered down. The introduction of EPAA Part 3A provisions in 2005 gave a windfall to developers who can rely on the Planning Minister to approve large-scale developments with less rigorous environmental assessment. The vast majority of approvals under Part 3A have been granted to applicants who have made significant political donations, in many cases within a few months either side of the consent date.

The Government's proposed planning law changes for 2008 will remove most planning powers from elected local councils and give them to government appointed panels that will implement the government's objective of massively increasing medium-density residential and commercial development across the state. The ability of local communities to protect their villages, towns or suburbs from overdevelopment will be extinguished.

Donations are on the nose with the public because of the clear potential for decisions affecting our urban and rural environments to be distorted by the influence of powerful developers who donate to political parties. The concurrence of sweeping planning law changes and increasing levels of developer donations has undermined public confidence

in the planning process. Power has been centralised with the Planning Minister, whose party has accepted millions of dollars from developers.

In NSW many of the companies who have won government tenders to build big-ticket infrastructure developments have also been big political donors. All the big residential developers have donated to the major parties in NSW at some stage.

Paul Keating argued several years ago that the only meaningful way to assuage public concern about planning favouritism for developers was to ban political parties from accepting developer donations.

Managing Director of Australand, Brendan Crotty, was reported in *The Australian* (Ooi, 2003) as defending the companies' projects and said the Greens were entitled to protest. He went on to describe the company's political donations as "part and parcel of doing business". Australand has donated over \$1,123,443 to the major parties during the past 9 years.

Leighton Holdings' chief executive, Wal King said of his reasons for donating: "If you don't do it, there's a chance of getting a black mark against your name. It's like giving your wife flowers - why wouldn't you do it?" (SMH, 02/02/2002)

The whole culture of developer donations is rotten. The problem can only be reversed by introducing a complete ban on developer donations to political parties.

2. Hotels and Clubs industry

Hotels

The NSW hotel industry has donated more than \$3.5 million to the NSW Labor Party in the nine years to July 2007. Though the industry is clearly contributing to the party in power in NSW, significant donations also go to the Coalition opposition. In the same period the Liberal and National parties received over \$1.4 million from hotels.

Australian Hotels Association (AHA) officials have stated they use these donations to buy access. What happens when that access is achieved is not known. But what we do know is that at the same time these donations flow to the Labor, Liberal and National parties, the MPs from these parties are voting together in the NSW parliament to pass laws that benefit hotels.

The NSW President of the AHA, John Thorpe, clearly realises the importance of donations. He was reported on the ABC's *Stateline* in 2004 as saying, "Democracy's not cheap. And your firm and your company - everybody's involved with assisting political parties because at this stage we need to keep these people in place to have the democracy we have today." He repeated these comments in 2006.

The Labor Party came to power in NSW in 1995. Since that time there have been a number of changes to the law that have benefited hotels. Although the Liberals introduced the controversial extended hotel trading hours in 1989, Labor has allowed 24-hour openings to flourish. Currently NSW has over 70 per cent of all hotels in Australia that operate with 24-hour licenses.

Social and health problems associated with 24-hour openings are extensive and many residents and social workers have lobbied the Labor government to reduce the numbers of these licenses. Their demands have been unsuccessful and instead the government has responded favourably to hotels lobbying on the issue.

Most of the changes to hotel operations under the Labor government have been to laws governing gaming machines and smoking. The Smoking Regulation Act 1997 re-defined the meaning of an enclosed public place so that smoking was allowed in hotels, as long as fresh air could circulate. But with more countries and other Australian states banning smoking in hotels, pubs and restaurants the NSW government has come under pressure over the past decade to put the health of workers and patrons first.

In early 2006 the government bowed to public pressure and agreed to phase in smoke-free hotels by July 2007. But the hotel industry would not be displeased with this outcome because the so-called ban has been achieved by changing the definition of outdoor areas and not by an outright ban on smoking. Under the so-called ban smoking will be permitted in hotel rooms that are open to as little as 25 per cent fresh air.

In 1997 the Carr Labor Government cleared the way for poker machines in hotels. This was a move that enriched many publicans. Between 1998 and 2003 the government made further decisions, which enabled hotels to receive more money from gaming machines. These changes included: allowing TAB Ltd to enter into agreements with individual hotels to buy machines or to put machines in the hotels for a share of the profits; permitting hotels to buy gaming machines from other hotels; reducing the period the machines must be closed down; making it easier for hotels to apply for an exemption to the new three-hour shut down period of their machines by claiming hardship.

A big rush of money came in during the two year run up to the 2003 NSW state election. In this period Labor received over \$2.3 million while the Coalition opposition parties received \$608,090 in hotel donations. Prior to the 2003 election The Sydney Morning Herald reported that the hotel industry was concerned about changes to gaming laws expected to be introduced after the March election. The Carr Government was expected to easily win, which probably accounts for Labor's larger share of the hotel industry donations. After 2003 the hotel industry returned to contributing more equally to Labor and the Coalition.

During the 2007 NSW election campaign the lobbyist group Australian Hotels Association (AHA) feted the Labor Party with a major fundraiser at the Four Seasons Hotel in Sydney. This event raised almost \$493,000 for the ALP state election campaign. Many hotel companies spent \$9,999 at the event since this was under the federal disclosure threshold. Fortunately it wasn't under the NSW disclosure threshold so we were able to discover this information from the NSW Election Funding Authority. NSW Labor declared accepting \$647,708 from the AHA alone in the four years leading up to the 2007 state election.

While it can be assumed that privately Labor welcomed these donations, publicly they did not want to highlight their links with the hotel industry. Ministers in the Lemma Government and a stream of MPs refused to comment on the function. John Thorpe confirmed that individual MPs were expected to sit one at a table with hoteliers, and that the Premier would give a speech.

