

Electoral Reform Green Paper: Donations, Funding and Expenditure

Submission by Stephen Mills

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About The Author

Stephen Mills is undertaking post-graduate studies on Australian election campaigns at the University of Sydney. He is a former political adviser and journalist, and is the author of *The New Machine Men* (Penguin, 1986) which considered the impact of new campaign techniques on electoral practice, including public funding.

What can be done to reduce campaign expenditure? What can even be done to slow its rate of growth? Very high levels of campaign expenditure are unfair: they limit participation in important campaign arenas such as television advertising to the large parties, and exclude smaller parties with fewer financial resources. They are perverse: they favour groups and individuals with existing wealth and/or fundraising skills over those skilled in, for example, policy or government affairs. And they are dangerous: high levels of campaign spending require high levels of fundraising, and party reliance on private donors creates the potential for real or perceived influence on decision making, degrading public confidence in the integrity of the political process.

The obvious solution – a limit on campaign spending – was abandoned in Australia in 1980 as impractical, intrusive, complex to administer, and prone to leakage. This submission focuses not on limiting not overall spending but the largest single component of spending: television advertising. Controlling the costs of TV advertising offers the most effective way of controlling overall spending, while breaking down the barriers to participation by smaller players.

Targeting the cost of electronic campaign advertising is not a new idea. It has been a recurrent theme of Parliamentary inquiries since the early 1980s. The present writer proposed licence conditions to mandate free time provision by broadcasters in 1986. It was one of the goals of the 1992 ban on political advertising, overturned in the High Court. But it remains a relevant and practical tool in the effort to protect Australia's system of representative and responsible government, particularly in the light of the High Court's view that the 1992 ban was too drastic a measure.¹

The proposal in a nutshell

This submission seeks to strengthen the fairness and integrity of election contests, broadening participation without significantly impairing freedom of expression by donors, broadcasters or parties. It seeks to apply public funding to its real purpose: helping voters make an informed choice at the ballot box. It seeks to enlist radio and television broadcasters in this effort, insisting that voters get a better deal for their dollars than they are getting at present, while providing broadcasters some financial compensation for their contribution to an improved electoral environment. It provides a meaningful target to measure the effectiveness of party use of public funding.

Under the proposal:

- the amount of allowable broadcast advertising (i.e., advocating a vote for parties or candidates) would be capped at a dollar limit and allocated among all eligible political parties;
- the cap would be set by reference to a target relating broadcast advertising costs to public funding receipts;
- parties would be able to use their allocation as they see fit, both as to content and broadcast schedules, up to their allocated entitlement but not beyond;
- broadcast advertising by groups other than parties would be permitted but not if it advocated a vote for or against parties or candidates;

¹ Australian Capital Television Pty Ltd v Commonwealth (1992) 177 CLR 106; Green Paper 7.29

- commercial broadcasters would be required as a condition of their licence to broadcast the advertising and other broadcasts at no cost;
- commercial broadcasters would be eligible for part-reimbursement through the public funding mechanism;
- ‘free time’ would be expanded and shared among all broadcasters.

The effect of the arrangement is that broadcast advertising would be capped, and for the major parties would decline as a proportion of their public funding receipts. This would level the playing field for smaller parties, breaking down the major parties’ monopoly on political broadcasts.

The proposal broadly resembles the New Zealand arrangements for public funding of political broadcasts, adjusted to take account of institutional and practical differences in Australia.

The proposal does not represent a ban on political advertising, or a cap on total campaign expenditure, and does not impact in any way on broadcast of news and current affairs.

Why control television advertising costs?

