



## **Donations, expenditure and electoral funding**

Submission to the consultation process in relation to the Green Paper on Commonwealth Electoral Law Reform

# **Australian Labor Party (National Secretariat) Response to the Green Paper on Commonwealth Electoral Law Reform**

## **A strong case for reform**

The ALP welcomes the opportunity to provide input into the consultations around the Electoral Reform Green Paper: Donations, Funding and Expenditure (the Green Paper).

The ALP recognised the Green Paper on its release in December 2008 as an important part of the process of reforming Australia's system of electoral funding and disclosure to ensure that it is transparent, accountable and enhances the democratic process.

The Special Minister of State has stated that the intention of the Green Paper consultation process is to "raise questions of both the values Australian electoral law ought to serve, and the specific measures taken to pursue those values". The ALP submission will examine both aspects of this process and provide commentary in support of our reform proposals.

The ALP would like to explicitly state its position that fundamental reform is required to Australia's electoral funding and disclosure regime to protect the democratic process and to address the legitimate calls for increased transparency and accountability around political donations.

The ALP supports a finance and disclosure regime which places transparency, accountability and integrity at its core.

Through this submission the ALP will focus on the systemic issues in the electoral system, such as the conditions which have led to the start of a spending 'arms race' between the major parties in electoral expenditure. The ALP believes that unless these systemic issues are tackled in the current reform process an historic opportunity to improve and modernise our electoral system will be lost.

The ALP would like to reiterate that it fully supports the reforms already announced by the Special Minister of State in relation to funding and disclosure including:

- Setting the campaign donation disclosure threshold at \$1,000, thereby reversing the previous government's huge increase in the threshold which took the disclosure limit from \$1,500 to over \$10,000;
- Banning donations from overseas and from non-Australian companies, ensuring donations come from a jurisdiction where Australian law applies;
- Binding election funding to reported and verified electoral expenditure directly incurred by a candidate or party for an election, thereby stopping profiteering from failed candidacy;
- Closing the loophole whereby separate divisions of a political party are treated as separate entities, so preventing large donations from being hidden by paying portions across state and territory branches of the same Party; and

- Increasing public scrutiny of donations by releasing donations and disclosure returns every 6 months.

The ALP believes that these measures would have an immediate impact on the Australian electoral system, improving our system of disclosure by increasing transparency and accountability.

## **A history of electoral modernisation**

The ALP has always been a strong proponent of electoral law reform, seeking to modernise our political system to improve our democracy and to remove the power of vested interests from the electoral system.

The last major reform of our system of election funding and disclosure was that of the Hawke Government through the 1983 *Commonwealth Electoral Legislation Amendment Bill*.

On its election in 1983 the Hawke Labor Government, under then Special Minister of State The Hon Mick Young MP, started the reform process that previous governments had found “too hard”. Through the Joint Select Committee on Electoral Reform, the government and other members of the Committee received 212 submissions and developed a comprehensive list of recommendations, many of which would become law.

Through this reform process, the government completed the first major review of Australia’s electoral legislation since the Act was first consolidated in 1918. The then Government took the historic opportunity to make lasting and enduring reforms to the system of funding and disclosure, providing what remains an effective basis for further improvement to the system.

The reforms in 1983 provide some context for the challenges faced in the current Green Paper process. In 1983, the then Special Minister of State, the Hon Kim Beazley MP outlined the reform challenge for the government:

*“Despite the many fundamental changes which have occurred in society since the turn of the century most Australian governments have not attempted to amend our electoral legislation to reflect those changes. Their failure to act has usually stemmed from a perceived partisan advantage resulting from the decay of the system.”<sup>1</sup>*

In 2006 the previous Government took a backwards step on campaign finance reform, significantly weakening Australia’s legal framework for funding and disclosure, as well as pursuing other draconian measures such as the early closure of the electoral roll.