The AHA also held a fundraising event for the Liberals. Reports suggest that this function was considerably smaller with less money raised. By the time this event was held it was widely expected that Labor would win the election comfortably. The AHA itself only donated \$264,650 to the NSW Liberals in the lead up to the 2007 state election.

While any connection between political donations and law changes that benefit the hotel industry cannot be established a number of public figures have raised concerns. Professor Ian Webster, an Emeritus Professor at the University of New South Wales and an expert in the alcohol and drugs area, recently appeared on SBS Insight which was exploring the

impact of 24-hour licensing of hotels on health and social problems. Professor Webster argued that political donations from the liquor industry should be banned.

Professor Webster stated that social agencies dealing with alcohol issues were a “bit like David fighting Goliath. When there’s a powerful industry with lots of money, lots of access involving alcohol, clubs and hotels and gambling, it’s a very powerful influence. ... I’m very concerned about the access that money buys to political influence.”

Clubs

The money flowing into NSW Labor's coffers from clubs has increased tremendously over the years. For example, in 1998-99 the party received \$276,636 from clubs. The Randwick Labor Club, which is closely aligned with the Labor Party but is not classified as an associated entity, contributed \$225,500 to Labor that year. Therefore, the other clubs were very minor donors.

By 2001-02 clubs contributed over \$302,807 to the NSW ALP with only \$100,000 of that coming from the Randwick Labor Club. During this period there was much discussion of the tax on gaming in clubs by the state government, with a tax increase occurring after the March 2003 state election.

In 2002-03 the amount contributed to the NSW Labor Party by clubs fell to approximately \$98,000, with \$75,000 from the Randwick Club. At the same time the large clubs and their lobby group shifted their donations to the opposition Coalition parties. This shift coincided with the Labor government's introduction of increased gaming taxes on these clubs.

For instance, the registered clubs' lobby group, Clubs NSW, cut its donations to NSW Labor from almost \$160,000 in 2001-02 to just \$11,000 in 2002-03. At the same time donations from the lobbyist group Clubs NSW to the Liberals went from zero in 2001-02 to \$114,760 the next year.

Since 2004/05 clubs, which are traditionally Labor supporters, have drifted back towards donating to Labor. From July 2004 to June 2007 clubs gave \$434,840 to NSW Labor and only \$195,530 to NSW Liberals.

This case clearly shows how the pattern of donating can swing in response to government policy changes.

3. Manildra

The previous federal Coalition government made a number of decisions that benefited Manildra, the flour milling business that also has a near monopoly on ethanol production in Australia.

Manildra received a 38 cents a litre ethanol subsidy from September 2002 for making ethanol to be blended into or used as a transport fuel. According to Alan Ramsey in the Sydney Morning Herald (2003) this amounted to almost \$21 million during the first 10 months. Then in July 2003 the Federal government announced another \$10 million in short-term assistance to the ethanol industry. Most of this money went to Manildra since they produce about 96% of the ethanol in Australia and CSR the remaining 4%. This scheme ran until the end of 2003 or until payments reached a cap of \$10 million.

Using freedom of information laws, Labor's Kerry O'Brien obtained a letter written by Manildra's chairman Dick Honan to John Howard in August 2002 thanking him for his support of the ethanol industry. In the letter Mr. Honan said he had spoken with the then head of the Prime Minister's department about Manildra and CSR Distilleries' concerns over the scheduled arrival of 13.9 million litres of cheap ethanol from Brazil. He believed

that cheap imported ethanol could destroy any prospect of an Australian renewable fuels industry (Ramsey, 2003).

Approximately two weeks after the letter was written John Howard announced cabinet's decision for the substantial subsidy of local ethanol and prohibitive excise arrangements of imported ethanol. A tanker of cheap Brazilian ethanol had to be diverted in mid ocean and sold by two importing companies for a loss of \$1 million.

In the ensuing outcry about this matter Labor asked a series of questions in Parliament which led to the controversy of whether or not the Prime Minister misled Parliament. Also, many reporters discussed the political donations from Manildra to the Coalition parties (for example, see Ramsey, 2003; Steketee, 2003).

According to the party returns to the AEC, Manildra has contributed \$694,970 to the NSW and Federal offices of the Coalition parties during the past five years. Most of that money was given since July 2001 and almost evenly divided between the Liberal and National Parties. A portion of this money went directly to the 2001 campaigns coffers of sitting NSW Liberal MPs, including John Howard, Tony Abbott, Ross Cameron and Jackie Kelly (Ramsey, 2003). Ramsey goes on to point out that Honan donated \$112,000 of this to the National Party in two cheques written more than six months after the 2001 Federal election and four months before the cabinet decision on ethanol in September 2002.

Manildra continues to make large donations to both sides of politics. In 2006/07 alone they donated \$367,950 to the major parties, including \$213,000 to NSW Labor and \$100,000 to the NSW Liberals.

4. Exclusive Brethren

Weak disclosure laws allow interest groups to spend hundreds of thousands of dollars in an election campaign without lodging any of the required forms with the AEC. An example is the Exclusive Brethren. This fundamental Christian church has influenced elections in Canada, the USA, New Zealand and Australia (see [Australian Policy Online](#) article) including an attack on the Australian Greens in the lead-up to the last Federal election.

Under Australian law donations and election expenditures associated with these groups should be disclosed. We only know that the AEC is still considering whether the Exclusive Brethren have a disclosure obligation related to the 2004 election. Considering the vagueness of our disclosure laws and the weak powers of the AEC, it is possible that they will not have to make these disclosures.