There are of course other categories of campaign expenditure where costs have risen over the years – print advertising, direct mail, market research and others. Campaign arenas that barely existed in the 1990s, notably web-based campaigning and fundraising, are likely to consume increasing portions of campaign budgets in coming years. But this proposal is focused on broadcast costs because they represent the *largest* component of campaign expenditure; controlling broadcast (especially television) costs is the most effective way to control overall campaign costs. The Green Paper states (10.20) that “one of the largest, and growing, elements of campaign expenditure [is] television advertising”. Yet significantly the Green Paper is unable to substantiate or quantify that claim, either in regard to the absolute cost of television advertising or its relative importance in the parties’ overall campaign budget. This is because since 1996, parties have not been required to lodge reports on their campaign expenditure; the public knows less about these matters today than in the 1990s.

The price dynamics of the television advertising market are driven by a broad set of commercial (and therefore largely non-transparent) market factors. These include overall economic conditions, patterns of media usage across communities and regions, and levels of market competition. Discounts and other incentives can be offered to preferred customers, for example on the basis of volume. In this market, election campaigns pose particular challenges and difficulties for broadcasters. They are occasional and not always predictable events that when they do occur, exert intense pressure on advertising schedules. The urgent requirement by political parties for significant amounts of advertising time over the few weeks of the campaign can indeed squeeze out commercial advertisers. On the other hand, political parties may pay premium prices for this kind of access; it seems at any rate that parties do not benefit from volume discounts.² If political advertising does not fit easily into the commercial market for broadcasting advertising, then the appropriate response surely is to remove it from that marketplace and fund it by other means.

The focus is on broadcast advertising for a second important reason: because of the fundamentally public nature of broadcasting. The broadcast spectrum is a scarce, publicly-owned asset, use of which is controlled or rationed via a licensing system. Broadcasting is extensively regulated through the *Broadcasting Services Act (1992)*, and various licence conditions are outlined in Schedule 2 of the Act mandating broadcasting standards designed to protect the public interest in various areas

² Perhaps in part because this might constitute a disclosable political donation by the broadcasters. No broadcaster lodged a donation disclosure in relation to the 2007 Federal election.

including parliamentary elections. The Australian Communications and Media Authority is responsible for awarding and renewing licences, and monitoring and varying licence conditions. Current licence conditions relating to elections include observing a 'blackout' period for election advertising, ensuring the identity of a political advertiser is disclosed, and keeping records of political matters broadcast.

The public thus has leverage over broadcasting that it does not have over other areas of campaign expenditure. It is time for the electoral reform debate to consider using the broadcast licensing regime as a tool for reducing campaign costs. Specifically, broadcast licences should be varied so as to require television broadcasters to provide a specified amount of broadcast time for political broadcasts during election campaigns.

The submission refers to 'broadcast' advertising, and is intended to refer to free-to-air as well as subscription television and radio broadcasting. It would be open for policy makers, consistent with the focus on the largest items of campaign expenditure, to separate high-cost television advertising from lower-cost radio broadcasting; however this would likely add to the administrative complexity of the program.

Public funding: a failed game-changer

Concerns about the way high campaign expenditure might damage the electoral system's fairness, integrity, transparency and participation levels led to the introduction of public funding – whereby the taxpayer helps political parties cover the cost of election campaigning. In the words of the Green Paper, public funding was introduced with the intention of “providing a greater equality in the opportunity to present policies to the electorate and to reduce the risk of corruption and undue influence” (4.10).

It is clear these ambitions have not been fulfilled. Instead of a political playing field that is more level, and less exposed to the risk of undue influence, campaigning remains dominated by two major parties engaged in a spending arms race paid for largely through non-public funds. Instead of relieving parties of the burden and risk of private fund raising, they are still engaged in a desperate and apparently ceaseless effort to attract donations so as to pay for their limitless – literally, limitless – campaign spending. According to the Green Paper (1.11), public funding constitutes only around one-fifth of total receipts by each of the major parties over the electoral cycle, with the balance coming through a wide range of fundraising activities involving party members, affiliates, members of the public and corporations. The malaise in Australian public funding today is shown most starkly in the Green Paper comment (1.15) that

“It would appear that public funding has been integrated into campaign budgets as an additional stream of funding that has in turn helped support expanded and lengthened election campaigns”.