These reforms, introduced through the *Electoral and Referendum Amendment (Electoral Integrity and Other Measures) Bill 2005*, reduced the accountability mechanisms built into Australia’s initial wave of electoral reform in 1984. Disclosure limits were lifted from \$1,500 to \$10,000 (and indexed to CPI). Changes to the proof of identity, roll closure, associated entities provisions and other areas were all a part

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<sup>1</sup> The Hon Kim Beazley MP, Second Reading Speech, Commonwealth Electoral Legislation Amendment Bill 1983, Hansard of the Commonwealth Parliament.

of a process to restrict the democratic franchise and reduce disclosure of donations to political parties.

As a result of these changes and also changes in the way modern politics is conducted, it is essential that Australia's electoral laws relating to funding and disclosure are modernised. The funding of electoral activity is now negatively affected by:

- An 'arms race' in electoral expenditure which saw the major parties spend record amounts in the 2007 election campaign.
- A continuing perception that political donations create undue influence in the political system.
- Systemic issues in disclosure provisions, such as evasion of the law through the creation of separate trust or corporate identities.

The ALP believes that the reform challenge must be met and that the Australian system of electoral funding and disclosure must be fundamentally reformed. It is no longer sufficient to claim that reform is "too hard" or to allow the electoral system and the democratic process to be potentially undermined by the current, negative, developments in electoral funding and disclosure.

The ALP recognises that there are no perfect solutions to the vexed issues around political funding and disclosure, however we do not believe that this should be an impediment to beginning major reform of the system.

### **Dealing with the 'arms race' in electoral expenditure**

As is cited in the Green Paper, the expenditure of the major parties in the 2007 election was far higher than in any other election.

The reality of electoral expenditure has been compared in academic literature to an "arms race".<sup>2</sup> This is an appropriate way to explain the escalation in expenditure in the last federal election. The pressure to match advertising expenditure is now a fundamental part of political contests across the western world. Without reform in this area we risk political parties seeking more and more private donations to fund ever higher advertising expenditure.

The ALP has previously put on the record its support for a comprehensive expenditure cap to be imposed on political parties for their electoral spending. The ALP believes that an expenditure cap is an appropriate way to maintain downwards pressure on electoral expenditure.

As is canvassed in the Green Paper, in other countries expenditure caps are an established fact in the electoral system. In Canada, New Zealand and the United Kingdom comprehensive systems operate at national and local levels. In the United States, a different system applies governed by similar principles. The Australian reform process has a lot to learn from these overseas examples, including in relation to overly complex provisions which have only served to undermine the public

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<sup>2</sup> KD Ewing, 2007: *The Cost of Democracy*, Hart Publishing, Oxford, p5.

perception of the electoral system further. As a result, the ALP believes that the compliance burden of any changes should also be assessed.

The ALP believes that an expenditure cap should be a recommendation from the Green Paper process, taking into account the following points:

- That expenditure caps be developed to meet the policy objective of simplicity in compliance and simplicity in enforcement.
- That any system of expenditure caps avoid repetition of the complexity of overseas systems which have seen political parties inadvertently exceed expenditure caps.
- That a national expenditure cap be set in relationship to other reforms that may be considered by government such as donation caps and public funding.
- That any system of expenditure caps ensure that formal and informal political coalitions are explicitly recognised, and that a single cap applies in these instances.

### **Targeting undue influence**

The ALP believes that the most important way to protect the integrity of the party funding system is to have a rigorous, well enforced system of donation disclosure. By disclosing political donations, the actions of political parties, private individuals and collective interests can be properly scrutinised and evaluated by the public, the media and other third parties. In its original form, the system of political disclosure was intended to make public an area previously considered the private domain of parties and their donors. It was intended to “shine a light” on these donations and in so doing, prevent undue influence and protect the political system from corruption. As academic Rose-Ackerman succinctly puts it:

*“Even entirely legal contributions from wealthy interests are a source of concern. The worry is favouritism. Groups that give funds to elected officials expect help in the legislative process. They may also expect special treatment on individual problems in dealing with the bureaucracy or in seeking contracts and concessions. If the interests of such groups or individuals conflict with those of the general public, this undermines democratic values.”<sup>3</sup>*

The Australian system of public disclosure is now failing to meet those policy objectives under the pressure of the failure to reform the system to keep pace with changes in political practices. It is now clear that there is a perception of undue influence over political decision-making arising from the current situation.

