



## **CFMEU Submission in Response to the Electoral Reform Green Paper**

### **About the Construction, Forestry, Mining and Energy Union (CFMEU)**

**The Construction, Forestry, Mining and Energy Union (CFMEU) is Australia's main trade union in construction, forestry and forest products, mining and energy production.**

The CFMEU is a progressive trade union that understands that the political and the industrial are inextricably linked. It is also a rank and file focused union that believes its responsibility is to build unionism in the workplace and to encourage workers to participate in the day to day affairs of the organisation. The CFMEU is a union which seeks to educate its membership and make them aware of the broader political forces that impact them at work and affect other aspects of their lives. We are a union that fights to build a better and fairer society.

The CFMEU has offices in all capital cities in Australia and in many major regional centres. The union has around 120,000 members and employs around 400 full time staff and officials.

The Principal Officers of the CFMEU comprise of the following:

**National Secretary:** John Sutton

**National President:** Tony Maher

**Assistant National Secretary:** Dave Noonan

**Assistant National Secretary:** Michael O'Connor

The CFMEU donates to political parties where it believes its members' interests will be served by the success of those political parties.

## Introduction

As a major Australian union with a proud record of extending and defending the pay and conditions of its members, the CFMEU knows how critical Government actions and decisions are to their working life.

The struggle against the Howard Government's Work Choices legislation is the most recent major example of how Governments can influence our members' incomes, jobs and futures. Another example is the Howard Government's Australian Building & Construction Commission, which was established to target the CFMEU in the construction industry. In 1998, the Howard Government supported union-busting on the waterfront. The Rudd Government's decisions during the development of a Carbon Pollution Reduction Scheme will have particular long-term impacts on our forestry, mining and energy membership in particular. The list goes on.

The party that the Australian people choose as Government in elections has a profound impact on all Australians.

On election, all Australians have the legitimate expectation that Governments will make decisions on their merits and free from improper and undue influence.

The Rudd Government's "Green Paper on Electoral Reform – Donations Funding and Expenditure" – has been engendered by perceptions that the system of election campaigning in Australia has become so expensive that the pressure to raise funds places undue pressure on decision-making by Governments. It is a credit to the Australian Government that issues so close to its functioning are open for debate and reform.

In the Green Paper, the Minister, John Faulkner, describes the prevailing Australian electoral funding system as a "campaigning 'arms race'", in which the main participants seemingly reach new heights of spending with each successive election cycle.

In this paper, the CFMEU calls for the main expenditure element of campaigning to be controlled - by limiting the most substantial form of election expenditure – electronic advertising.

### **The cost of elections is rising rapidly...**

Data in the Green Paper show that the cost of elections is spiralling upwards.

Table A below shows how, in a 12 year period, shortly following the repeal of spending limits in 1980, the major parties have escalated their election spending. It is evident from more recent elections that this trend has continued to a point where perceptions and concerns have arisen, prompting this Green Paper.

**Table A: ALP and Liberal Party Election Expenditure 1984 and 1996<sup>1</sup>**

Party	1984 election (\$000)	1996 election (\$000)	Nominal Increase (%)	Real Increase (%)
ALP	4075	11823	190	60
Liberal Party	4236	11165	163	45

### **This expenditure is increasingly funded by private means...**

On the funding side, the Green Paper illustrates the deterioration of public funding as a source of paying for elections. In the 2004 Election cycle (2002-3 to 2004-5) public funding is estimated to have constituted 19% of the ALP's income, and 21% of the Liberal Party's. The remaining sources are membership and affiliation fees, asset income, debt, fundraising and donations.

Studies of the finances of the major parties show that about 25% of overall income to the major parties comes in the form of pure donations (fundraising activity is separate again)<sup>2</sup>. Many of these donations are over \$10,000 each:

- Over 80% of donation income comes in individual amounts over \$10,000;
- Over 60% of donation income comes in individual amounts over \$40,000;
- Over 45% of donation income comes in individual amounts over \$100,000.