Later, the point is underlined: “Public funding has not significantly reduced the reliance of political parties on public funding” (Green Paper, 4.29).

Far from a game-changing resolution of the campaign spending problem, it seems public funding has become just another contribution to a largely private revenue stream devoted to the funding of longer campaigns.

Yet public funding remains a potentially powerful tool to achieve reform – a potential that I believe the Green Paper does not sufficiently recognise. The system of public funding is based on the fundamentally important goal of ensuring election campaigns respond to the needs of voters – not parties, donors or broadcasters. Public funding, with its associated donations disclosure regime, stands as one of several taxpayer-funded regulatory interventions - covering voter enrolment, polling,

redistributions, ministerial staffing, and electorate correspondence among others – that together underline the foundational importance of elections in legitimising the exercise of authority in Australia. Public funding affirms that election campaigns deal with fundamental public interests and rightly belong in the public sphere. Through public funding, voters are asserting that election campaigns are of such importance that the cost of campaigning ought to be publicly subsidised.

Without public funding, the campaign process would be subject solely to the influence of private funding - from party members, individuals, corporations and others. I argue that parties should of course remain free to raise funds from such sources, subject to proper disclosure, and should also retain discretion over how to spend their aggregate receipts during the campaign. It is also true that private individuals have the right to support candidates and causes of their choice. But at the same time, the voting public has an undeniable and powerful entitlement to a campaign that best assists them in making an informed choice at the ballot box. Public funding is designed to ensure that this in-principle entitlement is respected as a fact by party decision-makers.

Performance targets: advertising costs vs public funding receipts

Parties are free to spend their money, including public funding receipts, as they see fit; major parties routinely have broadcast advertising as their largest spending category. As noted above, we have little public data to flesh this out. Given the foregoing, however, it seems vital to understand not just the aggregate cost of broadcasting by major parties but also the relative importance of that expenditure against their public funding receipts.

A crude estimate is that broadcast advertising consumes the equivalent of 70 per cent of the major parties' public funding receipts.³ Further work should be done to verify this estimate.

At this level, the public is getting a poor deal. It owns the broadcast spectrum and controls broadcast licence conditions. It provides public funding to subsidise the cost of election campaigning. Yet parties allocate about seven dollars in ten of public funding on television advertising – and they remain deeply reliant on private donors as a result. In this sense the public is essentially “buying back” access to its own spectrum, at prices set in a commercial marketplace without regard to the public nature of election campaigns. This dysfunctional system requires further legislative intervention.

The Green Paper speaks in Chapter Two of the important, sometimes cross-cutting, set of principles that should guide evaluation of proposals for election reform. This is entirely appropriate. But in the absence of performance measures the discussion is bound to remain abstract. Legislative intervention should be based on target outcomes, so that progress towards the target and achievement of the target is measurable and transparent. Currently, the public lacks data on how

³ This estimate is developed as follows. Data from the 1984-1996 period, when expenditure breakdowns were provided by parties, indicate that broadcast advertising spending (broadcast plus production) steadily increased for both parties from \$2.1m to \$9m (ALP) and from \$2.3m to \$5.3m (Liberal). After the 1996 campaign, the Australian Electoral Commission paid \$12.9m to the ALP and \$12.5m to the Liberals. That is, the major parties spent 56 per cent of their public funding receipts on broadcast advertising. In the absence of party expenditure reports, it is hard to be precise about how this level may have changed in subsequent campaigns.