The ALP supports reforms which strengthen the disclosure regime, however the ALP also believes that a cap on political donations could be considered to supplement reforms in this area and reduce the perception of undue influence even further.

The ALP believes that a cap on donations from private sources could be a recommendation from the Green Paper process, taking into account the following points:

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<sup>3</sup> S Rose-Ackerman, 1999; *Corruption in Government*, Cambridge, pp133.

- That any donation cap be at a level that cannot be construed as distorting the electoral system and undermining the universal franchise.
- That any donation cap be targeted towards preventing undue influence from donors, rather than simply restricting funds to political parties.
- That any donation cap be set at a level that does not completely restrict the ability of party members and supporters from contributing towards the political process.
- That any donation cap be constructed being mindful of the need to allow political parties to modernise their operations and pursue new ways of engaging with the public.

### **Nationally consistent laws**

The ALP is strongly of the view that legislative reform at the national level on funding and disclosure must also apply at a state level to registered political parties, candidates, and state and local elections.

The ALP welcomes the moves already made by the Commonwealth Government in this direction, including the provisions in the current bill to prevent donations to separate branches of the same political party avoiding disclosure. There is a strong public expectation that the Commonwealth, state and territory governments will work constructively to ensure that the system of funding and disclosure is not only transparent, but also consistent.

The ALP believes that all levels of government should work at the ministerial council level to ensure that any reforms are also implemented in all states and territories.

### **Public funding underpinning reform**

As mentioned previously in this submission, the ALP has always been a strong supporter of public funding of political parties, expressly for the reason that public funding prevents hidden 'big money' influences from distorting electoral processes, through being a disincentive for parties to seek private funding.

It was the ALP which originally pushed for these reforms to be introduced in the face of considerable opposition. These reforms are now an established part of Australia's electoral, and political, landscape and have improved transparency and accountability. As the then Special Minister of State said in 1983 in relation to public funding:

*"The move to public funding and disclosure is not as radical a step as has been suggested by some sectors of the community. Indeed, the list of countries which have taken up public funding and disclosure shows that Australia will simply be catching up with the rest of the democratic world in this important area of reform. Austria, West Germany, France, Finland, Denmark, Israel, Italy, Japan, the Netherlands, Norway, Sweden, Canada and the United States of America have all embraced this so-called radical step. It is time that Australia also recognised the essential reasons for supporting public funding. Public funding ensures that*

*different parties offering themselves for election have an equal opportunity to present their policies to the electorate. Without it, worthy parties and candidates might not be able to afford the considerable sums necessary to make their policies known. In this way, public funding contributes to the development of an informed electorate. As well, it helps counter the problem created by the mounting costs of political campaigning due to the increased use of television as a medium of communication between the people and the politicians seeking their endorsement.”<sup>4</sup>*

In 1983 the debate over public funding was resolved, and that reform has become the single most important reform in protecting the integrity of the democratic franchise up to this point.

It should be noted that public funding remains the dominant means of funding of political parties in most developed democracies.

The ALP believes that public funding of political parties should also be reviewed as a part of this process and that its role in maintaining integrity in the political system should be explicitly recognised.

### **The reform opportunity**

The ALP believes that the Green Paper process represents a unique opportunity to reform Australia’s funding and disclosure laws for the better.

If the reform challenge is tackled, Australia will have a more robust and transparent system of electoral funding and disclosure which will serve Australia into the next decade.

The ALP looks forward to working with the government and other stakeholders to ensure that this challenge is met.

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<sup>4</sup> The Hon Kim Beazley MP, Second Reading Speech, Commonwealth Electoral Legislation Amendment Bill 1983, Hansard of the Commonwealth Parliament.