The corporate sector is the source of most of these funds, with public and private companies, professional firms and lobby groups well represented. Unions are also represented.

The Australian Electoral Commissions' February 1 disclosures of prior financial year receipts by political parties and candidates has for several years shown an increasing reliance on donations as a source of party income.

<sup>1</sup> Data is sourced from the Australian Government Electoral Reform Green Paper, 2008 p 10. Note a full head to head comparison of the major parties would also require National Party expenditure data, but these were not provided.

<sup>2</sup> ibid p42 – research was for the year 2004-5.

**Political parties should not be dependent on large, private donations to balance their finances...**

Part of the rationale for public funding of political parties' election expenses has always been the relief of pressure to seek large private donations from sectional interests, and proffering of privileged access.

Then NSW Premier Neville Wran used this reason when he introduced Australia's first public funding for election campaign costs in 1981, the Federal Parliament's Joint Select Committee on Electoral Matters said it in 1983 when it recommended federal public funding, and Kim Beazley claimed this in 1991 when he introduced laws that restricted spending on electronic advertising.

In all cases, the rationale for public funding was to displace pressure to raise private funds. In reality, the absence of an expenditure cap has meant that public funding merely adds to private funding, and there is scant evidence that private fundraising has abated. In fact, the evidence suggests the opposite.

The increasing centralisation of public funding has permitted the development of campaign war chests and fostered the professionalisation and efficiency of political campaigning. The major parties have been leapfrogging each other for the past two decades in a virtual campaigning arms race, backed by more sophisticated and widespread fundraising capability.

The widening, privately financed gap between spending and public funding is, in a sense, making the major parties dependent on ongoing funding from these major sources. Whatever interests these contributors represent, they have the potential to influence government decision-making, and they are certainly perceived as so.

**The key is to limit expenditure – the major component of which is electronic advertising...**

Election expenditure is heavily concentrated in electronic broadcasting and production costs. Table B below shows the percentage spread of the costs across categories. Broadcasting and production refers to the production and placement of television and radio advertising. Long considered the most cost effective advertising medium, television advertising costs are at the heart of the rising cost of campaigning.

**Table B: Components of ALP and Liberal Party Election Expenditure 1984 and 1996<sup>3</sup>**

Component	ALP (% of ALP total)		Liberal (% of Liberal total)	
	1984	1996	1984	1996
Broadcasting and production	54	76	56	48
Publishing	20	7	21	19
Display	2	1	0	0
Printing	22	10	19	23
Opinion Polling	2	6	4	10
<i>TOTAL</i>	<i>100</i>	<i>100</i>	<i>100</i>	<i>100</i>

<sup>3</sup> Ibid, p 10

## **We've Done It Before...**

In the 78 years from 1902 to 1980, the *Commonwealth Electoral Act* imposed limits on candidates' election spending. This was consistent with general practice around the globe. Occasionally the limits were raised, but they were very modest when repealed by the Fraser Government in 1980 (\$1000 for Senate and \$500 for House of Representatives). In 1984, the Hawke Government ushered in a new regime based on disclosure of donations and public funding. While it has been adjusted, this framework remains today, and there remains no limit on spending levels.

Labor sought to make major further reform in early 1990s – by eliminating electronic media expenditure. It was a return to regulation of the spending side of electioneering. It proposed a ban-and-ration regime – ban electronic advertising by parties and candidates during elections and ration Parliament-allocated airtime to the candidates based on past performance. In 1991, the Hawke/Keating Government successfully negotiated the Parliamentary passage of amendments to the *Broadcast Act* that appropriated media time from proprietors and allocated it to candidates based on a time formula. All other electronic election advertising during election periods was banned.