A crude estimate can be made as follows. In 2004, the Green Paper estimates (para 1.9) that the ALP spent a total of \$19.3m and the Liberal Party spent \$22m. In 1984-96, broadcasting advertising was responsible for an average 59% of aggregate reported spending by both major parties. Assuming this proportion has remained constant, then the parties broadcast costs would have been \$11.3m (ALP) and \$13m (Liberal). After the 2004 campaign, the Australian Electoral Commission paid \$16.7m to the ALP and \$17.9m to the Liberal Party. Broadcasting advertising costs thus represented 68% (ALP) and 72% (Liberal) of public funding receipts in 2004.

parties are spending their public funds and are not being held to any performance measure – that is, the public has no means to measure the performance of political parties in executing their campaign tasks. Indeed, in the absence of performance targets, political parties will have no real guidance on what is considered appropriate levels or categories of campaign expenditure.

I argue that the relationship between the cost of broadcast advertising and public funding receipts is an important one that would provide a useful performance measure and performance target for electoral reform. Others may have different suggestions and these should be ventilated and compared so as to come up with a suitable metric. With such a metric it would be possible to target and monitor performance – as further outlined below.

For example, a level of 70 percent of major party public funding receipts being allocated to broadcast advertising is clearly too high. In implementing reform, a target should be set that sees this proportion falling over time to a more appropriate level. As an indicative target, subject to further study and discussion, it seems appropriate to require the proportion to fall below 50 per cent over the next two federal election campaigns.

Broadcasts: capping, allocating and compensating

The following points outline how the proposed arrangements would work in practice, viewed against the timeline of an actual election campaign.

- In the year before the next federal election is due, the Australian Electoral Commission (AEC) would establish how much public funding will be available for distribution to eligible parties and candidates.
 - This would be done by reference to public funding levels and to the inflation-based formula for party reimbursement, and by seeking formal confirmation from the Special Minister of State that public funding will be available
- The AEC would then establish the *available amount* of public funding for broadcast advertising during the forthcoming campaign
 - Broadcast advertising is advertising that advocates a vote for or against a particular party or candidate.
 - The *available amount* of advertising is a dollar figure that represents the maximum amount that can be spent on broadcast advertising during the campaign
 - In setting the amount, the AEC is to
 - consult with political parties, as likely advertisers, and with broadcasters in relation to prevailing costs of broadcast time;
 - capped expenditure at the estimated level of the previous campaign's spending on broadcasting
 - ensure that broadcast advertising expenditure will fall as a proportion of total public funding receipts by the major parties to an agreed target level over time
- In the same timeframe, the AEC is to seek registration from political parties and candidates to establish the list of eligible recipients of public funding

- Only parties with members of parliament seeking re-election, or parties nominating candidates for election, or individual candidates, are eligible
 - They are required to register with the AEC before nominations close
- Finally, the AEC is to determine relative entitlements by eligible recipients to the *available amount*
 - Relative entitlements will depend on factors including the size of the party's existing parliamentary representation, the numbers of candidates fielded, the size of its membership and other indications of political support (e.g. through reference to public opinion polls)
 - A case can be made on grounds of fairness for lowering the current threshold from 4 per cent to 2 per cent of the formal first preference vote (Green Paper 4.21). This would have the effect of expanding participation in public funding and is consistent with, though not essential to, the thrust of this proposal
- In the lead up to the campaign and during the campaign, parties would secure advertising space with broadcasters, but only for broadcast during the campaign and only up to their allocation of the available amount.
 - It would be the responsibility of each party to ensure they do not breach their allocated limit
 - Broadcasters would provide parties with the cost equivalent of their scheduled advertising so parties can monitor their burn rate relative to their allocation
 - Parties may decide not to use their full allocation, in which case they would be able to convert unused allocations to cash via the public funding mechanism after the election.
- After the commencement of the campaign (= issue of writs) television and radio broadcasters would carry political broadcasts as defined at no cost to the parties.
 - No broadcasts would be permitted beyond these allocated limits
 - No broadcasts would be permitted advocating a vote for or against a candidate or party unless it was broadcast on behalf of a party or candidate that had received an allocation from the AEC. This is designed to control advertising by apparently independent groups acting as surrogates or proxies for the parties, without limiting freedom of expression during a campaign about contested policies
 - Political advertising may only apply to the period of the election campaign. 'Mid-term' campaigns are not permissible. Television advertising is not permissible for by-elections
 - Existing requirements on identification of advertisements would remain
 - The current "election blackout" would remain
- After the conclusion of the election, broadcasters would be entitled to receive financial compensation for foregone revenue from the available amount of public funding for broadcasting previously established by the AEC
 - Broadcasters would need to submit returns of advertising provided to the AEC.

- On the basis of broadcaster returns, the AEC allocates the available sum of money among broadcasters, less any sums that should be paid to parties for their unused allocation

These arrangements will pose some administrative challenges, largely for the AEC. An additional layer of complexity would arise from coordinating these Federal election arrangements with the separate and occasionally overlapping schedules for state elections. The challenges arise from the complexity of the competing stakeholder interests and the need to balance competing principles of fairness and efficiency.

The New Zealand model, put to the test in the recent New Zealand national elections, is likely to provide useful input into the design of an Australian scheme.

Allocating and funding ‘free time’ political broadcasts

For many years the Australian Broadcasting Corporation has provided parties with ‘free time’ during campaigns to broadcast policy speeches. More recently, debates between major party leaders, and between rival ministerial spokespeople, have become an accepted though voluntary part of the broadcast landscape during a campaign. Taken together, such broadcasts provide a rich and more diverse source of political information, supplementing the sharper and shorter messages broadcast as advertisements with extended exposure to alternate leaders and their policies. Given that the purpose of public funding is to assist voters make an informed decision at the ballot box, it makes sense for these broadcasts to be brought under the public funding allocation process outlined above.

- Commercial broadcasters should be required to carry some of the financial burden of broadcasting key campaign events as policy speeches.
 - This could be achieved by piggy-backing a ‘free-time allocation’ process on the back of the advertising allocation.
 - The AEC would establish – by reference to levels of free time provided by the ABC in previous campaigns - a likely minimum amount of free time (in minutes) available for the forthcoming campaign and communicate this to commercial broadcasters and the ABC
 - Commercial broadcasters and the ABC would determine by consultation a broadcasting schedule to provide this amount of free time such that viewers in every electorate have access to each of the broadcasts. It is not intended that every station carry every broadcast in ‘blanket’ style.
 - The schedule is to be submitted to the AEC for approval.
 - The AEC is also to allocate the available free time among eligible parties using the same factors outlined above.
 - Parties are to use the free time for broadcast of their policy speeches or policy summaries
 - ‘Free time’ does not include news or current affairs broadcasting.

Candidate debates present a more difficult problem. Running for up to an hour and perhaps longer, debates are too long to be included in the same calculations as advertisements. They also appear capable of attracting significant audiences – especially the debates between alternate Prime Ministers. With audiences comes commercial advertising. Consideration should therefore be given to

requiring the 'host' broadcaster of the debate to contribute proceeds (minus costs) of the commercial advertising run before and after the debate to the public funding pool, to support other free time broadcasts during the campaign.

Conclusion

The Green Paper describes an electoral funding system that is dysfunctional and in urgent need of reform. Campaign expenditure is uncontrolled. Public funding has failed to reduce party reliance on private donations. The electoral playing field is so uneven - especially in the vital arena of broadcasting advertising – that in effect only two sides can afford to play in the competition.

Election funding in New Zealand has pioneered the way with a model that – subject to institutional and other differences between the two countries - provides a template for reform in Australia. It deserves close scrutiny.

Capping the permissible amount of money that can be spent on broadcasting advertising will help control the overall growth of campaign expenditure. Allocating it fairly among all parties will open the way for increased political participation. Reimbursing broadcasters will soften the cost while reasserting public control over broadcast licenses in this crucial area. Combined with greater financial encouragement for 'free time' broadcasts, and a specific performance target, the arrangements proposed here are designed to improve the ability of voters to make an informed choice at the ballot box.