Although successfully challenged by the commercial media owners in the High Court, the Act was defeated more by issues of construction, rather than fundamental constitutional obstacles<sup>4</sup>. This case is famous for its adoption of the right to freedom of political communication as being implied by the Constitution's prescription of "responsible government". In the end, the Court accepted that the right existed, acknowledged that it could be impaired if there was a reasonable justification, but that the laws as constructed (especially around the rights of third parties and new entrants to the political process – they were allocated only five percent of allocated time) did not meet that standard.

Despite this setback, this was a significant and far-reaching reform, and this approach should be revisited and reworked in light of the comments of the Court, and more recent developments in campaign finance.

## **And It Occurs Elsewhere Now...**

Canada limits a party's campaign expenditure to a set amount per electorate contested, as does New Zealand and the United Kingdom. The Green Paper notes the reduction in funds flowing into, and being spent by, political parties in Canada since expenditure reform<sup>5</sup>.

Significantly, in New Zealand, the Government buys TV airtime and distributes it between parties broadly according to size. There are limits on how much third parties can spend on a campaign.

In the United Kingdom the Parliament has banned television advertising outside the time it grants in kind (presumably via the BBC) to political parties. This free time, and free postage which is also provided, are estimated to cost the Government £121million in an election year (\$A270million).

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<sup>4</sup> The *Australian Capital Television case* (1992) 177 CLR 106.

<sup>5</sup> Green Paper on Electoral Reform, p29 (para 3.70).

## **A Proposed Approach**

There are several ways that expenditure is limited in campaigns. The main ones are caps and bans, usually supplemented by some public funding.

While a credible approach, the main concerns with caps are their enforceability and oversight costs.

We support the UK system - a ban-and-ration approach to electronic advertising for elections. This is also similar to the Hawke/Keating reform effort from 1991 (with improvements to address the Court's concerns).

Electronic advertising includes all television and radio advertising. The system would apply at all times in the political cycle. The approach would encompass all political parties, candidates and third parties.

Electronic political advertising would be banned outside the allocation system.

The Commonwealth would be responsible for compulsory purchase of advertising slots from commercial networks for political advertising by parties, candidates and third parties. Radio and TV slots would also be provided by the Commonwealth via the ABC and SBS. This allocation would apply at all times and would increase as elections approach. It will target advertising and would not apply to news and current affairs programmes. It would apply to Federal and State Elections, and referenda (as did Federal Labor's reforms in 1991).

Slots would be allocated to parties and candidates based on a "rationing" linked to performance in previous polls. A smaller pool of available slots (say up to 20% of the total acquisition) would be offered first to new candidates or parties, those who previously failed to meet the current 4% public funding threshold, and third party advertisers.

As distinct from direct participants in the electoral process, third parties would be required to reimburse the Commonwealth for slots used on a cost pass-through basis, and these slots would be allocated (as present) on a first-come, first-served basis with an upper limit for any one third party.

## **Benefits of the Proposed Approach**

The benefits of the ban-and-ration approach are that:

- it is relatively simple and straightforward and addresses the heart of the problem,
- it reduces the need for major changes in other parts of the system – donations and disclosure for instance.
- in places a powerful growth constraint on the major cost of election campaigns;
- it allows Government to evenly bargain with the networks, saving money, rather than a virtual auction as occurs between parties during election periods currently;
- it eliminates the need for political parties and candidates to raise funds to cover this major campaign cost element (over 50%).
- it permits a fair allocation of time to all participants, irrespective of their financial position – but based on a formula identifying major and minor participants;
- it facilitates and acknowledges the legitimate role of third parties in election campaigns;
- it will allow political parties to concentrate more on party development than fundraising;
- it addresses the issue of excessive campaign spending by an individually wealthy (the Ross Perot effect) individual, who is not constrained by donation restrictions;
- in the long run it will reduce the level of cynicism that surrounds government decision-making today.

## **Conclusion**

The CFMEU commends these proposals to the Commonwealth Government in response to the Green Paper on electoral reform. We would be available to speak to these matters further and present material in support of these propositions, to any public forum or inquiry that may follow.